

State of South Dakota

EIGHTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2013

742U0462

HOUSE COMMERCE AND ENERGY ENGROSSED NO. **HB 1102** - 01/30/2013

Introduced by: Representatives Rounds, Haggar (Don), and Hawley and Senators Holien, Krebs, Lederman, and Maher

1 FOR AN ACT ENTITLED, An Act to revise provisions regarding the South Dakota Life and
2 Health Insurance Guaranty Association Act.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 58-29C-46 be amended to read as follows:

5 58-29C-46. A. This chapter shall provide coverage for the policies and contracts specified
6 in subpart B:

7 (1) To persons who, regardless of where they reside (except for nonresident certificate
8 holders under group policies or contracts), are the beneficiaries, assignees, or payees
9 of the persons covered under subdivision (2);

10 (2) To persons who are owners of or certificate holders under the policies or contracts
11 (other than structured settlement annuities) and in each case who:

12 (a) Are residents; or

13 (b) Are not residents, but only under all of the following conditions:

14 (i) The insurer that issued the policies or contracts is domiciled in this



- 1 state;
- 2 (ii) The states in which the persons reside have associations similar to the
- 3 association created by this chapter;
- 4 (iii) The persons are not eligible for coverage by an association in any other
- 5 state due to the fact that the insurer was not licensed in the state at the
- 6 time specified in the state's guaranty association law;
- 7 (3) For structured settlement annuities specified in subpart B, subdivisions (1) and (2)
- 8 of this subpart do not apply, and this chapter shall (except as provided in subdivisions
- 9 (4) and (5) of this subpart) provide coverage to a person who is a payee under a
- 10 structured settlement annuity (or beneficiary of a payee if the payee is deceased), if
- 11 the payee:
- 12 (a) Is a resident, regardless of where the contract owner resides; or
- 13 (b) Is not a resident, but only under both of the following conditions:
- 14 (i)(I) The contract owner of the ~~structure~~ structured settlement annuity is a
- 15 resident, or
- 16 (II) The contract owner of the structured settlement annuity is not a
- 17 resident, but the insurer that issued the structured settlement annuity is
- 18 domiciled in this state and the state in which the contract owner resides
- 19 has an association similar to the association created by this chapter; and
- 20 (ii) Neither the payee (or beneficiary) nor the contract owner is eligible for
- 21 coverage by the association of the state in which the payee or contract
- 22 owner resides;
- 23 (4) This chapter does not provide coverage to a person who is a payee (or beneficiary)
- 24 of a contract owner resident of this state, if the payee (or beneficiary) is afforded any

1 coverage by the association of another state;

2 (5) This chapter is intended to provide coverage to a person who is a resident of this state

3 and, in special circumstances, to a nonresident. In order to avoid duplicate coverage,

4 if a person who would otherwise receive coverage under this chapter is provided

5 coverage under the laws of any other state, the person may not be provided coverage

6 under this chapter. In determining the application of the provisions of this paragraph

7 in situations where a person could be covered by the association of more than one

8 state, whether as an owner, payee, beneficiary, or assignee, this chapter shall be

9 construed in conjunction with other state laws to result in coverage by only one

10 association.

11 B. (1) This chapter shall provide coverage to the persons specified in subpart A for direct,

12 nongroup life, health, or annuity policies or contracts, ~~and supplemental contracts to any of these~~

13 ~~and~~ for certificates under direct group policies and contracts, and for supplemental contracts to

14 any of these, in each case except as limited by this chapter. Annuity contracts and certificates

15 under group annuity contracts include allocated funding agreements, structured settlement

16 annuities, and any immediate or deferred annuity contracts.

17 (2) This chapter may not provide coverage for:

18 (a) A portion of a policy or contract not guaranteed by the insurer, or under which

19 the risk is borne by the policy or contract owner;

20 (b) A policy or contract of reinsurance, unless assumption certificates have been

21 issued pursuant to the reinsurance policy or contract;

22 (c) A portion of a policy or contract to the extent that the rate of interest on which

23 it is based, or the interest rate, crediting rate, or similar factor determined by

24 use of an index or other external reference stated in the policy or contract

1 employed in calculating returns or changes in value:

2 (i) Averaged over the period of four years prior to the date on which the
3 ~~association becomes obligated with respect to the policy or contract,~~
4 ~~exceeds a~~ member insurer becomes an impaired or insolvent insurer
5 under this chapter, whichever is earlier, exceeds the rate of interest
6 determined by subtracting two percentage points from Moody's
7 Corporate Bond Yield Average averaged for that same four-year period
8 or for such lesser period if the policy or contract was issued less than
9 four years before the ~~association became obligated~~ member insurer
10 becomes an impaired or insolvent insurer under this chapter, whichever
11 is earlier; and

12 (ii) On and after the date on which the ~~association becomes obligated with~~
13 ~~respect to the policy or contract~~ member insurer becomes an impaired
14 or insolvent insurer under this chapter, whichever is earlier, exceeds the
15 rate of interest determined by subtracting three percentage points from
16 Moody's Corporate Bond Yield Average as most recently available;

17 (d) A portion of a policy or contract issued to a plan or program of an employer,
18 association, or other person to provide life, health, or annuity benefits to its
19 employees, members, or others, to the extent that the plan or program is self-
20 funded or uninsured, including benefits payable by an employer, association,
21 or other person under:

22 (i) A multiple employer welfare arrangement as defined in ~~29 U.S.C.~~
23 ~~§ 1144~~ section 3(40) of the Employee Retirement Income Security Act
24 of 1974 (29 U.S.C. § 1002(40));

- 1 (v) A claim for penalties or consequential or incidental damages;
- 2 (i) A contractual agreement that establishes the member insurer's obligations to
- 3 provide a book value accounting guaranty for defined contribution benefit plan
- 4 participants by reference to a portfolio of assets that is owned by the benefit
- 5 plan or its trustee, which in each case is not an affiliate of the member insurer;
- 6 (j) An unallocated annuity contract; ~~and~~
- 7 (k) A portion of a policy or contract to the extent it provides for interest or other
- 8 changes in value to be determined by the use of an index or other external
- 9 reference stated in the policy or contract, but which have not been credited to
- 10 the policy or contract, or as to which the policy or contract owner's rights are
- 11 subject to forfeiture, as of the date the member insurer becomes an impaired
- 12 or insolvent insurer under this chapter, whichever is earlier. If a policy's or
- 13 contract's interest or changes in value are credited less frequently than
- 14 annually, then for purposes of determining the values that have been credited
- 15 and are not subject to forfeiture under this subsection, the interest or change
- 16 in value determined by using the procedures defined in the policy or contract
- 17 will be credited as if the contractual date of crediting interest or changing
- 18 values was the date of impairment or insolvency, whichever is earlier, and will
- 19 not be subject to forfeiture; and
- 20 (l) A policy or contract providing any hospital, medical, prescription drug, or
- 21 other health care benefits pursuant to Part C or Part D of Subchapter XVIII
- 22 Chapter 7 of Title 42 of the United States Code (commonly known as
- 23 Medicare Part C & D) or any regulations issued pursuant thereto.

24 C. The benefits that the association may become obligated to cover may in no event exceed

1 the lesser of:

2 (1) The contractual obligations for which the insurer is liable or would have been liable
3 if it were not an impaired or insolvent insurer; or

4 (2)(a) With respect to one life, regardless of the number of policies or contracts:

5 (i) Three hundred thousand dollars in life insurance death benefits, but not
6 more than one hundred thousand dollars in net cash surrender and net
7 cash withdrawal values for life insurance;

8 (ii) In health insurance benefits:

9 (I) One hundred thousand dollars for coverages not described in
10 clauses (II) and (III) below, including any net cash surrender and
11 net cash withdrawal values;

12 (II) Three hundred thousand dollars for disability income insurance
13 as defined in § 58-17-108, and three hundred thousand dollars
14 for long-term care insurance as defined in subdivision 58-17B-
15 2(6);

16 (III) Five hundred thousand dollars for basic hospital, medical and
17 surgical insurance, or major medical insurance as defined in the
18 National Association of Insurance Commissioners Health
19 Insurance Shoppers' Guide, as of January 1, 2003; or

20 (iii) Two hundred fifty thousand dollars in the present value of annuity
21 benefits, including net cash surrender and net cash withdrawal values;

22 or

23 (b) With respect to each payee of a structured settlement annuity (or beneficiary
24 or beneficiaries of the payee if deceased), two hundred fifty thousand dollars

1 in present value annuity benefits, in the aggregate, including net cash surrender
2 and net cash withdrawal values, if any;

3 (c) However, in no event may the association be obligated to cover more than (i)
4 an aggregate of three hundred thousand dollars in benefits with respect to any
5 one life under subsections 2(a); and 2(b); ~~and 2(c)~~ of subpart C of this section
6 except with respect to benefits for basic hospital, medical and surgical
7 insurance, and major medical insurance under subsection 2(a)(ii) of this
8 section, in which case the aggregate liability of the association may not exceed
9 five hundred thousand dollars with respect to any one individual, or (ii) with
10 respect to one owner of multiple nongroup policies of life insurance, whether
11 the policy owner is an individual, firm, corporation, or other person, and
12 whether the persons insured are officers, managers, employees, or other
13 persons, more than five million dollars in benefits, regardless of the number
14 of policies and contracts held by the owner;

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

23 D. In performing its obligations to provide coverage under § 58-29C-51, the association may
24 not be required to guarantee, assume, reinsure, or perform, or cause to be guaranteed, assumed,

1 reinsured, or performed, the contractual obligations of the insolvent or impaired insurer under
2 a covered policy or contract that do not materially affect the economic values or economic
3 benefits of the covered policy or contract.

4 Section 2. That § 58-29C-48 be amended to read as follows:

5 58-29C-48. Terms used in this chapter mean:

- 6 (1) "Account," either of the two accounts created under § 58-29C-49;
- 7 (2) "Association," the South Dakota Life and Health Insurance Guaranty Association
8 described in § 58-29C-49;
- 9 (3) "Authorized assessment" or the term "authorized" when used in the context of
10 assessments, means a resolution by the board of directors has been passed whereby
11 an assessment will be called immediately or in the future from member insurers for
12 a specified amount. An assessment is authorized when the resolution is passed;
- 13 (4) "Benefit plan," a specific employee, union, or association of natural persons benefit
14 plan;
- 15 (5) "Called assessment" or the term "called" when used in the context of assessments,
16 means that a notice has been issued by the association to member insurers requiring
17 that an authorized assessment be paid within the time frame set forth within the
18 notice. An authorized assessment becomes a called assessment when notice is mailed
19 by the association to member insurers;
- 20 (6) "Contractual obligation," an obligation under a policy or contract or certificate under
21 a group policy or contract, or portion thereof for which coverage is provided under
22 § 58-29C-46;
- 23 (7) "Covered policy," a policy or contract or portion of a policy or contract for which
24 coverage is provided under § 58-29C-46;

- 1 (8) "Director," the director of the Division of Insurance of this state;
- 2 (9) "Extra-contractual claims," include, for example, claims relating to bad faith in the
3 payment of claims, punitive or exemplary damages, or attorneys' fees and costs;
- 4 (10) "Impaired insurer," a member insurer which, after July 1, 2003, is not an insolvent
5 insurer, and is placed under an order of rehabilitation or conservation by a court of
6 competent jurisdiction;
- 7 (11) "Insolvent insurer," a member insurer which after July 1, 2003, is placed under an
8 order of liquidation by a court of competent jurisdiction with a finding of insolvency;
- 9 (12) "Member insurer," an insurer licensed or that holds a certificate of authority to
10 transact in this state any kind of insurance for which coverage is provided under § 58-
11 29C-46, and includes an insurer whose license or certificate of authority in this state
12 may have been suspended, revoked, not renewed, or voluntarily withdrawn, but does
13 not include:
- 14 (a) A hospital or medical service organization, whether for profit or nonprofit;
- 15 (b) A health maintenance organization;
- 16 ~~(b)~~(c) A fraternal benefit society;
- 17 ~~(c)~~(d) A mandatory state pooling plan;
- 18 ~~(d)~~(e) A mutual assessment company or other person that operates on an assessment
19 basis;
- 20 ~~(e)~~(f) An insurance exchange;
- 21 ~~(f)~~(g) An organization engaged in the issuance of charitable gift annuities, which is
22 described in § 58-1-16; or
- 23 ~~(g)~~(h) An entity similar to any of the above;
- 24 (13) "Moody's Corporate Bond Yield Average," the Monthly Average Corporates as

1 published by Moody's Investors Service, Inc., or any successor thereto;

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

9 (15) "Person," an individual, corporation, limited liability company, partnership,
10 association, governmental body or entity, or voluntary organization;

11 (16) "Premiums," amounts or considerations (by whatever name called) received on
12 covered policies or contracts less returned premiums, considerations, and deposits
13 and less dividends and experience credits. The term, premiums, does not include
14 amounts or considerations received for policies or contracts or for the portions of
15 policies or contracts for which coverage is not provided under subpart B of § 58-29C-
16 46 except that assessable premium may not be reduced on account of subsection 58-
17 29C-46B(2)(c) relating to interest limitations and subdivision 58-29C-46C(2) relating
18 to limitations with respect to one individual, one participant, and one contract owner.

19 Premiums do not include:

20 (a) Premiums on an unallocated annuity contract; or

21 (b) With respect to multiple nongroup policies of life insurance owned by one
22 owner, whether the policy owner is an individual, firm, corporation, or other
23 person, and whether the persons insured are officers, managers, employees, or
24 other persons, premiums in excess of five million dollars with respect to these

1 policies or contracts, regardless of the number of policies or contracts held by
2 the owner;

3 (17) "Principal place of business" of a plan sponsor or a person other than a natural
4 person, the single state in which the natural persons who establish policy for the
5 direction, control, and coordination of the operations of the entity as a whole
6 primarily exercise that function, determined by the association in its reasonable
7 judgment by considering the following factors:

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

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

12 (c) The state in which the board of directors (or similar governing person or
13 persons) of the entity conducts the majority of its meetings;

14 (d) The state in which the executive or management committee of the board of
15 directors (or similar governing person or persons) of the entity conducts the
16 majority of its meetings;

17 (e) The state from which the management of the overall operations of the entity
18 is directed; and

19 (f) In the case of a benefit plan sponsored by affiliated companies comprising a
20 consolidated corporation, the state in which the holding company or
21 controlling affiliate has its principal place of business as determined using the
22 above factors. However, in the case of a plan sponsor, if more than fifty
23 percent of the participants in the benefit plan are employed in a single state,
24 that state shall be deemed to be the principal place of business of the plan

1 sponsor.

2 The principal place of business of a plan sponsor of a benefit plan shall be
3 deemed to be the principal place of business of the association, committee,
4 joint board of trustees, or other similar group of representatives of the parties
5 who establish or maintain the benefit plan that, in lieu of a specific or clear
6 designation of a principal place of business, shall be deemed to be the
7 principal place of business of the employer or employee organization that has
8 the largest investment in the benefit plan in question;

9 (18) "Receivership court," the court in the insolvent or impaired insurer's state having
10 jurisdiction over the conservation, rehabilitation, or liquidation of the insurer;

11 (19) "Resident," a person to whom a contractual obligation is owed and who resides in
12 this state on the date of entry of a court order that determines a member insurer to be
13 an impaired insurer or a court order that determines a member insurer to be an
14 insolvent insurer, ~~whichever occurs first~~. A person may be a resident of only one
15 state, which in the case of a person other than a natural person shall be its principal
16 place of business. Citizens of the United States that are either (i) residents of foreign
17 countries, or (ii) residents of United States possessions, territories, or protectorates
18 that do not have an association similar to the association created by this chapter, shall
19 be deemed residents of the state of domicile of the insurer that issued the policies or
20 contracts;

21 (20) "Structured settlement annuity," an annuity purchased in order to fund periodic
22 payments for a plaintiff or other claimant in payment for or with respect to personal
23 injury suffered by the plaintiff or other claimant;

24 (21) "State," a state, the District of Columbia, Puerto Rico, and a United States

1 possession, territory, or protectorate;

2 (22) "Supplemental contact," a written agreement entered into for the distribution of
3 proceeds under a life, health, or annuity policy or contract;

4 (23) "Unallocated annuity contract," an annuity contract or group annuity certificate which
5 is not issued to ~~an~~ owned and owned by an individual, except to the extent of any
6 annuity benefits guaranteed to an individual by an insurer under the contract or
7 certificate.

8 Section 3. That § 58-29C-49 be amended to read as follows:

9 58-29C-49. A. There is hereby continued the nonprofit legal entity known as the South
10 Dakota Life and Health Insurance Guaranty Association as created by former § 58-29C-1. All
11 member insurers shall be and remain members of the association as a condition of their
12 authority to transact insurance in this state. The association shall perform its functions under the
13 plan of operation established and approved under § 58-29C-53 and shall exercise its powers
14 through a board of directors established under § 58-29C-50. For purposes of administration and
15 assessment, the association shall maintain two accounts:

16 (1) The life insurance and annuity account which includes the following subaccounts:

17 (a) Life insurance account; and

18 (b) Annuity account ~~which shall include annuity contracts owned by a~~
19 ~~governmental retirement plan (or its trustee) established under Section 401,~~
20 ~~403(b), or 457 of the United States Internal Revenue Code; and~~

21 (2) The health insurance account.

22 B. The association shall come under the immediate supervision of the director and shall be
23 subject to the applicable provisions of the insurance laws of this state. Meetings or records of
24 the association may be opened to the public upon majority vote of the board of directors of the

1 association.

2 Section 4. That § 58-29C-51 be amended to read as follows:

3 58-29C-51. A. If a member insurer is an impaired insurer, the association may, in its
4 discretion, and subject to any conditions imposed by the association that do not impair the
5 contractual obligations of the impaired insurer and that are approved by the director:

- 6 (1) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, any
7 or all of the policies or contracts of the impaired insurer; ~~or~~ and
- 8 (2) Provide such moneys, pledges, loans, notes, guarantees, or other means as are proper
9 to effectuate subdivision (1) and assure payment of the contractual obligations of the
10 impaired insurer pending action under subdivision (1).

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

- 12 (1)(a)(i) ~~Guaranty~~ Guarantee, assume, or reinsure, or cause to be guaranteed, assumed,
13 or reinsured, the policies or contracts of the insolvent insurer; or
- 14 (ii) Assure payment of the contractual obligations of the insolvent insurer;
15 and
- 16 (b) Provide moneys, pledges, loans, notes, guarantees, or other means reasonably
17 necessary to discharge the association's duties; or
- 18 (2) Provide benefits and coverages in accordance with the following provisions:
 - 19 (a) With respect to life and health insurance policies and annuities, assure
20 payment of benefits for premiums identical to the premiums and benefits
21 (except for terms of conversion and renewability) that would have been
22 payable under the policies or contracts of the insolvent insurer, for claims
23 incurred:
 - 24 (i) With respect to group policies and contracts, not later than the earlier

1 of the next renewal date under those policies or contracts or forty-five
2 days, but in no event less than thirty days, after the date on which the
3 association becomes obligated with respect to the policies and
4 contracts;

5 (ii) With respect to nongroup policies, contracts, and annuities not later
6 than the earlier of the next renewal date, if any, under the policies or
7 contracts or one year, but in no event less than thirty days, from the date
8 on which the association becomes obligated with respect to the policies
9 or contracts;

10 (b) Make diligent efforts to provide all known insureds or annuitants (for
11 nongroup policies and contracts), or group policy owners with respect to group
12 policies and contracts, thirty days notice of the termination (pursuant to
13 subsection (a) of this subdivision) of the benefits provided;

14 (c) With respect to nongroup life and health insurance policies and annuities
15 covered by the association, make available to each known insured or
16 annuitant, or owner if other than the insured or annuitant, and with respect to
17 an individual formerly insured or formerly an annuitant under a group policy
18 who is not eligible for replacement group coverage, make available substitute
19 coverage on an individual basis in accordance with the provisions of
20 subsection (d), if the insureds or annuitants had a right under law or the
21 terminated policy or annuity to convert coverage to individual coverage or to
22 continue an individual policy or annuity in force until a specified age or for a
23 specified time, during which the insurer had no right unilaterally to make
24 changes in any provision of the policy or annuity or had a right only to make

1 changes in premium by class;

2 (d)(i) In providing the substitute coverage required under subsection (c), the
3 association may offer either to reissue the terminated coverage or to issue an
4 alternative policy;

5 (ii) Alternative or reissued policies shall be offered without requiring
6 evidence of insurability, and may not provide for any waiting period or
7 exclusion that would not have applied under the terminated policy;

8 (iii) The association may reinsure any alternative or reissued policy;

9 (e)(i) Alternative policies adopted by the association are subject to the approval of
10 the domiciliary insurance director and the receivership court. The association
11 may adopt alternative policies of various types for future issuance without
12 regard to any particular impairment or insolvency;

13 (ii) Alternative policies shall contain at least the minimum statutory
14 provisions required in this state and provide benefits that may not be
15 unreasonable in relation to the premium charged. The association shall
16 set the premium in accordance with a table of rates that it shall adopt.
17 The premium shall reflect the amount of insurance to be provided and
18 the age and class of risk of each insured, but may not reflect any
19 changes in the health of the insured after the original policy was last
20 underwritten;

21 (iii) Any alternative policy issued by the association shall provide coverage
22 of a type similar to that of the policy issued by the impaired or insolvent
23 insurer, as determined by the association;

24 (f) If the association elects to reissue terminated coverage at a premium rate

1 different from that charged under the terminated policy, the premium shall be
2 set by the association in accordance with the amount of insurance provided
3 and the age and class of risk, subject to approval of the domiciliary insurance
4 director and the receivership court;

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

9 (h) When proceeding under this subdivision B(2) with respect to a policy or
10 contract carrying guaranteed minimum interest rates, the association shall
11 assure the payment or crediting of a rate of interest consistent with subsection
12 58-29C-46(B)(2)(c).

13 C. Nonpayment of premiums within thirty-one days after the date required under the terms
14 of any guaranteed, assumed, alternative, or reissued policy or contract or substitute coverage
15 shall terminate the association's obligations under the policy or coverage under this chapter with
16 respect to the policy or coverage, except with respect to any claims incurred or any net cash
17 surrender value which may be due in accordance with the provisions of this chapter.

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

23 E. The protection provided by this chapter does not apply where any guaranty protection is
24 provided to residents of this state by the laws of the domiciliary state or jurisdiction of the

1 impaired or insolvent insurer other than this state.

2 F. In carrying out its duties under subpart B, the association may:

3 (1) Subject to approval by a court in this state, impose permanent policy or contract liens
4 in connection with a guarantee, assumption, or reinsurance agreement, if the
5 association finds that the amounts which can be assessed under this chapter are less
6 than the amounts needed to assure full and prompt performance of the association's
7 duties under this chapter, or that the economic or financial conditions as they affect
8 member insurers are sufficiently adverse to render the imposition of such permanent
9 policy or contract liens, to be in the public interest;

10 (2) Subject to approval by a court in this state, impose temporary moratoriums or liens
11 on payments of cash values and policy loans, or any other right to withdraw funds
12 held in conjunction with policies or contracts, in addition to any contractual
13 provisions for deferral of cash or policy loan value. In addition, in the event of a
14 temporary moratorium or moratorium charge imposed by the receivership court on
15 payment of cash values or policy loans, or on any other right to withdraw funds held
16 in conjunction with policies or contracts, out of the assets of the impaired or
17 insolvent insurer, the association may defer the payment of cash values, policy loans,
18 or other rights by the association for the period of the moratorium or moratorium
19 charge imposed by the receivership court, except for claims covered by the
20 association to be paid in accordance with a hardship procedure established by the
21 liquidator or rehabilitator and approved by the receivership court.

22 G. A deposit in this state, held pursuant to law or required by the director for the benefit of
23 creditors, including policy owners, not turned over to the domiciliary liquidator upon the entry
24 of a final order of liquidation or order approving a rehabilitation plan of an insurer domiciled

1 in this state or in a reciprocal state, pursuant to §§ 58-29B-144 and 58-29B-149, shall be
2 promptly paid to the association. The association shall be entitled to retain a portion of any
3 amount so paid to it equal to the percentage determined by dividing the aggregate amount of
4 policy owners' claims related to that insolvency for which the association has provided statutory
5 benefits by the aggregate amount of all policy owners' claims in this state related to that
6 insolvency and shall remit to the domiciliary receiver the amount so paid to the association ~~and~~
7 ~~not less the amount~~ retained pursuant to this subpart. Any amount so paid to the association ~~less~~
8 ~~the amount not and~~ retained by it shall be treated as a distribution of estate assets pursuant to
9 § 58-29B-98 or similar provision of the state of domicile of the impaired or insolvent insurer.

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

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

16 J. The association shall have standing to appear or intervene before a court or agency in this
17 state with jurisdiction over an impaired or insolvent insurer concerning which the association
18 is or may become obligated under this chapter or with jurisdiction over any person or property
19 against which the association may have rights through subrogation or otherwise. Standing shall
20 extend to all matters germane to the powers and duties of the association, including proposals
21 for reinsuring, modifying, or guaranteeing the policies or contracts of the impaired or insolvent
22 insurer and the determination of the policies or contracts and contractual obligations. The
23 association ~~may~~ also has the right to appear or intervene before a court or agency in another state
24 with jurisdiction over an impaired or insolvent insurer for which the association is or may

1 become obligated or with jurisdiction over any person or property against whom the association
2 may have rights through subrogation or otherwise.

3 K. (1) A person receiving benefits under this chapter shall be deemed to have assigned the
4 rights under, and any causes of action against any person for losses arising under, resulting from,
5 or otherwise relating to, the covered policy or contract to the association to the extent of the
6 benefits received because of this chapter, whether the benefits are payments of or on account
7 of contractual obligations, continuation of coverage, or provision of substitute or alternative
8 coverages. The association may require an assignment to it of such rights and cause of action
9 by any payee, policy, or contract owner, beneficiary, insured, or annuitant as a condition
10 precedent to the receipt of any right or benefits conferred by this chapter upon the person.

11 (2) The subrogation rights of the association under this subpart shall have the same
12 priority against the assets of the impaired or insolvent insurer as that possessed by the
13 person entitled to receive benefits under this chapter.

14 (3) In addition to subdivisions (1) and (2) of this subpart, the association shall have all
15 common law rights of subrogation and any other equitable or legal remedy that would
16 have been available to the impaired or insolvent insurer or owner, beneficiary, or
17 payee of a policy or contract with respect to the policy or contracts ~~(including, in the~~
18 ~~case of a structured settlement annuity, any rights of the owner, beneficiary, or payee~~
19 ~~of the annuity, to the extent of benefits received pursuant to this chapter, against a~~
20 ~~person originally or by succession responsible for the losses arising from the personal~~
21 ~~injury relating to the annuity or payment therefor, excepting any such person~~
22 ~~responsible solely by reason of serving as an assignee in respect of a qualified~~
23 ~~assignment under Internal Revenue Code § 130).~~

24 (4) If the preceding provisions of this subpart are invalid or ineffective with respect to

1 any person or claim for any reason, the amount payable by the association with
2 respect to the related covered obligations shall be reduced by the amount realized by
3 any other person with respect to the person or claim that is attributable to the policies
4 (or portion thereof) covered by the association.

5 (5) If the association has provided benefits with respect to a covered obligation and a
6 person recovers amounts as to which the association has rights as described in the
7 preceding subdivisions of this subpart, the person shall pay to the association the
8 portion of the recovery attributable to the policies (or portion thereof) covered by the
9 association.

10 L. In addition to the rights and powers elsewhere in this chapter, the association may:

11 (1) Enter into such contracts as are necessary or proper to carry out the provisions and
12 purposes of this chapter;

13 (2) Sue or be sued, including taking any legal actions necessary or proper to recover any
14 unpaid assessments under § 58-29C-52 and to settle claims or potential claims
15 against it;

16 (3) Borrow money to effect the purposes of this chapter; any notes or other evidence of
17 indebtedness of the association not in default shall be legal investments for domestic
18 insurers and may be carried as admitted assets;

19 (4) Employ or retain such persons as are necessary or appropriate to handle the financial
20 transactions of the association, and to perform such other functions as become
21 necessary or proper under this chapter;

22 (5) Take such legal action as may be necessary or appropriate to avoid or recover
23 payment of improper claims;

24 (6) Exercise, for the purposes of this chapter and to the extent approved by the director,

1 the powers of a domestic life or health insurer, but in no case may the association
2 issue insurance policies or annuity contracts other than those issued to perform its
3 obligations under this chapter;

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

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

9 (9) Take other necessary or appropriate action to discharge its duties and obligations
10 under this chapter or to exercise its powers under this chapter.

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

14 N. (1)(a) At any time within ~~one year after the date on which the association becomes~~
15 ~~responsible for the obligations of a member insurer (the coverage date)~~ one hundred eighty days
16 of the date of the order of liquidation, the association may elect to succeed to the rights and
17 obligations of the ~~member insurer, that accrue on or after the coverage date and ceding member~~
18 insurer that relate to ~~contracts~~ policies or annuities covered ~~(, in whole or in part),~~ by the
19 association, in each case under any one or more ~~indemnity reinsurance agreements~~ contracts
20 entered into by the ~~member insolvent insurer as a ceding insurer and its reinsurers~~ and selected
21 by the association. ~~However, the association may not exercise an election with respect to a~~
22 ~~reinsurance agreement if the receiver, rehabilitator, or liquidator of the member insurer has~~
23 ~~previously and expressly disaffirmed the reinsurance agreement.~~ Any such assumption shall be
24 effective as of the date of the order of liquidation. The election shall be effected by a ~~notice to~~

1 ~~the receiver, rehabilitator, or liquidator and the association or the National Organization of Life~~
2 ~~and Health Insurance Guaranty Associations (NOLHGA) on its behalf sending written notice,~~
3 ~~return receipt requested,~~ to the affected reinsurers. ~~If the association makes an election,~~
4 ~~subsections (a) to (d), inclusive, of this subdivision shall apply with respect to the agreements~~
5 ~~selected by the association:~~

6 (b) To facilitate the earliest practicable decision about whether to assume any of
7 the contracts of reinsurance, and in order to protect the financial position of
8 the estate, the receiver and each reinsurer of the ceding member insurer shall
9 make available upon request to the association or to NOLHGA on its behalf
10 as soon as possible after commencement of formal delinquency proceedings:

11 (i) Copies of in-force contracts of reinsurance and all related files and
12 records relevant to the determination of whether such contracts should
13 be assumed; and

14 (ii) Notices of any defaults under the reinsurance contracts or any known
15 event or condition which with the passage of time could become a
16 default under the reinsurance contracts.

17 (c) Subparagraphs (i) to (iv) apply to reinsurance contracts so assumed by the
18 association:

19 ~~(a)~~(i) The association shall be responsible for all unpaid premiums due under
20 the ~~agreements~~ (reinsurance contracts for periods both before and after
21 the coverage date) of the order of liquidation, and shall be responsible
22 for the performance of all other obligations to be performed after the
23 coverage date of the order of liquidation, in each case which relate to
24 contracts policies or annuities covered ~~(, in whole or in part)~~, by the

1 association. The association may charge ~~contracts~~ policies or annuities
 2 covered in part by the association, through reasonable allocation
 3 methods, the costs for reinsurance in excess of the obligations of the
 4 association and shall provide notice and an accounting of these charges
 5 to the liquidator;

6 ~~(b)~~(ii) The association is entitled to any amounts payable by the
 7 reinsurer under the ~~agreements~~ reinsurance contracts with respect
 8 to losses or events that occur in periods after the ~~coverage~~ date
 9 of the order of liquidation and that relate to ~~contracts~~ policies or
 10 annuities covered by the association ~~(, in whole or in part):~~
 11 ~~However, by the association, provided that,~~ upon receipt of any
 12 such amounts, the association is obliged to pay to the beneficiary
 13 under the policy or ~~contract~~ annuity on account of which the
 14 amounts were paid a portion of the amount equal to the lesser of:

15 (A) The amount received by the association; and

16 (B) The excess of:

17 ~~_____ (i) The~~ the amount received by the association, over

18 ~~_____ (ii) The~~ the amount equal to the benefits paid by the association on account
 19 of the policy or ~~contract~~ annuity less the retention of the ~~impaired or~~
 20 ~~insolvent member~~ insurer applicable to the loss or event;

21 ~~(e)~~(iii) Within thirty days following the association's election ~~(the~~
 22 "election date"), the association and each ~~indemnity~~ reinsurer
 23 under contracts assumed by the association shall calculate the net
 24 balance due to or from the association under each reinsurance

1 ~~agreement contract~~ as of the ~~date of election date~~ with respect to
2 ~~policies or annuities covered, in whole or in part, by the~~
3 ~~association's election, giving association, which calculation shall~~
4 ~~give full credit to all items paid by either the member insurer (or~~
5 ~~its receiver, rehabilitator, or liquidator) or the indemnity~~
6 ~~reinsurer during the period between the coverage date and the~~
7 ~~date of the association's election. Either the association or~~
8 ~~indemnity reinsurer shall pay the net balance due the other or its~~
9 ~~receiver or the reinsurer prior to the election date. The reinsurer~~
10 ~~shall pay the receiver any amounts due for losses or events prior~~
11 ~~to the date of the order of liquidation, subject to any set-off for~~
12 ~~premiums unpaid for periods prior to the date, and the~~
13 ~~association or reinsurer shall pay any remaining balance due the~~
14 ~~other, in each case~~ within five days of the completion of the
15 ~~mentioned calculation. Any disputes over the amounts due~~
16 ~~to either the association or the reinsurer shall be resolved by~~
17 ~~arbitration pursuant to the terms of the affected reinsurance~~
18 ~~contracts or, if the contract contains no arbitration clause, as~~
19 ~~otherwise provided by law. If the receiver, rehabilitator, or~~
20 ~~liquidator has received any amounts due the association pursuant~~
21 ~~to subsection (b) subsection (1)(c)(ii), the receiver, rehabilitator,~~
22 ~~or liquidator shall remit the same to the association as promptly~~
23 ~~as practicable.~~

24 (d)(iv) If the association or receiver, on the association's behalf, within

1 sixty days of the election date, pays the unpaid premiums due for
 2 periods both before and after the coverage election date that
 3 relate to ~~contracts~~ policies or annuities covered ~~by the~~
 4 ~~association~~ (, in whole or in part) by the association, the
 5 reinsurer is not entitled to terminate the reinsurance ~~agreements~~
 6 contracts for failure to pay premium insofar as the ~~agreements~~
 7 reinsurance contracts relate to ~~contracts covered by the~~
 8 ~~association~~ (policies or annuities covered, in whole or in part),
 9 by the association, and is not entitled to set off any unpaid
 10 premium due for periods prior to the coverage date amounts due
 11 under other contracts, or unpaid amounts due from parties other
 12 than the association, against amounts due the association.

13 (2) ~~If the association transfers its obligations to another insurer, and if the association~~
 14 ~~and the other insurer agree, the other insurer shall succeed to the rights and~~
 15 ~~obligations of the association under subdivision (1) effective as of the date agreed~~
 16 ~~upon by the association and the other insurer and regardless of whether the~~
 17 ~~association has made the election referred to above in subdivision (1) provided that:~~

18 ~~(a) The indemnity reinsurance agreements shall automatically terminate for new~~
 19 ~~reinsurance unless the indemnity reinsurer and the other insurer agree to the~~
 20 ~~contrary; During the period from the date of the order of liquidation until the~~
 21 ~~election date (or, if the election date does not occur, until one hundred eighty~~
 22 ~~days after the date of the order of liquidation);~~

23 ~~(a)(i) Neither the association nor the reinsurer shall have any rights or obligations~~
 24 ~~under reinsurance contracts that the association has the right to assume under~~

1 subsection (1), whether for periods prior to or after the date of the order of
2 liquidation; and

3 (ii) The reinsurer, the receiver, and the association shall, to the extent
4 practicable, provide each other data and records reasonably requested;

5 (b) Provided that once the association has elected to assume a reinsurance
6 contract, the parties' rights and obligations shall be governed by subsection (1).

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

11 (4) When policies or annuities, or covered obligations with respect thereto, are
12 transferred to an assuming insurer, reinsurance on the policies or annuities may also
13 be transferred by the association, in the case of contracts assumed under subsection
14 (1), subject to the following:

15 (a) Unless the reinsurer and the assuming insurer agree otherwise, the reinsurance
16 contract transferred may not cover any new policies of insurance or annuities
17 in addition to those transferred;

18 (b) ~~The obligations described in the proviso to subsection (1)(b) of this subpart~~
19 ~~section no longer apply on and after the date the indemnity reinsurance~~
20 ~~agreement is transferred to the third party insurer~~ with respect to matters
21 arising after the effective date of the transfer; and

22 (c) ~~This subdivision (2) does not apply if the association has previously expressly~~
23 ~~determined in writing that it will not exercise the election referred to in~~
24 ~~subdivision (1)~~ The transferring party shall give notice in writing, return

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

3 ~~(3)~~(5) The provisions of ~~this subpart~~ subsection N shall supersede the provisions of any law
4 of ~~this state~~ law or of any affected reinsurance ~~agreement~~ contract that provides for
5 or requires any payment of reinsurance proceeds, on account of losses or events that
6 occur in periods after the ~~coverage~~ date of the order of liquidation, to the receiver,
7 ~~liquidator, or rehabilitator~~ of the insolvent ~~member~~ insurer or any other person. The
8 receiver, ~~rehabilitator, or liquidator~~ shall remain entitled to any amounts payable by
9 the reinsurer under the reinsurance ~~agreement~~ contracts with respect to losses or
10 events that occur in periods prior to the ~~coverage~~ date (of the order of liquidation,
11 subject to applicable setoff provisions); and

12 ~~(4)~~(6) Except as otherwise ~~expressly~~ provided ~~above~~ in this section, nothing ~~herein~~ in
13 subsection N alters or modifies the terms and conditions of ~~the indemnity any~~
14 reinsurance ~~agreements of the insolvent member insurer~~ contract. Nothing ~~herein~~ in
15 this section abrogates or limits any rights of any reinsurer to claim that it is entitled
16 to rescind a reinsurance ~~agreement~~ contract. Nothing ~~herein~~ in this section gives a
17 policy owner or beneficiary an independent cause of action against ~~an indemnity a~~
18 reinsurer that is not otherwise set forth in the ~~indemnity reinsurance agreement~~
19 reinsurance contract. No provision in this section limits or affects the association's
20 rights as a creditor of the estate against the assets of the estate. No provision in this
21 section applies to reinsurance agreements covering property or casualty risks.

22 O. The board of directors of the association shall have discretion and may exercise
23 reasonable business judgment to determine the means by which the association is to provide the
24 benefits of this chapter in an economical and efficient manner.

1 P. Where the association has arranged or offered to provide the benefits of this chapter to
2 a covered person under a plan or arrangement that fulfills the association's obligations under this
3 chapter, the person is not entitled to benefits from the association in addition to or other than
4 those provided under the plan or arrangement.

5 Q. Venue in a suit against the association arising under the chapter shall be in Hughes
6 County. The association may not be required to give an appeal bond in an appeal that relates to
7 a cause of action arising under this chapter.

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

14 (1) In lieu of the index or other external reference provided for in the original policy or
15 contract, the alternative policy or contract provides for (i) a fixed interest rate or (ii)
16 payment of dividends with minimum guarantees or (iii) different methods for
17 calculating interest or changes in value;

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

20 (3) The alternative policy or contract is substantially similar to the replaced policy or
21 contract in all other material terms.

22 Section 5. That § 58-29C-52 be amended to read as follows:

23 58-29C-52. A. For the purpose of providing the funds necessary to carry out the powers and
24 duties of the association, the board of directors shall assess the member insurers, separately for

1 each account, at such time and for such amounts as the board finds necessary. Assessments shall
2 be due not less than thirty days after prior written notice to the member insurers and shall accrue
3 interest at ten percent per annum on and after the due date.

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

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

9 (2) Class B assessments shall be authorized and called to the extent necessary to carry
10 out the powers and duties of the association under § 58-29C-51 with regard to an
11 impaired or an insolvent insurer.

12 C. (1) The amount of a Class A assessment shall be determined by the board and may be
13 authorized and called on a pro rata or nonpro rata basis. If pro rata, the board may provide that
14 it be credited against future Class B assessments. The total of all nonpro rata assessments may
15 not exceed ~~one hundred fifty~~ three hundred dollars per member insurer in any one calendar year.
16 The amount of a Class B assessment shall be allocated for assessment purposes among the
17 accounts pursuant to an allocation formula which may be based on the premiums or reserves of
18 the impaired or insolvent insurer or any other standard deemed by the board in its sole discretion
19 as being fair and reasonable under the circumstances.

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

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

5 (3) Assessments for funds to meet the requirements of the association with respect to an
6 impaired or insolvent insurer may not be authorized or called until necessary to
7 implement the purposes of this chapter. Classification of assessments under subpart
8 B and computation of assessments under this subpart shall be made with a reasonable
9 degree of ~~accurate~~ accuracy, recognizing that exact determinations may not always
10 be possible. The association shall notify each member insurer of its anticipated pro
11 rata share of an authorized assessment not yet called within one hundred eighty days
12 after the assessment is authorized.

13 D. The association may abate or defer, in whole or in part, the assessment of a member
14 insurer if, in the opinion of the board, payment of the assessment would endanger the ability of
15 the member insurer to fulfill its contractual obligations. In the event an assessment against a
16 member insurer is abated, or deferred in whole or in part, the amount by which the assessment
17 is abated or deferred may be assessed against the other member insurers in a manner consistent
18 with the basis for assessments set forth in this section. Once the conditions that caused a deferral
19 have been removed or rectified, the member insurer shall pay all assessments that were deferred
20 pursuant to a repayment plan approved by the association.

21 E. (1)(a) Subject to the provisions of subsection (b) of this subdivision, the total of all
22 assessments authorized by the association with respect to a member insurer for each subaccount
23 of the life insurance and annuity account and for the health account may not in one calendar year
24 exceed two percent of that member insurer's average annual premiums received in this state on

1 the policies and contracts covered by the subaccount or account during the three calendar years
2 preceding the year in which the insurer became an impaired or insolvent insurer.

3 (b) If two or more assessments are authorized in one calendar year with respect
4 to insurers that become impaired or insolvent in different calendar years, the
5 average annual premiums for purposes of the aggregate assessment percentage
6 limitation referenced in subsection (a) of this subdivision shall be equal and
7 limited to the higher of the three-year average annual premiums for the
8 applicable subaccount or account as calculated pursuant to this section.

9 (c) If the maximum assessment, together with the other assets of the association
10 in an account, does not provide in one year in either account an amount
11 sufficient to carry out the responsibilities of the association, the necessary
12 additional funds shall be assessed as soon thereafter as permitted by this
13 chapter.

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

17 (3) If the maximum assessment for a subaccount of the life and annuity account in one
18 year does not provide an amount sufficient to carry out the responsibilities of the
19 association, then pursuant to subdivision C(2), the board shall access the other
20 subaccounts of the life and annuity account for the necessary additional amount,
21 subject to the maximum stated in subdivision (1) of this section.

22 F. The board may, by an equitable method as established in the plan of operation, refund to
23 member insurers, in proportion to the contribution of each insurer to that account, the amount
24 by which the assets of the account exceed the amount the board finds is necessary to carry out

1 during the coming year the obligations of the association with regard to that account, including
2 assets accruing from assignment, subrogation, net realized gains, and income from investments.
3 A reasonable amount may be retained in any account to provide funds for the continuing
4 expenses of the association and for future losses claims.

5 G. It shall be proper for any member insurer, in determining its premium rates and policy
6 owner dividends as to any kind of insurance within the scope of this chapter, to consider the
7 amount reasonably necessary to meet its assessment obligations under this chapter.

8 H. The association shall issue to each insurer paying an assessment under this chapter, other
9 than a Class A assessment, a certificate of contribution, in a form prescribed by the director, for
10 the amount of the assessment so paid. All outstanding certificates shall be of equal dignity and
11 priority without reference to amounts or dates of issue. A certificate of contribution may be
12 shown by the insurer in its financial statement as an asset in such form and for such amount, if
13 any, and period of time as the director may approve.

14 I. (1) A member insurer that wishes to protest all or part of an assessment shall pay when
15 due the full amount of the assessment as set forth in the notice provided by the association. The
16 payment shall be available to meet association obligations during the pendency of the protest
17 or any subsequent appeal. Payment shall be accompanied by a statement in writing that the
18 payment is made under protest and setting forth a brief statement of the grounds for the protest.

19 (2) Within sixty days following the payment of an assessment under protest by a member
20 insurer, the association shall notify the member insurer in writing of its determination
21 with respect to the protest unless the association notifies the member insurer that
22 additional time is required to resolve the issues raised by the protest.

23 (3) Within thirty days after a final decision has been made, the association shall notify
24 the protesting member insurer in writing of that final decision. Within sixty days of

1 receipt of notice of the final decision, the protesting member insurer may appeal that
2 final action to the director.

3 (4) In the alternative to rendering a final decision with respect to a protest based on a
4 question regarding the assessment base, the association may refer protests to the
5 director for a final decision, with or without a recommendation from the association.

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

9 J. The association may request information of member insurers in order to aid in the exercise
10 of its power under this section and member insurers shall promptly comply with a request.

11 Section 6. That § 58-29C-53 be amended to read as follows:

12 58-29C-53. A. (1) The association shall submit to the director a plan of operation and any
13 amendments thereto necessary or suitable to assure the fair, reasonable, and equitable
14 administration of the association. The plan of operation and any amendments thereto shall
15 become effective upon the director's written approval or unless it has not been disapproved
16 within thirty days.

17 (2) If the association fails to submit a suitable plan of operation within one hundred
18 twenty days following July 1, 2003, or if at any time thereafter the association fails
19 to submit suitable amendments to the plan, the director shall, after notice and hearing,
20 adopt and promulgate such reasonable rules as are necessary or advisable to
21 effectuate the provisions of this chapter. The rules shall continue in force until
22 modified by the director or superseded by a plan submitted by the association and
23 approved by the director.

24 B. All member insurers shall comply with the plan of operation.

1 C. The plan of operation shall, in addition to requirements enumerated elsewhere in this
2 chapter:

- 3 (1) Establish procedures for handling the assets of the association;
- 4 (2) Establish the amount and method of reimbursing members of the board of directors
5 under § 58-29C-50;
- 6 (3) Establish regular places and times for meetings including telephone conference calls
7 of the board of directors;
- 8 (4) Establish procedures for records to be kept of all financial transactions of the
9 association, its agents, and the board of directors;
- 10 (5) Establish the procedures whereby selections for the board of directors will be made
11 and submitted to the director;
- 12 (6) Establish any additional procedures for assessments under § 58-29C-52;
- 13 (7) Contain additional provisions necessary or proper for the execution of the powers and
14 duties of the association;
- 15 (8) Establish procedures whereby a director may be removed for cause, including in the
16 case where a member insurer director becomes an impaired or insolvent insurer;
- 17 (9) Require the board of directors to establish a policy and procedures for addressing
18 conflicts of interests.

19 D. The plan of operation may provide that any or all powers and duties of the association,
20 except those under subdivision 58-29C-51L(3) and § 58-29C-52, are delegated to a corporation,
21 association, or other organization which performs or will perform functions similar to those of
22 this association, or its equivalent, in two or more states. Such a corporation, association, or
23 organization shall be reimbursed for any payments made on behalf of the association and shall
24 be paid for its performance of any function of the association. A delegation under this subpart

1 shall take effect only with the approval of both the board of directors and the director, and may
2 be made only to a corporation, association, or organization which extends protection not
3 substantially less favorable and effective than that provided by this chapter.

4 Section 7. That § 58-29C-54 be amended to read as follows:

5 58-29C-54. In addition to the duties and powers enumerated elsewhere in this chapter,

6 A. The director shall:

7 (1) Upon request of the board of directors, provide the association with a statement of
8 the premiums in this and any other appropriate states for each member insurer;

9 (2) When an impairment is declared and the amount of the impairment is determined,
10 serve a demand upon the impaired insurer to make good the impairment within a
11 reasonable time; notice to the impaired insurer shall constitute notice to its
12 shareholders, if any; the failure of the insurer to promptly comply with such demand
13 shall not excuse the association from the performance of its powers and duties under
14 this chapter;

15 ~~(3) In any liquidation or rehabilitation proceeding involving a domestic insurer, be~~
16 ~~appointed as the liquidator or rehabilitator.~~

17 B. The director may suspend or revoke, after notice and hearing, the certificate of authority
18 to transact insurance in this state of any member insurer which fails to pay an assessment when
19 due or fails to comply with the plan of operation. As an alternative the director may levy a
20 forfeiture on any member insurer that fails to pay an assessment when due. The forfeiture may
21 not exceed five percent of the unpaid assessment per month, but no forfeiture shall be less than
22 one hundred dollars per month.

23 C. A final action of the board of directors or the association may be appealed to the director
24 by a member insurer if the appeal is taken within sixty days of its receipt of notice of the final

1 action being appealed. A final action or order of the director shall be subject to judicial review
2 in a court of competent jurisdiction in accordance with the laws of this state that apply to the
3 actions or orders of the director.

4 D. The liquidator, rehabilitator, or conservator of an impaired or insolvent insurer may
5 notify all interested persons of the effect of this chapter.

6 Section 8. That § 58-29C-57 be amended to read as follows:

7 58-29C-57. A. This chapter may not be construed to reduce the liability for unpaid
8 assessments of the insureds of an impaired or insolvent insurer operating under a plan with
9 assessment liability.

10 B. Records shall be kept of all meetings of the board of directors to discuss the activities of
11 the association in carrying out its powers and duties under § 58-29C-51. The records of the
12 association with respect to an impaired or insolvent insurer may ~~only not~~ be disclosed ~~upon prior~~
13 to the termination of a liquidation, rehabilitation, or conservation proceeding involving the
14 impaired or insolvent insurer, except (i) upon the termination of the impairment or insolvency
15 of the insurer, or (ii) upon the order of a court of competent jurisdiction. Nothing in this subpart
16 shall limit the duty of the association to render a report of its activities under § 58-29C-58.

17 C. For the purpose of carrying out its obligations under this chapter, the association shall be
18 deemed to be a creditor of the impaired or insolvent insurer to the extent of assets attributable
19 to covered policies reduced by any amounts to which the association is entitled as subrogee
20 pursuant to subpart § 58-29C-51K. Assets of the impaired or insolvent insurer attributable to
21 covered policies shall be used to continue all covered policies and pay all contractual obligations
22 of the impaired or insolvent insurer as required by this chapter. Assets attributable to covered
23 policies, as used in this subpart, are that proportion of the assets which the reserves that should
24 have been established for such policies bear to the reserves that should have been established

1 for all policies of insurance written by the impaired or insolvent insurer.

2 D. As a creditor of the impaired or insolvent insurer as established in subpart C of this
3 section and consistent with § 58-29B-98, the association and other similar associations shall be
4 entitled to receive a disbursement of assets out of the marshaled assets, from time to time as the
5 assets become available to reimburse it, as a credit against contractual obligations under this
6 chapter. If the liquidator has not, within one hundred twenty days of a final determination of
7 insolvency of an insurer by the receivership court, made an application to the court for the
8 approval of a proposal to disburse assets out of marshaled assets to guaranty associations having
9 obligations because of the insolvency, then the association shall be entitled to make application
10 to the receivership court for approval of its own proposal to disburse these assets.

11 E. (1) Prior to the termination of any liquidation, rehabilitation, or conservation proceeding,
12 the court may take into consideration the contributions of the respective parties, including the
13 association, the shareholders, and policy owners of the insolvent insurer, and any other party
14 with a bona fide interest, in making an equitable distribution of the ownership rights of the
15 insolvent insurer. In such a determination, consideration shall be given to the welfare of the
16 policy owners of the continuing or successor insurer.

17 (2) No distribution to stockholders, if any, of an impaired or insolvent insurer shall be
18 made until and unless the total amount of valid claims of the association with interest
19 thereon for funds expended in carrying out its powers and duties under 58-29C-51
20 with respect to the insurer have been fully recovered by the association.

21 F. (1) If an order for liquidation or rehabilitation of an insurer domiciled in this state has
22 been entered, the receiver appointed under the order ~~may~~ has a right to recover on behalf of the
23 insurer, from any affiliate that controlled it, the amount of distributions, other than stock
24 dividends paid by the insurer on its capital stock, made at any time during the five years

1 preceding the petition for liquidation or rehabilitation subject to the limitations of subdivisions
2 (2) to (4), inclusive.

3 (2) No such distribution is recoverable if the insurer shows that when paid the
4 distribution was lawful and reasonable, and that the insurer did not know and could
5 not reasonably have known that the distribution might adversely affect the ability of
6 the insurer to fulfill its contractual obligations.

7 (3) Any person who was an affiliate that controlled the insurer at the time the
8 distributions were paid is liable up to the amount of distributions received. Any
9 person who was an affiliate that controlled the insurer at the time the distributions
10 were declared, shall be liable up to the amount of distributions which would have
11 been received if they had been paid immediately. If two or more persons are liable
12 with respect to the same distributions, they shall be jointly and severally liable.

13 (4) The maximum amount recoverable under this subpart shall be the amount needed in
14 excess of all other available assets of the insolvent insurer to pay the contractual
15 obligations of the insolvent insurer.

16 (5) If any person liable under subdivision (3) is insolvent, all its affiliates that controlled
17 it at the time the distribution was paid, shall be jointly and severally liable for any
18 resulting deficiency in the amount recovered from the insolvent affiliate.

19 Section 9. That § 58-29C-60 be amended to read as follows:

20 58-29C-60. There is no liability on the part of and no cause of action of any nature may arise
21 against any member insurer or its agents or employees, the association or its agents or
22 employees, members of the board of directors, or the director or the director's representatives,
23 for any action or omission by them in the performance of their powers and duties under this
24 chapter. ~~Immunity~~ This immunity shall extend to the participation in any organization of one

1 or more other state associations of similar purposes and to any such organization and its agents
2 or employees.

3 Section 10. That § 58-29C-61 be amended to read as follows:

4 58-29C-61. All proceedings in which the insolvent insurer is a party in any court in this state
5 shall be stayed ~~sixty~~ one hundred eighty days from the date an order of liquidation,
6 rehabilitation, or conservation is final to permit proper legal action by the association on any
7 matters germane to its powers or duties. As to judgment under any decision, order, verdict, or
8 finding based on default the association may apply to have such judgment set aside by the same
9 court that made such judgment and shall be permitted to defend against such suit on the merits.

10 Section 11. That § 58-29C-62 be amended to read as follows:

11 58-29C-62. A. No person, including an insurer, agent, or affiliate of an insurer may make,
12 publish, disseminate, circulate, or place before the public, or cause directly or indirectly, to be
13 made, published, disseminated, circulated, or placed before the public, in any newspaper,
14 magazine, or other publication, or in the form of a notice, ~~circulate~~ circular, pamphlet, letter, or
15 poster, or over any radio station or television station, or in any other way, any advertisement,
16 announcement, or statement, written or oral, which uses the existence of the Life and Health
17 Insurance Guaranty Association of this state for the purpose of sales, solicitation, or inducement
18 to purchase any form of insurance covered by the South Dakota Life and Health Insurance
19 Guaranty Association chapter. However, this section does not apply to the South Dakota Life
20 and Health Insurance Guaranty Association or any other entity which does not sell or solicit
21 insurance.

22 B. Within one hundred eighty days of July 1, 2003, the association shall prepare a summary
23 document describing the general purposes and current limitations of the chapter and complying
24 with subpart C of this section. This document shall be submitted to the director for approval.

1 At the expiration of the sixtieth day after the date on which the director approves the document,
2 an insurer may not deliver a policy or contract to a policy or contract owner unless the summary
3 document is delivered to the policy or contract owner at the time of delivery of the policy or
4 contract. The document shall also be available upon request by a policy owner. The distribution,
5 delivery, or contents or interpretation of this document does not guarantee that either the policy
6 or the contract or the owner of the policy or contract is covered in the event of the impairment
7 or insolvency of a member insurer. The description document shall be revised by the association
8 as amendments to the chapter may require. Failure to receive this document does not ~~give~~ give
9 the policy owner, contract owner, certificate holder, or insured any greater rights than those
10 stated in this chapter.

11 C. The document prepared under subpart B shall contain a clear and conspicuous disclaimer
12 on its face. The director shall establish the form and content of the disclaimer. The disclaimer
13 shall:

- 14 (1) State the name and address of the Life and Health Insurance Guaranty Association
15 and insurance department;
- 16 (2) Prominently warn the policy or contract owner that the Life and Health Insurance
17 Guaranty Association may not cover the policy or, if coverage is available, it will be
18 subject to substantial limitations and exclusions and conditioned on continued
19 residence in this state;
- 20 (3) State the types of policies for which guaranty funds will provide coverage;
- 21 (4) State that the insurer and its agents are prohibited by law from using the existence of
22 the Life and Health Insurance Guaranty Association for the purpose of sales,
23 solicitation, or inducement to purchase any form of insurance;
- 24 (5) State that the policy or contract owner should not rely on coverage under the Life and

- 1 Health Insurance Guaranty Association when selecting an insurer;
- 2 (6) Explain rights available and procedures for filing a complaint to allege a violation of
- 3 any provisions of this chapter; and
- 4 (7) Provide other information as directed by the director including sources for
- 5 information about the financial condition of insurers provided that the information
- 6 is not proprietary and is subject to disclosure under that state's public records law.
- 7 D. A member insurer shall retain evidence of compliance with subpart B for so long as the
- 8 policy or contract for which the notice is given remains in effect.