

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

71710009

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 3** - 01/22/2003

Introduced by: Senators Vitter, Albers, Bogue, and Kelly and Representatives Hunhoff, Sebert, and Sigdestad at the request of the Interim Alcoholic Beverage Licensing and Regulation Committee

1 FOR AN ACT ENTITLED, An Act to revise the convention facility on-sale alcoholic beverage
2 license requirements.

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

4 Section 1. That § 35-4-11.2 be amended to read as follows:

5 35-4-11.2. Notwithstanding the provisions of § 35-4-11, each municipality may issue two
6 convention facility on-sale licenses for convention facilities substantially constructed within the
7 two years following issuance of such license or previously completed. ~~▲ If located in a first class~~
8 municipality, the hotel-motel convention facility ~~as used in this section is a facility located in~~
9 ~~South Dakota and in a bona fide manner~~ shall be used and kept open for the hosting of large
10 groups of guests for compensation ~~which has~~ and shall have at least one hundred rooms which
11 are suitable lodging accommodations and convention facilities with seating for at least four
12 hundred persons. ~~However, for the purposes of~~ If located in a second or third class municipality,
13 the hotel-motel convention facilities ~~located in municipalities other than municipalities of the first~~
14 ~~class, the minimum number of rooms required as~~ facility shall have at least forty rooms which



- 1 are suitable lodging accommodations shall be fifty rooms and convention facilities with seating
- 2 for at least one hundred fifty persons.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

770I0266

SENATE RETIREMENT LAWS COMMITTEE

ENGROSSED NO. **SB 15** - 01/23/2003

Introduced by: The Committee on Retirement Laws at the request of the South Dakota Retirement System

1 FOR AN ACT ENTITLED, An Act to revise the filing deadline for benefits under the South
2 Dakota Retirement System, to revise the commencement date in certain situations, and to
3 provide a delayed effective date.

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

5 Section 1. That § 3-12-90 be amended to read as follows:

6 3-12-90. Benefits paid upon early or normal retirement shall commence on the earlier of the
7 member's required beginning date or on the first day of the month following the later of, the date
8 on which the member's contributory service terminated, thirty days after the written application
9 for retirement benefits is received in the office of the administrator, or the date specified in the
10 member's application for retirement. In any event the benefit shall be paid from the first day of
11 the month. The last payment shall be made from the first day of the month in which the member's
12 death occurs. No benefits can commence until the final contributions have been received from
13 the participating employer.

14 An individual who fails to make a timely application for retirement benefits may receive up
15 to a maximum of three months of benefits retroactive to the date on which the member's



1 contributory service terminated.

2 Section 2. The provisions of this Act are effective for any retirement benefit commencing on

3 and after October 1, 2003.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

400I0219

SENATE JUDICIARY COMMITTEE ENGROSSED NO. **SB 21** - 01/22/2003

Introduced by: The Committee on Judiciary at the request of the Department of Social Services

1 FOR AN ACT ENTITLED, An Act to revise the requirements for service of a notice of entry
2 in an action involving abuse or neglect.

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

4 Section 1. That § 26-8A-28 be amended to read as follows:

5 26-8A-28. Notice of entry of order of adjudication or final decree of disposition issued by
6 the court in any action involving an abused or neglected child shall be served on the child's
7 attorney and the child's guardian ad litem or special advocate, if any, and on all respondent
8 parents and other respondent parties ~~in the same manner as service of the summons in the action~~
9 ~~as provided in § 26-7A-47~~ in any manner authorized by the rules of civil procedure. The notice
10 of entry may be served by publication in the same manner as service of the summons in the action
11 as provided in § 26-7A-48. If the notice of entry is served by publication, the service is
12 completed five days after the date of publication. The time for appeal commences on the day
13 following the date of completed service of the notice of entry regardless of the manner in which
14 the notice of entry is served.



State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

400I0276

SENATE TAXATION COMMITTEE ENGROSSED NO. **SB 35** - 01/22/2003

Introduced by: The Committee on Taxation at the request of the Department of Revenue

1 FOR AN ACT ENTITLED, An Act to require retailers to electronically file sales and
2 contractors' excise tax returns and to electronically pay the tax.

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

4 Section 1. That § 10-45-27 be amended to read as follows:

5 10-45-27. Any person who is the holder of a sales tax permit or is a retailer whose receipts
6 are subject to sales tax in this state during the periods specified by this section shall make a return
7 and remittance to the Department of Revenue on forms prescribed and furnished by the
8 department in the following manner:

9 (1) ~~Any person whose tax liability is one thousand dollars or more annually, shall file the~~
10 ~~return and remit the tax on or before the twentieth day of the month following each~~
11 ~~monthly period;~~

12 ~~—(2)—~~Any person whose tax liability is less than one thousand dollars annually, shall ~~file the~~
13 ~~return and~~ remit the tax by electronic transfer to the state and shall file the return by
14 electronic means. The person shall file the return on or before the ~~last~~ twenty-third
15 day of the month following each two-month period and remit the tax on or before the



1 second to the last day of the month following each two-month period;

2 ~~(3)(2)~~ Any person whose tax liability is one thousand dollars or more annually ~~and who~~
3 ~~remits, shall remit~~ the tax by electronic transfer to the state; and shall file the return
4 by electronic means. The person shall file the return on or before the twenty-third day
5 of the month following each monthly period and remit the tax on or before the second
6 to the last day of the month following each monthly period.

7 The secretary of revenue shall grant an exception for a period of two years from the
8 requirement to file and pay electronically, if requested by the taxpayer. However, the secretary
9 is not required to grant such exception after July 1, 2005. The secretary of revenue may grant
10 an exception from the requirement to file and pay electronically if the taxpayer does not have
11 internet or telephone access. The secretary of revenue may grant an extension of not more than
12 five days for filing a return and remittance. However, the secretary of revenue may grant an
13 extension for remitting the tax to a qualified business as provided in §§ 10-45-99 to 10-45-107,
14 inclusive, for six months.

15 Unless an extension is granted, penalty or interest under § 10-59-6 shall be paid if a return
16 or remittance is not made on time.

17 Section 2. That § 10-46A-1.6 be amended to read as follows:

18 10-46A-1.6. Any person who is the holder of a contractor's excise tax license or is a
19 contractor whose receipts are subject to contractor's excise tax in this state during the periods
20 specified by this section shall make a return and remittance to the Department of Revenue on
21 forms prescribed and furnished by the department in the following manner:

22 (1) ~~Any person whose tax liability is one thousand dollars or more annually, shall file the~~
23 ~~return and remit the tax on or before the twentieth day of the month following each~~
24 ~~monthly period;~~

1 ~~—(2)—~~ Any person whose tax liability is less than one thousand dollars annually, shall ~~file the~~
 2 ~~return and~~ remit the tax by electronic transfer to the state and shall file the return by
 3 electronic means. The person shall file the return on or before the ~~last~~ twenty-third
 4 day of the month following each two-month period and remit the tax on or before the
 5 second to the last day of the month following each two-month period;

6 ~~(3)~~(2) Any person whose tax liability is one thousand dollars or more annually ~~and who~~
 7 ~~remits,~~ shall remit the tax by electronic transfer to the state; and shall file the return
 8 by electronic means. The person shall file the return on or before the twenty-third day
 9 of the month following each monthly period and remit the tax on or before the second
 10 to the last day of the month following each monthly period.

11 The secretary of revenue may grant an exception from the requirement to file and pay
 12 electronically for hardship. The secretary of revenue may grant an extension of not more than
 13 five days for filing a return and remittance. Unless an extension is granted, the person with the
 14 tax liability shall pay the penalty or interest as provided by § 10-59-6 if a return or remittance is
 15 not made on time.

16 Section 3. That § 10-46B-1.4 be amended to read as follows:

17 10-46B-1.4. Any person who is the holder of a contractor's excise tax license or is a
 18 contractor whose receipts are subject to contractor's excise tax in this state during the periods
 19 specified by this section shall make a return and remittance to the Department of Revenue on
 20 forms prescribed and furnished by the department in the following manner:

21 (1) ~~Any person whose tax liability is one thousand dollars or more annually, shall file the~~
 22 ~~return and remit the tax on or before the twentieth day of the month following each~~
 23 ~~monthly period;~~

24 ~~—(2)—~~ Any person whose tax liability is less than one thousand dollars annually, shall ~~file the~~

1 ~~return and~~ remit the tax by electronic transfer to the state and shall file the return by
2 electronic means. The person shall file the return on or before the last twenty-third
3 day of the month following each two-month period and remit the tax on or before the
4 second to the last day of the month following each two-month period;

5 ~~(3)(2)~~ Any person whose tax liability is one thousand dollars or more annually ~~and who~~
6 ~~remit~~, shall remit the tax by electronic transfer to the state; and shall file the return
7 by electronic means. The person shall file the return on or before the twenty-third day
8 of the month following each monthly period and remit the tax on or before the second
9 to the last day of the month following each monthly period.

10 The secretary of revenue may grant an exception from the requirement to file and pay
11 electronically for hardship. The secretary of revenue may grant an extension of not more than
12 five days for filing a return and remittance. Unless an extension is granted, the person with the
13 tax liability shall pay the penalty or interest as provided by § 10-59-6 if a return or remittance is
14 not made on time.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

400I0224

SENATE TRANSPORTATION COMMITTEE

ENGROSSED NO. **SB 37** - 01/21/2003

Introduced by: The Committee on Transportation at the request of the Department of
Revenue

1 FOR AN ACT ENTITLED, An Act to require the issuance of a unique identifier to certain
2 motor vehicle owners.

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

4 Section 1. Any owner of a motor vehicle which is used to transport passengers or property
5 and meets one of the following:

6 (1) Has a gross combination weight rating of 26,001 pounds or more, inclusive of a
7 towed unit;

8 (2) Has a gross vehicle weight rating of 26,001 pounds or more;

9 (3) Is designed to transport sixteen or more passengers, including the driver; or

10 (4) Is of any size and is used in the transportation of materials found to be hazardous for
11 the purposes of the Hazardous Materials Transportation Act and which require the
12 motor vehicle to be placarded under the Hazardous Materials Regulations (49 C.F.R.
13 part 172, subpart R) as of January 1, 2003;

14 shall at the time of registration either provide their United States Department of Transportation
15 assigned carrier number or be assigned a South Dakota number. An applicant who does not have



1 a United States Department of Transportation number or a South Dakota assigned number shall
2 apply for a number at the time of registration by completing an application form prescribed by
3 the secretary. Anyone wishing to obtain a unique identifier for vehicles 26,000 pounds or less
4 for the purpose of registering the units may do so upon completion of an application form.

5 Section 2. Any South Dakota number assigned pursuant to this Act may be, but is not
6 required to be, displayed on the outside of the vehicle. Upon request of an authorized agent or
7 enforcement agent, the owner of the vehicle shall make available the assigned number. The
8 owner of the vehicle shall notify the department if there is a change to the owner's assigned
9 number.

10 Section 3. If the owner fails to report or apply for either the United States Department of
11 Transportation number or the South Dakota number as required by this Act, the department shall
12 suspend the owner's registration.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

400I0312

SENATE EDUCATION COMMITTEE ENGROSSED NO. **SB 39** - 01/23/2003

Introduced by: The Committee on Education at the request of the Department of Education
and Cultural Affairs

1 FOR AN ACT ENTITLED, An Act to revise the assessments required in public schools, the
2 grades to be assessed, and to declare an emergency.

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

4 Section 1. That § 13-3-55 be amended to read as follows:

5 13-3-55. Every public school district shall annually administer the same ~~national~~
6 ~~norm-referenced academic achievement test to all students in grades two, four, eight, and eleven,~~
7 ~~and every~~ assessment to all students in grades three to eight, inclusive, and in grade eleven. The
8 assessment shall measure the academic progress of each student. Every public school district
9 shall annually administer to all students in grades five and nine an achievement test to assess
10 writing skills. ~~In addition, every school district shall administer the same criterion-referenced~~
11 ~~academic achievement test, once in the fall semester and once again in the spring semester, to~~
12 ~~all students in grades three, six, and ten. The criterion-referenced tests shall be designed by the~~
13 ~~state. All of the tests~~ The assessment instruments shall be provided by the Department of
14 Education and Cultural Affairs ~~and shall assess proficiency in meeting state standards.~~ The tests
15 shall be administered within timelines established by the Department of Education and Cultural



1 Affairs by rules promulgated pursuant to chapter 1-26 starting in the spring of the ~~2001-2002~~
2 2002-2003 school year. Each state-designed test ~~for each grade level to be tested shall be a single~~
3 ~~statewide criterion-referenced test, which shall be highly~~ correlated with the state's graduation
4 requirements, course guidelines, and academic content standards. ~~The requirements of this~~
5 ~~section pertaining to criterion-referenced tests to be administered to students in grades three, six,~~
6 ~~and ten do not apply to students who are receiving alternative instruction pursuant to § 13-27-3.~~
7 The South Dakota Board of Education may promulgate rules pursuant to chapter 1-26 to
8 provide for administration of all assessments.

9 Section 2. That § 13-27-3 be amended to read as follows:

10 13-27-3. A child shall be excused from school attendance, pursuant to § 13-27-2, because
11 the child is otherwise provided with alternative instruction for an equivalent period of time, as
12 in the public schools, in the basic skills of language arts and mathematics. The parent or guardian
13 of the child shall identify in the application the place where the child will be instructed and any
14 individual who will instruct the child. The individuals are not required to be certified. The
15 secretary of the Department of Education and Cultural Affairs may investigate and determine
16 whether the instruction is being provided. Failure to provide instruction is grounds for the school
17 board, upon thirty days notice, to revoke the excuse from school attendance. The secretary of
18 the Department of Education and Cultural Affairs may inspect the records of an alternative
19 education program with fourteen days written notice if the secretary has probable cause to
20 believe the program is not in compliance with this section. The records to be inspected are
21 limited to attendance and evidence showing academic progress.

22 No individual may instruct more than twenty-two children. All instructions shall be given so
23 as to lead to a mastery of the English language. Children receiving alternative instruction who
24 are in grades ~~tested under the state testing program~~ two, four, eight, and eleven shall take a

1 nationally standardized achievement test of the basic skills. The test may be the test provided by
2 the state and used in the public school district where the child is instructed or another nationally
3 standardized achievement test chosen by and provided at the expense of the child's parent,
4 guardian, or school giving alternative instruction. The test may be monitored by the local school
5 district where the child is instructed.

6 Section 3. Whereas, this Act is necessary for the support of the state government and its
7 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full
8 force and effect from and after its passage and approval.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

400I0238

SENATE COMMERCE COMMITTEE ENGROSSED NO. **SB 49** - 01/21/2003

Introduced by: The Committee on Commerce at the request of the Department of Commerce
and Regulation

1 FOR AN ACT ENTITLED, An Act to authorize the Board of Pharmacy to promulgate rules
2 regarding the reference publications required for each licensed pharmacy.

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

4 Section 1. That § 36-11-41 be amended to read as follows:

5 36-11-41. No permit ~~shall~~ may be issued under § 36-11-32 unless:

6 (1) The pharmacy is equipped with ~~such~~ the pharmaceutical instruments and utensils as
7 ~~may be~~ prescribed by the State Board of Pharmacy, and shall possess a stock of
8 pharmaceuticals adequate to serve the needs of the community in which ~~such~~ the
9 pharmacy is located; and

10 (2) The pharmacy has on file at all times the ~~latest publication~~ publications and
11 supplements ~~thereto, of one of the below listed publications:~~

12 ~~———— (a) — United States pharmacopoeia-national formulary;~~

13 ~~———— (b) — USPDI drug information for the health care provider;~~

14 ~~———— (c) — Facts and comparisons;~~

15 ~~———— (d) — American hospital formulary service~~ of formularies and drug information



1

prescribed by the board by rules promulgated pursuant to chapter 1-26.

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

597I0387

SENATE RETIREMENT LAWS COMMITTEE

ENGROSSED NO. **SB 55** - 01/23/2003

Introduced by: Senators Albers, Earley, Kooistra, and Sutton (Dan) and Representatives Rounds, Elliott, Michels, and Olson (Mel)

1 FOR AN ACT ENTITLED, An Act to permit school administrators to establish an association
2 and to allow the purchase of certain service in the South Dakota Retirement System.

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

4 Section 1. That chapter 13-8 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Any school administrator of any school district of this state may become a member of an
7 association with school administrators of other school districts of this state the purpose of which
8 is to enhance the quality of education in the school districts in South Dakota.

9 Section 2. That chapter 3-12 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 Notwithstanding the restrictions contained in §§ 3-12-83 and 3-12-84, current contributing
12 members may purchase permissive service credit as defined in and pursuant to the provisions of
13 § 415(n) of the Internal Revenue Code as amended and in effect as of January 1, 2003, except
14 that service for a for-profit entity does not qualify for purchase.



State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

391I0133

SENATE COMMERCE COMMITTEE ENGROSSED NO. **SB 56** - 01/23/2003

Introduced by: Senator Knudson and Representative Michels

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

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

4 Section 1. This Act shall be known and may be cited as the South Dakota Life and Health
5 Insurance Guaranty Association Act.

6 Section 2. A. The purpose of this Act is to protect, subject to certain limitations, the persons
7 specified in subpart A of section 3 of this Act against failure in the performance of contractual
8 obligations, under life and health insurance policies and annuity contracts specified in subpart B
9 of section 3 of this Act, because of the impairment or insolvency of the member insurer that
10 issued the policies or contracts.

11 B. To provide this protection, an association of insurers is organized to pay benefits and to
12 continue coverages as limited by this Act, and members of the association are subject to
13 assessment to provide funds to carry out the purpose of this Act.

14 Section 3. A. This Act shall provide coverage for the policies and contracts specified in
15 subpart B:



- 1 (1) To persons who, regardless of where they reside (except for nonresident certificate
2 holders under group policies or contracts), are the beneficiaries, assignees, or payees
3 of the persons covered under subdivision (2);
- 4 (2) To persons who are owners of or certificate holders under the policies or contracts
5 (other than structured settlement annuities) and in each case who:
 - 6 (a) Are residents; or
 - 7 (b) Are not residents, but only under all of the following conditions:
 - 8 (i) The insurer that issued the policies or contracts is domiciled in this state;
 - 9 (ii) The states in which the persons reside have associations similar to the
10 association created by this Act;
 - 11 (iii) The persons are not eligible for coverage by an association in any other
12 state due to the fact that the insurer was not licensed in the state at the
13 time specified in the state's guaranty association law;
- 14 (3) For structured settlement annuities specified in subpart B, subdivisions (1) and (2) of
15 this subpart do not apply, and this Act shall (except as provided in subdivisions (4)
16 and (5) of this subpart) provide coverage to a person who is a payee under a
17 structured settlement annuity (or beneficiary of a payee if the payee is deceased), if
18 the payee:
 - 19 (a) Is a resident, regardless of where the contract owner resides; or
 - 20 (b) Is not a resident, but only under both of the following conditions:
 - 21 (i) (I) The contract owner of the structure settlement annuity is a resident,
22 or (II) The contract owner of the structured settlement annuity is not a
23 resident, but the insurer that issued the structured settlement annuity is
24 domiciled in this state and the state in which the contract owner resides

1 has an association similar to the association created by this Act; and

2 (ii) Neither the payee (or beneficiary) nor the contract owner is eligible for
3 coverage by the association of the state in which the payee or contract
4 owner resides;

5 (4) This Act does not provide coverage to a person who is a payee (or beneficiary) of a
6 contract owner resident of this state, if the payee (or beneficiary) is afforded any
7 coverage by the association of another state;

8 (5) This Act is intended to provide coverage to a person who is a resident of this state
9 and, in special circumstances, to a nonresident. In order to avoid duplicate coverage,
10 if a person who would otherwise receive coverage under this Act is provided
11 coverage under the laws of any other state, the person may not be provided coverage
12 under this Act. In determining the application of the provisions of this paragraph in
13 situations where a person could be covered by the association of more than one state,
14 whether as an owner, payee, beneficiary, or assignee, this Act shall be construed in
15 conjunction with other state laws to result in coverage by only one association.

16 B. (1) This Act shall provide coverage to the persons specified in subpart A for direct,
17 nongroup life, health, or annuity policies or contracts and supplemental contracts to any of these
18 and for certificates under direct group policies and contracts, except as limited by this Act.
19 Annuity contracts and certificates under group annuity contracts include allocated funding
20 agreements, structured settlement annuities, and any immediate or deferred annuity contracts.

21 (2) This Act may not provide coverage for:

22 (a) A portion of a policy or contract not guaranteed by the insurer, or under which
23 the risk is borne by the policy or contract owner;

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

- 1 issued pursuant to the reinsurance policy or contract;
- 2 (c) A portion of a policy or contract to the extent that the rate of interest on which
- 3 it is based:
- 4 (i) Averaged over the period of four years prior to the date on which the
- 5 association becomes obligated with respect to the policy or contract,
- 6 exceeds a rate of interest determined by subtracting two percentage
- 7 points from Moody's Corporate Bond Yield Average averaged for that
- 8 same four-year period or for such lesser period if the policy or contract
- 9 was issued less than four years before the association became obligated;
- 10 and
- 11 (ii) On and after the date on which the association becomes obligated with
- 12 respect to the policy or contract, exceeds the rate of interest determined
- 13 by subtracting three percentage points from Moody's Corporate Bond
- 14 Yield Average as most recently available;
- 15 (d) A portion of a policy or contract issued to a plan or program of an employer,
- 16 association, or other person to provide life, health, or annuity benefits to its
- 17 employees, members, or others, to the extent that the plan or program is self-
- 18 funded or uninsured, including benefits payable by an employer, association,
- 19 or other person under:
- 20 (i) A multiple employer welfare arrangement as defined in 29 U.S.C.
- 21 § 1144;
- 22 (ii) A minimum premium group insurance plan;
- 23 (iii) A stop-loss group insurance plan; or
- 24 (iv) An administrative services only contract;

- 1 (e) A portion of a policy or contract to the extent that it provides for:
 - 2 (i) Dividends or experience rating credits;
 - 3 (ii) Voting rights; or
 - 4 (iii) Payment of any fees or allowances to any person, including the policy
 - 5 or contract owner, in connection with the service to or administration
 - 6 of the policy or contract;
- 7 (f) A policy or contract issued in this state by a member insurer at a time when it
- 8 was not licensed or did not have a certificate of authority to issue the policy or
- 9 contract in this state;
- 10 (g) A portion of a policy or contract to the extent that the assessments required by
- 11 section 9 of this Act with respect to the policy or contract are preempted by
- 12 federal or state law;
- 13 (h) An obligation that does not arise under the express written terms of the policy
- 14 or contract issued by the insurer to the contract owner or policy owner,
- 15 including without limitation:
 - 16 (i) Claims based on marketing materials;
 - 17 (ii) Claims based on side letters, riders, or other documents that were issued
 - 18 by the insurer without meeting applicable policy form filing or approval
 - 19 requirements;
 - 20 (iii) Misrepresentations of or regarding policy benefits;
 - 21 (iv) Extra-contractual claims; or
 - 22 (v) A claim for penalties or consequential or incidental damages;
- 23 (i) A contractual agreement that establishes the member insurer's obligations to
- 24 provide a book value accounting guaranty for defined contribution benefit plan

1 participants by reference to a portfolio of assets that is owned by the benefit
2 plan or its trustee, which in each case is not an affiliate of the member insurer;

3 (j) An unallocated annuity contract; and

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

17 C. The benefits that the association may become obligated to cover may in no event exceed
18 the lesser of:

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

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

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

- 1 (ii) In health insurance benefits:
 - 2 (I) One hundred thousand dollars for coverages not defined as
 - 3 disability insurance or basic hospital, medical and surgical
 - 4 insurance, or major medical insurance as defined in the National
 - 5 Association of Insurance Commissioners Health Insurance
 - 6 Shoppers' Guide, as of January 1, 2003, including any net cash
 - 7 surrender and net cash withdrawal values;
 - 8 (II) Three hundred thousand dollars for disability insurance as defined
 - 9 in the National Association of Insurance Commissioners Health
 - 10 Insurance Shoppers' Guide, as of January 1, 2003;
 - 11 (III) Five hundred thousand dollars for basic hospital, medical and
 - 12 surgical insurance, or major medical insurance as defined in the
 - 13 National Association of Insurance Commissioners Health
 - 14 Insurance Shoppers' Guide, as of January 1, 2003; or
- 15 (iii) One hundred thousand dollars in the present value of annuity benefits,
- 16 including net cash surrender and net cash withdrawal values;
- 17 (b) With respect to each payee of a structured settlement annuity (or beneficiary
- 18 or beneficiaries of the payee if deceased), one hundred thousand dollars in
- 19 present value annuity benefits, in the aggregate, including net cash surrender
- 20 and net cash withdrawal values;
- 21 (c) However, in no event may the association be obligated to cover more than (i)
- 22 an aggregate of three hundred thousand dollars in benefits with respect to any
- 23 one life under subsections 2(a), 2(b), and 2(c) of subpart C of this section
- 24 except with respect to benefits for basic hospital, medical and surgical

1 insurance, and major medical insurance under subsection 2(a)(ii) of this section,
2 in which case the aggregate liability of the association may not exceed five
3 hundred thousand dollars with respect to any one individual, or (ii) with respect
4 to one owner of multiple nongroup policies of life insurance, whether the
5 policy owner is an individual, firm, corporation, or other person, and whether
6 the persons insured are officers, managers, employees, or other persons, more
7 than five million dollars in benefits, regardless of the number of policies and
8 contracts held by the owner;

9 (d) The limitations set forth in this section are limitations on the benefits for which
10 the association is obligated before taking into account either its subrogation
11 and assignment rights or the extent to which those benefits could be provided
12 out of the assets of the impaired or insolvent insurer attributable to covered
13 policies. The costs of the association's obligations under this Act may be met
14 by the use of assets attributable to covered policies or reimbursed to the
15 association pursuant to its subrogation and assignment rights.

16 D. In performing its obligations to provide coverage under section 8 of this Act, the
17 association may not be required to guarantee, assume, reinsure, or perform, or cause to be
18 guaranteed, assumed, reinsured, or performed, the contractual obligations of the insolvent or
19 impaired insurer under a covered policy or contract that do not materially affect the economic
20 values or economic benefits of the covered policy or contract.

21 Section 4. This Act shall be construed to effect the purpose under section 2 of this Act.

22 Section 5. Terms used in this Act mean:

23 (1) "Account," either of the two accounts created under section 6 of this Act;

24 (2) "Association," the South Dakota Life and Health Insurance Guaranty Association

- 1 described in section 6 of this Act;
- 2 (3) "Authorized assessment" or the term "authorized" when used in the context of
3 assessments, means a resolution by the board of directors has been passed whereby
4 an assessment will be called immediately or in the future from member insurers for a
5 specified amount. An assessment is authorized when the resolution is passed;
- 6 (4) "Benefit plan," a specific employee, union, or association of natural persons benefit
7 plan;
- 8 (5) "Called assessment" or the term "called" when used in the context of assessments,
9 means that a notice has been issued by the association to member insurers requiring
10 that an authorized assessment be paid within the time frame set forth within the
11 notice. An authorized assessment becomes a called assessment when notice is mailed
12 by the association to member insurers;
- 13 (6) "Contractual obligation," an obligation under a policy or contract or certificate under
14 a group policy or contract, or portion thereof for which coverage is provided under
15 section 3 of this Act;
- 16 (7) "Covered policy," a policy or contract or portion of a policy or contract for which
17 coverage is provided under section 3 of this Act;
- 18 (8) "Director," the director of the Division of Insurance of this state;
- 19 (9) "Extra-contractual claims," include, for example, claims relating to bad faith in the
20 payment of claims, punitive or exemplary damages, or attorneys' fees and costs;
- 21 (10) "Impaired insurer," a member insurer which, after the effective date of this Act, is not
22 an insolvent insurer, and is placed under an order of rehabilitation or conservation by
23 a court of competent jurisdiction;
- 24 (11) "Insolvent insurer," a member insurer which after the effective date of this Act, is

1 placed under an order of liquidation by a court of competent jurisdiction with a
2 finding of insolvency;

3 (12) "Member insurer," an insurer licensed or that holds a certificate of authority to
4 transact in this state any kind of insurance for which coverage is provided under
5 section 3 of this Act, and includes an insurer whose license or certificate of authority
6 in this state may have been suspended, revoked, not renewed, or voluntarily
7 withdrawn, but does not include:

8 (a) A health maintenance organization;

9 (b) A fraternal benefit society;

10 (c) A mandatory state pooling plan;

11 (d) A mutual assessment company or other person that operates on an assessment
12 basis;

13 (e) An insurance exchange;

14 (f) An organization engaged in the issuance of charitable gift annuities, which is
15 described in § 58-1-16; or

16 (g) An entity similar to any of the above;

17 (13) "Moody's Corporate Bond Yield Average," the Monthly Average Corporates as
18 published by Moody's Investors Service, Inc., or any successor thereto;

19 (14) "Owner" of a policy or contract and "policy owner" and "contract owner," the person
20 who is identified as the legal owner under the terms of the policy or contract or who
21 is otherwise vested with legal title to the policy or contract through a valid assignment
22 completed in accordance with the terms of the policy or contract and properly
23 recorded as the owner on the books of the insurer. The terms owner, contract owner,
24 and policy owner do not include persons with a mere beneficial interest in a policy or

1 contract;

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

4 (16) "Premiums," amounts or considerations (by whatever name called) received on
5 covered policies or contracts less returned premiums, considerations, and deposits and
6 less dividends and experience credits. The term, premiums, does not include amounts
7 or considerations received for policies or contracts or for the portions of policies or
8 contracts for which coverage is not provided under subpart B of section 3 except that
9 assessable premium may not be reduced on account of subsection 3B(2)(c) relating
10 to interest limitations and subdivision 3C(2) relating to limitations with respect to one
11 individual, one participant, and one contract owner. Premiums do not include:

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

13 (b) With respect to multiple nongroup policies of life insurance owned by one
14 owner, whether the policy owner is an individual, firm, corporation, or other
15 person, and whether the persons insured are officers, managers, employees, or
16 other persons, premiums in excess of five million dollars with respect to these
17 policies or contracts, regardless of the number of policies or contracts held by
18 the owner;

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

24 (a) The state in which the primary executive and administrative headquarters of the

1 entity is located;

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

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

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

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

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

18 The principal place of business of a plan sponsor of a benefit plan shall be
19 deemed to be the principal place of business of the association, committee,
20 joint board of trustees, or other similar group of representatives of the parties
21 who establish or maintain the benefit plan that, in lieu of a specific or clear
22 designation of a principal place of business, shall be deemed to be the principal
23 place of business of the employer or employee organization that has the largest
24 investment in the benefit plan in question;

- 1 (18) "Receivership court," the court in the insolvent or impaired insurer's state having
2 jurisdiction over the conservation, rehabilitation, or liquidation of the insurer;
- 3 (19) "Resident," a person to whom a contractual obligation is owed and who resides in this
4 state on the date of entry of a court order that determines a member insurer to be an
5 impaired insurer or a court order that determines a member insurer to be an insolvent
6 insurer, whichever occurs first. A person may be a resident of only one state, which
7 in the case of a person other than a natural person shall be its principal place of
8 business. Citizens of the United States that are either (i) residents of foreign countries,
9 or (ii) residents of United States possessions, territories, or protectorates that do not
10 have an association similar to the association created by this Act, shall be deemed
11 residents of the state of domicile of the insurer that issued the policies or contracts;
- 12 (20) "Structured settlement annuity," an annuity purchased in order to fund periodic
13 payments for a plaintiff or other claimant in payment for or with respect to personal
14 injury suffered by the plaintiff or other claimant;
- 15 (21) "State," a state, the District of Columbia, Puerto Rico, and a United States
16 possession, territory, or protectorate;
- 17 (22) "Supplemental contact," a written agreement entered into for the distribution of
18 proceeds under a life, health, or annuity policy or contract;
- 19 (23) "Unallocated annuity contract," an annuity contract or group annuity certificate which
20 is not issued to an individual, except to the extent of any annuity
21 benefits guaranteed to an individual by an insurer under the contract or certificate.

22 Section 6. A. There is hereby continued the nonprofit legal entity known as the South Dakota
23 Life and Health Insurance Guaranty Association as created by § 58-29C-1. All member insurers
24 shall be and remain members of the association as a condition of their authority to transact

1 insurance in this state. The association shall perform its functions under the plan of operation
2 established and approved under section 10 of this Act and shall exercise its powers through a
3 board of directors established under section 7 of this Act. For purposes of administration and
4 assessment, the association shall maintain two accounts:

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

6 (a) Life insurance account; and

7 (b) Annuity account which shall include annuity contracts owned by a
8 governmental retirement plan (or its trustee) established under Section 401,
9 403(b), or 457 of the United States Internal Revenue Code; and

10 (2) The health insurance account.

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

15 Section 7. A. The board of directors of the association shall consist of not less than five nor
16 more than nine member insurers serving terms as established in the plan of operation. The insurer
17 members of the board shall be elected by member insurers subject to the approval of the director.
18 Vacancies on the board shall be filled for the remaining period of the term by a majority vote of
19 the remaining board members, subject to the approval of the director.

20 B. In approving selections or in appointing members to the board, the director shall consider,
21 among other things, whether all member insurers are fairly represented.

22 C. Members of the board may be reimbursed from the assets of the association for expenses
23 incurred by them as members of the board of directors but members of the board may not
24 otherwise be compensated by the association for their services.

1 Section 8. A. If a member insurer is an impaired insurer, the association may, in its discretion,
2 and subject to any conditions imposed by the association that do not impair the contractual
3 obligations of the impaired insurer and that are approved by the director:

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

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

- 10 (1) (a) (i) Guaranty, assume, or reinsure, or cause to be guaranteed, assumed, or
11 reinsured, the policies or contracts of the insolvent insurer; or
- 12 (ii) Assure payment of the contractual obligations of the insolvent insurer;
13 and
- 14 (b) Provide moneys, pledges, loans, notes, guarantees, or other means reasonably
15 necessary to discharge the association's duties; or
- 16 (2) Provide benefits and coverages in accordance with the following provisions:
 - 17 (a) With respect to life and health insurance policies and annuities, assure payment
18 of benefits for premiums identical to the premiums and benefits (except for
19 terms of conversion and renewability) that would have been payable under the
20 policies or contracts of the insolvent insurer, for claims incurred:
 - 21 (i) With respect to group policies and contracts, not later than the earlier
22 of the next renewal date under those policies or contracts or forty-five
23 days, but in no event less than thirty days, after the date on which the
24 association becomes obligated with respect to the policies and contracts;

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

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

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

- 22 (d) (i) In providing the substitute coverage required under subsection (c), the
23 association may offer either to reissue the terminated coverage or to
24 issue an alternative policy;

- 1 (ii) Alternative or reissued policies shall be offered without requiring
- 2 evidence of insurability, and may not provide for any waiting period or
- 3 exclusion that would not have applied under the terminated policy;
- 4 (iii) The association may reinsure any alternative or reissued policy;
- 5 (e) (i) Alternative policies adopted by the association are subject to the
- 6 approval of the domiciliary insurance director and the receivership
- 7 court. The association may adopt alternative policies of various types
- 8 for future issuance without regard to any particular impairment or
- 9 insolvency;
- 10 (ii) Alternative policies shall contain at least the minimum statutory
- 11 provisions required in this state and provide benefits that may not be
- 12 unreasonable in relation to the premium charged. The association shall
- 13 set the premium in accordance with a table of rates that it shall adopt.
- 14 The premium shall reflect the amount of insurance to be provided and
- 15 the age and class of risk of each insured, but may not reflect any
- 16 changes in the health of the insured after the original policy was last
- 17 underwritten;
- 18 (iii) Any alternative policy issued by the association shall provide coverage
- 19 of a type similar to that of the policy issued by the impaired or insolvent
- 20 insurer, as determined by the association;
- 21 (f) If the association elects to reissue terminated coverage at a premium rate
- 22 different from that charged under the terminated policy, the premium shall be
- 23 set by the association in accordance with the amount of insurance provided and
- 24 the age and class of risk, subject to approval of the domiciliary insurance

1 director and the receivership court;

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

6 (h) When proceeding under this subdivision B(2) with respect to a policy or
7 contract carrying guaranteed minimum interest rates, the association shall
8 assure the payment or crediting of a rate of interest consistent with subsection
9 3B(2)(c).

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

15 D. Premiums due for coverage after entry of an order of liquidation of an insolvent insurer
16 shall belong to and be payable at the direction of the association, and the association shall be
17 liable for unearned premiums due to policy or contract owners arising after the entry of the
18 order.

19 E. The protection provided by this Act does not apply where any guaranty protection is
20 provided to residents of this state by the laws of the domiciliary state or jurisdiction of the
21 impaired or insolvent insurer other than this state.

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

23 (1) Subject to approval by a court in this state, impose permanent policy or contract liens
24 in connection with a guarantee, assumption, or reinsurance agreement, if the

1 association finds that the amounts which can be assessed under this Act are less than
2 the amounts needed to assure full and prompt performance of the association's duties
3 under this Act, or that the economic or financial conditions as they affect member
4 insurers are sufficiently adverse to render the imposition of such permanent policy or
5 contract liens, to be in the public interest;

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

18 G. A deposit in this state, held pursuant to law or required by the director for the benefit of
19 creditors, including policy owners, not turned over to the domiciliary liquidator upon the entry
20 of a final order of liquidation or order approving a rehabilitation plan of an insurer domiciled in
21 this state or in a reciprocal state, pursuant to §§ 58-29B-144 and 58-29B-149, shall be promptly
22 paid to the association. The association shall be entitled to retain a portion of any amount so paid
23 to it equal to the percentage determined by dividing the aggregate amount of policy owners'
24 claims related to that insolvency for which the association has provided statutory benefits by the

1 aggregate amount of all policy owners' claims in this state related to that insolvency and shall
2 remit to the domiciliary receiver the amount so paid to the association and not retained pursuant
3 to this subpart. Any amount so paid to the association less the amount not retained by it shall be
4 treated as a distribution of estate assets pursuant to § 58-29B-98 or similar provision of the state
5 of domicile of the impaired or insolvent insurer.

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

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

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

23 K. (1) A person receiving benefits under this Act shall be deemed to have assigned the rights
24 under, and any causes of action against any person for losses arising under, resulting

1 from, or otherwise relating to, the covered policy or contract to the association to the
2 extent of the benefits received because of this Act, whether the benefits are payments
3 of or on account of contractual obligations, continuation of coverage, or provision of
4 substitute or alternative coverages. The association may require an assignment to it
5 of such rights and cause of action by any payee, policy, or contract owner,
6 beneficiary, insured, or annuitant as a condition precedent to the receipt of any right
7 or benefits conferred by this Act upon the person.

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

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

21 (4) If the preceding provisions of this subpart are invalid or ineffective with respect to any
22 person or claim for any reason, the amount payable by the association with respect to
23 the related covered obligations shall be reduced by the amount realized by any other
24 person with respect to the person or claim that is attributable to the policies (or

1 portion thereof) covered by the association.

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

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

8 (1) Enter into such contracts as are necessary or proper to carry out the provisions and
9 purposes of this Act;

10 (2) Sue or be sued, including taking any legal actions necessary or proper to recover any
11 unpaid assessments under section 9 of this Act and to settle claims or potential claims
12 against it;

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

16 (4) Employ or retain such persons as are necessary or appropriate to handle the financial
17 transactions of the association, and to perform such other functions as become
18 necessary or proper under this Act;

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

21 (6) Exercise, for the purposes of this Act and to the extent approved by the director, the
22 powers of a domestic life or health insurer, but in no case may the association issue
23 insurance policies or annuity contracts other than those issued to perform its
24 obligations under this Act;

- 1 (7) Organize itself as a corporation or in other legal form permitted by the laws of the
2 state;
- 3 (8) Request information from a person seeking coverage from the association in order to
4 aid the association in determining its obligations under this Act with respect to the
5 person, and the person shall promptly comply with the request; and
- 6 (9) Take other necessary or appropriate action to discharge its duties and obligations
7 under this Act or to exercise its powers under this Act.

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

10 N. (1) At any time within one year after the date on which the association becomes
11 responsible for the obligations of a member insurer (the coverage date), the
12 association may elect to succeed to the rights and obligations of the member insurer,
13 that accrue on or after the coverage date and that relate to contracts covered (in
14 whole or in part) by the association, under any one or more indemnity reinsurance
15 agreements entered into by the member insurer as a ceding insurer and selected by the
16 association. However, the association may not exercise an election with respect to a
17 reinsurance agreement if the receiver, rehabilitator, or liquidator of the member
18 insurer has previously and expressly disaffirmed the reinsurance agreement. The
19 election shall be effected by a notice to the receiver, rehabilitator, or liquidator and
20 to the affected reinsurers. If the association makes an election, subsections (a) to (d),
21 inclusive, of this subdivision shall apply with respect to the agreements selected by the
22 association:

- 23 (a) The association shall be responsible for all unpaid premiums due under the
24 agreements (for periods both before and after the coverage date), and shall be

1 responsible for the performance of all other obligations to be performed after
2 the coverage date, in each case which relate to contracts covered (in whole or
3 in part) by the association. The association may charge contracts covered in
4 part by the association, through reasonable allocation methods, the costs for
5 reinsurance in excess of the obligations of the association;

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

- 12 (i) The amount received by the association, over
- 13 (ii) The benefits paid by the association on account of the policy or contract
14 less the retention of the impaired or insolvent member insurer applicable
15 to the loss or event;

16 (c) Within thirty days following the association's election, the association and each
17 indemnity reinsurer shall calculate the net balance due to or from the
18 association under each reinsurance agreement as of the date of the association's
19 election, giving full credit to all items paid by either the member insurer (or its
20 receiver, rehabilitator, or liquidator) or the indemnity reinsurer during the
21 period between the coverage date and the date of the association's election.
22 Either the association or indemnity reinsurer shall pay the net balance due the
23 other within five days of the completion of the aforementioned calculation. If
24 the receiver, rehabilitator, or liquidator has received any amounts due the

1 association pursuant to subsection (b), the receiver, rehabilitator, or liquidator
2 shall remit the same to the association as promptly as practicable.

3 (d) If the association, within sixty days of the election, pays the premiums due for
4 periods both before and after the coverage date that relate to contracts covered
5 by the association (in whole or in part), the reinsurer is not entitled to terminate
6 the reinsurance agreements insofar as the agreements relate to contracts
7 covered by the association (in whole or in part) and is not entitled to set off any
8 unpaid premium due for periods prior to the coverage date against amounts
9 due the association.

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

15 (a) The indemnity reinsurance agreements shall automatically terminate for new
16 reinsurance unless the indemnity reinsurer and the other insurer agree to the
17 contrary;

18 (b) The obligations described in the proviso to subsection (1)(b) of this subpart no
19 longer apply on and after the date the indemnity reinsurance agreement is
20 transferred to the third party insurer; and

21 (c) This subdivision (2) does not apply if the association has previously expressly
22 determined in writing that it will not exercise the election referred to in
23 subdivision (1);

24 (3) The provisions of this subpart shall supersede the provisions of any law of this state

1 or of any affected reinsurance agreement that provides for or requires any payment
2 of reinsurance proceeds, on account of losses or events that occur in periods after the
3 coverage date, to the receiver, liquidator, or rehabilitator of the insolvent member
4 insurer. The receiver, rehabilitator, or liquidator shall remain entitled to any amounts
5 payable by the reinsurer under the reinsurance agreement with respect to losses or
6 events that occur in periods prior to the coverage date (subject to applicable setoff
7 provisions); and

8 (4) Except as otherwise expressly provided above, nothing herein alters or modifies the
9 terms and conditions of the indemnity reinsurance agreements of the insolvent
10 member insurer. Nothing herein abrogates or limits any rights of any reinsurer to claim
11 that it is entitled to rescind a reinsurance agreement. Nothing herein gives a policy
12 owner or beneficiary an independent cause of action against an indemnity reinsurer
13 that is not otherwise set forth in the indemnity reinsurance agreement.

14 O. The board of directors of the association shall have discretion and may exercise reasonable
15 business judgment to determine the means by which the association is to provide the benefits of
16 this Act in an economical and efficient manner.

17 P. Where the association has arranged or offered to provide the benefits of this Act to a
18 covered person under a plan or arrangement that fulfills the association's obligations under this
19 Act, the person is not entitled to benefits from the association in addition to or other than those
20 provided under the plan or arrangement.

21 Q. Venue in a suit against the association arising under the Act shall be in Hughes County.
22 The association may not be required to give an appeal bond in an appeal that relates to a cause
23 of action arising under this Act.

24 R. In carrying out its duties in connection with guaranteeing, assuming, or reinsuring policies

1 or contracts under subpart A or B, the association may, subject to approval of the receivership
2 court, issue substitute coverage for a policy or contract that provides an interest rate, crediting
3 rate, or similar factor determined by use of an index or other external reference stated in the
4 policy or contract employed in calculating returns or changes in value by issuing an alternative
5 policy or contract in accordance with the following provisions:

- 6 (1) In lieu of the index or other external reference provided for in the original policy or
7 contract, the alternative policy or contract provides for (i) a fixed interest rate or (ii)
8 payment of dividends with minimum guarantees or (iii) different methods for
9 calculating interest or changes in value;
- 10 (2) There is no requirement for evidence of insurability, waiting period, or other exclusion
11 that would not have applied under the replaced policy or contract; and
- 12 (3) The alternative policy or contract is substantially similar to the replaced policy or
13 contract in all other material terms.

14 Section 9. A. For the purpose of providing the funds necessary to carry out the powers and
15 duties of the association, the board of directors shall assess the member insurers, separately for
16 each account, at such time and for such amounts as the board finds necessary. Assessments shall
17 be due not less than thirty days after prior written notice to the member insurers and shall accrue
18 interest at ten percent per annum on and after the due date.

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

- 20 (1) Class A assessments shall be authorized and called for the purpose of meeting
21 administrative and legal costs and other expenses. Class A assessments may be
22 authorized and called whether or not related to a particular impaired or insolvent
23 insurer.
- 24 (2) Class B assessments shall be authorized and called to the extent necessary to carry out

1 the powers and duties of the association under section 8 of this Act with regard to an
2 impaired or an insolvent insurer.

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

12 (2) Class B assessments against member insurers for each account and subaccount shall
13 be in the proportion that the premiums received on business in this state by each
14 assessed member insurer on policies or contracts covered by each account for the
15 three most recent calendar years for which information is available preceding the year
16 in which the insurer became insolvent (or, in the case of an assessment with respect
17 to an impaired insurer, the three most recent calendar years for which information is
18 available preceding the year in which the insurer became impaired) bears to premiums
19 received on business in this state for those calendar years by all assessed member
20 insurers.

21 (3) Assessments for funds to meet the requirements of the association with respect to an
22 impaired or insolvent insurer may not be authorized or called until necessary to
23 implement the purposes of this Act. Classification of assessments under subpart B and
24 computation of assessments under this subpart shall be made with a reasonable degree

1 of accurate, recognizing that exact determinations may not always be possible. The
2 association shall notify each member insurer of its anticipated pro rata share of an
3 authorized assessment not yet called within one hundred eighty days after the
4 assessment is authorized.

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

13 E. (1) (a) Subject to the provisions of subsection (b) of this subdivision, the total of all
14 assessments authorized by the association with respect to a member insurer for
15 each subaccount of the life insurance and annuity account and for the health
16 account may not in one calendar year exceed two percent of that member
17 insurer's average annual premiums received in this state on the policies and
18 contracts covered by the subaccount or account during the three calendar years
19 preceding the year in which the insurer became an impaired or insolvent
20 insurer.

21 (b) If two or more assessments are authorized in one calendar year with respect to
22 insurers that become impaired or insolvent in different calendar years, the
23 average annual premiums for purposes of the aggregate assessment percentage
24 limitation referenced in subsection (a) of this subdivision shall be equal and

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

3 (c) If the maximum assessment, together with the other assets of the association
4 in an account, does not provide in one year in either account an amount
5 sufficient to carry out the responsibilities of the association, the necessary
6 additional funds shall be assessed as soon thereafter as permitted by this Act.

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

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

15 F. The board may, by an equitable method as established in the plan of operation, refund to
16 member insurers, in proportion to the contribution of each insurer to that account, the amount
17 by which the assets of the account exceed the amount the board finds is necessary to carry out
18 during the coming year the obligations of the association with regard to that account, including
19 assets accruing from assignment, subrogation, net realized gains, and income from investments.
20 A reasonable amount may be retained in any account to provide funds for the continuing
21 expenses of the association and for future losses claims.

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

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

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

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

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

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

24 (5) If the protest or appeal on the assessment is upheld, the amount paid in error or

1 excess shall be returned to the member company. Interest on a refund due a protesting
2 member shall be paid at the rate actually earned by the association.

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

5 Section 10. A. (1) The association shall submit to the director a plan of operation and any
6 amendments thereto necessary or suitable to assure the fair, reasonable, and equitable
7 administration of the association. The plan of operation and any amendments thereto shall
8 become effective upon the director's written approval or unless it has not been disapproved
9 within thirty days.

10 (2) If the association fails to submit a suitable plan of operation within one hundred
11 twenty days following the effective date of this Act or if at any time thereafter the
12 association fails to submit suitable amendments to the plan, the director shall, after
13 notice and hearing, adopt and promulgate such reasonable rules as are necessary or
14 advisable to effectuate the provisions of this Act. The rules shall continue in force
15 until modified by the director or superseded by a plan submitted by the association
16 and approved by the director.

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

18 C. The plan of operation shall, in addition to requirements enumerated elsewhere in this Act:

- 19 (1) Establish procedures for handling the assets of the association;
- 20 (2) Establish the amount and method of reimbursing members of the board of directors
21 under section 7 of this Act;
- 22 (3) Establish regular places and times for meetings including telephone conference calls
23 of the board of directors;
- 24 (4) Establish procedures for records to be kept of all financial transactions of the

1 association, its agents, and the board of directors;

2 (5) Establish the procedures whereby selections for the board of directors will be made
3 and submitted to the director;

4 (6) Establish any additional procedures for assessments under section 9 of this Act;

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

7 D. The plan of operation may provide that any or all powers and duties of the association,
8 except those under subdivision 8L(3) and section 9 of this Act, are delegated to a corporation,
9 association, or other organization which performs or will perform functions similar to those of
10 this association, or its equivalent, in two or more states. Such a corporation, association, or
11 organization shall be reimbursed for any payments made on behalf of the association and shall
12 be paid for its performance of any function of the association. A delegation under this subpart
13 shall take effect only with the approval of both the board of directors and the director, and may
14 be made only to a corporation, association, or organization which extends protection not
15 substantially less favorable and effective than that provided by this Act.

16 Section 11. In addition to the duties and powers enumerated elsewhere in this Act,

17 A. The director shall:

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

20 (2) When an impairment is declared and the amount of the impairment is determined,
21 serve a demand upon the impaired insurer to make good the impairment within a
22 reasonable time; notice to the impaired insurer shall constitute notice to its
23 shareholders, if any; the failure of the insurer to promptly comply with such demand
24 shall not excuse the association from the performance of its powers and duties under

1 this Act;

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

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

10 C. A final action of the board of directors or the association may be appealed to the director
11 by a member insurer if the appeal is taken within sixty days of its receipt of notice of the final
12 action being appealed. A final action or order of the director shall be subject to judicial review
13 in a court of competent jurisdiction in accordance with the laws of this state that apply to the
14 actions or orders of the director.

15 D. The liquidator, rehabilitator, or conservator of an impaired insurer may notify all
16 interested persons of the effect of this Act.

17 Section 12. To aid in the detection and prevention of insurer insolvencies or impairments,

18 A. It shall be the duty of the director:

19 (1) To notify the directors of all the other states, territories of the United States and the
20 District of Columbia within thirty days following the action taken or the date the
21 action occurs, when the director takes any of the following actions against a member
22 insurer:

23 (a) revocation of license;

24 (b) Suspension of license; or

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

5 (2) To report to the board of directors when the director has taken any of the actions set
6 forth in subdivision (1) or has received a report from any other director indicating that
7 any such action has been taken in another state. The report to the board of directors
8 shall contain all significant details of the action taken or the report received from
9 another director.

10 (3) To report to the board of directors when the director has reasonable cause to believe
11 from an examination, whether completed or in process, of any member insurer that
12 the insurer may be an impaired or insolvent insurer.

13 (4) To furnish to the board of directors the National Association of Insurance
14 Commissioners Insurance Regulatory Information System (IRIS) ratios and listings
15 of companies not included in the ratios developed by the National Association of
16 Insurance Commissioners, and the board may use the information contained therein
17 in carrying out its duties and responsibilities under this section. The report and the
18 information contained therein shall be kept confidential by the board of directors until
19 such time as made public by the director or other lawful authority.

20 B. The director may seek the advice and recommendations of the board of directors
21 concerning any matter affecting the duties and responsibilities of the director regarding the
22 financial condition of member insurers and companies seeking admission to transact insurance
23 business in this state.

24 C. The board of directors may, upon majority vote, make reports and recommendations to

1 the director upon any matter germane to the solvency, liquidation, rehabilitation, or conservation
2 of any member insurer or germane to the solvency of any company seeking to do an insurance
3 business in this state. The reports and recommendations may not be considered public
4 documents.

5 D. The board of directors may, upon majority vote, notify the director of any information
6 indicating a member insurer may be an impaired or insolvent insurer.

7 E. The board of directors may, upon majority vote, make recommendations to the director
8 for the detection and prevention of insurer insolvencies.

9 Section 13. A. A member insurer may offset against its premium tax liability to this state an
10 assessment described in subpart 9H to the extent of twenty percent of the amount of the
11 assessment for each of the five calendar years following the year in which the assessment was
12 paid. If the assessment is five hundred dollars or less, the member insurer shall take the total
13 offset in the first year following the year in which the assessment was paid. However, total
14 assessments offset against premium taxes may not exceed two million dollars in any year. If
15 offsets exceed the annual limitation in this section, the excess may be carried forward to a
16 subsequent year in which the annual limitation has not been exceeded. Any excess shall be
17 apportioned among the contributing insurers in relation to their assessment that caused the limit
18 to be exceeded. In the event a member insurer should cease doing business, all uncredited
19 assessments may be credited against its premium tax liability for the year it ceases doing business.

20 B. Any sums that are acquired by refund, pursuant to subpart 9F, from the association by
21 member insurers, and that have been offset against premium taxes as provided in subpart A of
22 this section, shall be paid by the insurers to this state in such manner as the tax authorities may
23 require. The association shall notify the director that refunds have been made.

24 Section 14. A. This Act may not be construed to reduce the liability for unpaid assessments

1 of the insureds of an impaired or insolvent insurer operating under a plan with assessment
2 liability.

3 B. Records shall be kept of all meetings of the board of directors to discuss the activities of
4 the association in carrying out its powers and duties under section 8 of this Act. The records of
5 the association with respect to an impaired or insolvent insurer may only be disclosed upon the
6 termination of a liquidation, rehabilitation, or conservation proceeding involving the impaired or
7 insolvent insurer, upon the termination of the impairment or insolvency of the insurer, or upon
8 the order of a court of competent jurisdiction. Nothing in this subpart shall limit the duty of the
9 association to render a report of its activities under section 15 of this Act.

10 C. For the purpose of carrying out its obligations under this Act, the association shall be
11 deemed to be a creditor of the impaired or insolvent insurer to the extent of assets attributable
12 to covered policies reduced by any amounts to which the association is entitled as subrogee
13 pursuant to subpart 8K. Assets of the impaired or insolvent insurer attributable to covered
14 policies shall be used to continue all covered policies and pay all contractual obligations of the
15 impaired or insolvent insurer as required by this Act. Assets attributable to covered policies, as
16 used in this subpart, are that proportion of the assets which the reserves that should have been
17 established for such policies bear to the reserves that should have been established for all policies
18 of insurance written by the impaired or insolvent insurer.

19 D. As a creditor of the impaired or insolvent insurer as established in subpart C of this section
20 and consistent with § 58-29B-98, the association and other similar associations shall be entitled
21 to receive a disbursement of assets out of the marshaled assets, from time to time as the assets
22 become available to reimburse it, as a credit against contractual obligations under this Act. If the
23 liquidator has not, within one hundred twenty days of a final determination of insolvency of an
24 insurer by the receivership court, made an application to the court for the approval of a proposal

1 to disburse assets out of marshaled assets to guaranty associations having obligations because
2 of the insolvency, then the association shall be entitled to make application to the receivership
3 court for approval of its own proposal to disburse these assets.

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

11 (2) No distribution to stockholders, if any, of an impaired or insolvent insurer shall be
12 made until and unless the total amount of valid claims of the association with interest
13 thereon for funds expended in carrying out its powers and duties under section 8 of
14 this Act with respect to the insurer have been fully recovered by the association.

15 F. (1) If an order for liquidation or rehabilitation of an insurer domiciled in this state has
16 been entered, the receiver appointed under the order may recover on behalf of the
17 insurer, from any affiliate that controlled it, the amount of distributions, other than
18 stock dividends paid by the insurer on its capital stock, made at any time during the
19 five years preceding the petition for liquidation or rehabilitation subject to the
20 limitations of subdivisions (2) to (4), inclusive.

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

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

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

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

13 Section 15. The association is subject to examination and regulation by the director. The
14 board of directors shall submit to the director each year, not later than one hundred twenty days
15 after the association's fiscal year, a financial report in a form approved by the director and a
16 report of its activities during the preceding fiscal year. Upon the request of a member insurer,
17 the association shall provide the member insurer with a copy of the report.

18 Section 16. The association shall be exempt from payment of all fees and all taxes levied by
19 this state or any of its subdivisions, except taxes levied on real property.

20 Section 17. 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 Act.
24 Immunity shall extend to the participation in any organization of one or more other state

1 associations of similar purposes and to any such organization and its agents or employees.

2 Section 18. All proceedings in which the insolvent insurer is a party in any court in this state
3 shall be stayed sixty days from the date an order of liquidation, rehabilitation, or conservation
4 is final to permit proper legal action by the association on any matters germane to its powers or
5 duties. As to judgment under any decision, order, verdict, or finding based on default the
6 association may apply to have such judgment set aside by the same court that made such
7 judgment and shall be permitted to defend against such suit on the merits.

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

19 B. Within one hundred eighty days of the effective date of this Act, the association shall
20 prepare a summary document describing the general purposes and current limitations of the Act
21 and complying with subpart C of this section. This document shall be submitted to the director
22 for approval. At the expiration of the sixtieth day after the date on which the director approves
23 the document, an insurer may not deliver a policy or contract to a policy or contract owner
24 unless the summary document is delivered to the policy or contract owner at the time of delivery

1 of the policy or contract. The document shall also be available upon request by a policy owner.
2 The distribution, delivery, or contents or interpretation of this document does not guarantee that
3 either the policy or the contract or the owner of the policy or contract is covered in the event of
4 the impairment or insolvency of a member insurer. The description document shall be revised by
5 the association as amendments to the Act may require. Failure to receive this document does not
6 give the policy owner, contract owner, certificate holder, or insured any greater rights than
7 those stated in this Act.

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

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

1 (7) Provide other information as directed by the director including sources for
2 information about the financial condition of insurers provided that the information is
3 not proprietary and is subject to disclosure under that state's public records law.

4 D. A member insurer shall retain evidence of compliance with subpart B for so long as the
5 policy or contract for which the notice is given remains in effect.

6 Section 20. That §§ 58-29C-1 to 58-29C-43, inclusive, are repealed.