

# State of South Dakota

EIGHTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2013

742U0462

## HOUSE BILL NO. 1102

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

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

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

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

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

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

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

12 (a) Are residents; or

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

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





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

10 B. (1) This chapter shall provide coverage to the persons specified in subpart A for direct,  
11 nongroup life, health, or annuity policies or contracts, ~~and supplemental contracts to any of these~~  
12 ~~and~~ and for certificates under direct group policies and contracts, and for supplemental contracts to  
13 any of these, in each case except as limited by this chapter. Annuity contracts and certificates  
14 under group annuity contracts include allocated funding agreements, structured settlement  
15 annuities, and any immediate or deferred annuity contracts.

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

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

19 (b) A policy or contract of reinsurance, unless assumption certificates have been  
20 issued pursuant to the reinsurance policy or contract;

21 (c) A portion of a policy or contract to the extent that the rate of interest on which  
22 it is based, or the interest rate, crediting rate, or similar factor determined by  
23 use of an index or other external reference stated in the policy or contract  
24 employed in calculating returns or changes in value:

- 1 (i) Averaged over the period of four years prior to the date on which the  
2 ~~association becomes obligated with respect to the policy or contract,~~  
3 ~~exceeds a~~ member insurer becomes an impaired or insolvent insurer  
4 under this chapter, whichever is earlier, exceeds the rate of interest  
5 determined by subtracting two percentage points from Moody's  
6 Corporate Bond Yield Average averaged for that same four-year period  
7 or for such lesser period if the policy or contract was issued less than  
8 four years before the ~~association became obligated~~ member insurer  
9 becomes an impaired or insolvent insurer under this chapter, whichever  
10 is earlier; and
- 11 (ii) On and after the date on which the ~~association becomes obligated with~~  
12 ~~respect to the policy or contract~~ member insurer becomes an impaired  
13 or insolvent insurer under this chapter, whichever is earlier, exceeds the  
14 rate of interest determined by subtracting three percentage points from  
15 Moody's Corporate Bond Yield Average as most recently available;
- 16 (d) A portion of a policy or contract issued to a plan or program of an employer,  
17 association, or other person to provide life, health, or annuity benefits to its  
18 employees, members, or others, to the extent that the plan or program is self-  
19 funded or uninsured, including benefits payable by an employer, association,  
20 or other person under:
- 21 (i) A multiple employer welfare arrangement as defined in ~~29 U.S.C.~~  
22 ~~§ 1144~~ section 3(40) of the Employee Retirement Income Security Act  
23 of 1974 (29 U.S.C. § 1002(40));
- 24 (ii) A minimum premium group insurance plan;

- 1 (iii) A stop-loss group insurance plan; or
- 2 (iv) An administrative services only contract;
- 3 (e) A portion of a policy or contract to the extent that it provides for:
  - 4 (i) Dividends or experience rating credits;
  - 5 (ii) Voting rights; or
  - 6 (iii) Payment of any fees or allowances to any person, including the policy
  - 7 or contract owner, in connection with the service to or administration
  - 8 of the policy or contract;
- 9 (f) A policy or contract issued in this state by a member insurer at a time when it
- 10 was not licensed or did not have a certificate of authority to issue the policy
- 11 or contract in this state;
- 12 (g) A portion of a policy or contract to the extent that the assessments required by
- 13 58-29C-52 with respect to the policy or contract are preempted by federal or
- 14 state law;
- 15 (h) An obligation that does not arise under the express written terms of the policy
- 16 or contract issued by the insurer to the contract owner or policy owner,
- 17 including without limitation:
  - 18 (i) Claims based on marketing materials;
  - 19 (ii) Claims based on side letters, riders, or other documents that were issued
  - 20 by the insurer without meeting applicable policy form filing or approval
  - 21 requirements;
  - 22 (iii) Misrepresentations of or regarding policy benefits;
  - 23 (iv) Extra-contractual claims; or
  - 24 (v) A claim for penalties or consequential or incidental damages;

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

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

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

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

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

7 (ii) In health insurance benefits:

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

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

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

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

21 or

22 (b) With respect to each payee of a structured settlement annuity (or beneficiary  
23 or beneficiaries of the payee if deceased), two hundred fifty thousand dollars  
24 in present value annuity benefits, in the aggregate, including net cash surrender

- 1 and net cash withdrawal values, if any;
- 2 (c) However, in no event may the association be obligated to cover more than (i)
- 3 an aggregate of three hundred thousand dollars in benefits with respect to any
- 4 one life under subsections 2(a); and 2(b), ~~and 2(c)~~ of subpart C of this section
- 5 except with respect to benefits for basic hospital, medical and surgical
- 6 insurance, and major medical insurance under subsection 2(a)(ii) of this
- 7 section, in which case the aggregate liability of the association may not exceed
- 8 five hundred thousand dollars with respect to any one individual, or (ii) with
- 9 respect to one owner of multiple nongroup policies of life insurance, whether
- 10 the policy owner is an individual, firm, corporation, or other person, and
- 11 whether the persons insured are officers, managers, employees, or other
- 12 persons, more than five million dollars in benefits, regardless of the number
- 13 of policies and contracts held by the owner;
- 14 (d) The limitations set forth in this section are limitations on the benefits for
- 15 which the association is obligated before taking into account either its
- 16 subrogation and assignment rights or the extent to which those benefits could
- 17 be provided out of the assets of the impaired or insolvent insurer attributable
- 18 to covered policies. The costs of the association's obligations under this
- 19 chapter may be met by the use of assets attributable to covered policies or
- 20 reimbursed to the association pursuant to its subrogation and assignment
- 21 rights.

22 D. In performing its obligations to provide coverage under § 58-29C-51, the association may

23 not be required to guarantee, assume, reinsure, or perform, or cause to be guaranteed, assumed,

24 reinsured, or performed, the contractual obligations of the insolvent or impaired insurer under

1 a covered policy or contract that do not materially affect the economic values or economic  
2 benefits of the covered policy or contract.

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

4 58-29C-48. Terms used in this chapter mean:

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

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

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

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

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

18 Premiums do not include:

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

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

1                   the owner;

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

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

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

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

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

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

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

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

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

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

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

23       (21) "State," a state, the District of Columbia, Puerto Rico, and a United States  
24           possession, territory, or protectorate;

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

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

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

8 58-29C-49. A. There is hereby continued the nonprofit legal entity known as the South  
9 Dakota Life and Health Insurance Guaranty Association as created by former § 58-29C-1. All  
10 member insurers shall be and remain members of the association as a condition of their  
11 authority to transact insurance in this state. The association shall perform its functions under the  
12 plan of operation established and approved under § 58-29C-53 and shall exercise its powers  
13 through a board of directors established under § 58-29C-50. For purposes of administration and  
14 assessment, the association shall maintain two accounts:

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

16 (a) Life insurance account; and

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

20 (2) The health insurance account.

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

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

2 58-29C-51. A. If a member insurer is an impaired insurer, the association may, in its  
3 discretion, and subject to any conditions imposed by the association that do not impair the  
4 contractual obligations of the impaired insurer and that are approved by the director:

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

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

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

1 days, but in no event less than thirty days, after the date on which the  
2 association becomes obligated with respect to the policies and  
3 contracts;

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

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

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

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

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

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

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

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

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

23 (f) If the association elects to reissue terminated coverage at a premium rate  
24 different from that charged under the terminated policy, the premium shall be

1 set by the association in accordance with the amount of insurance provided  
2 and the age and class of risk, subject to approval of the domiciliary insurance  
3 director and the receivership court;

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

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

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

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

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

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

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

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

21 G. A deposit in this state, held pursuant to law or required by the director for the benefit of  
22 creditors, including policy owners, not turned over to the domiciliary liquidator upon the entry  
23 of a final order of liquidation or order approving a rehabilitation plan of an insurer domiciled  
24 in this state or in a reciprocal state, pursuant to §§ 58-29B-144 and 58-29B-149, shall be

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

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

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

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

1 may have rights through subrogation or otherwise.

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

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

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

23 (4) If the preceding provisions of this subpart are invalid or ineffective with respect to  
24 any person or claim for any reason, the amount payable by the association with

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

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

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

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

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

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

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

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

23 (6) Exercise, for the purposes of this chapter and to the extent approved by the director,  
24 the powers of a domestic life or health insurer, but in no case may the association

1 issue insurance policies or annuity contracts other than those issued to perform its  
2 obligations under this chapter;

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

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

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

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

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

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

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

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

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

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

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

1 covered in part by the association, through reasonable allocation  
 2 methods, the costs for reinsurance in excess of the obligations of the  
 3 association and shall provide notice and an accounting of these charges  
 4 to the liquidator;

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

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

15 (B) The excess of:

16 ~~\_\_\_\_\_ (i) The~~ the amount received by the association, over

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

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

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

23 (d)(iv) If the association or receiver, on the association's behalf, within  
24 sixty days of the election date, pays the unpaid premiums due for

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

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

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

22 (a)(i) Neither the association nor the reinsurer shall have any rights or obligations  
 23 under reinsurance contracts that the association has the right to assume under  
 24 subsection (1), whether for periods prior to or after the date of the order of

- 1           liquidation; and
- 2           (ii) The reinsurer, the receiver, and the association shall, to the extent
- 3                   practicable, provide each other data and records reasonably requested;
- 4           (b) Provided that once the association has elected to assume a reinsurance
- 5                   contract, the parties' rights and obligations shall be governed by subsection (1).
- 6       (3) If the association does not elect to assume a reinsurance contract by the election date
- 7                   pursuant to subsection (1), the association shall have no rights or obligations, in each
- 8                   case for periods both before and after the date of the order of liquidation, with respect
- 9                   to the reinsurance contract.
- 10       (4) When policies or annuities, or covered obligations with respect thereto, are
- 11                   transferred to an assuming insurer, reinsurance on the policies or annuities may also
- 12                   be transferred by the association, in the case of contracts assumed under subsection
- 13                   (1), subject to the following:
- 14           (a) Unless the reinsurer and the assuming insurer agree otherwise, the reinsurance
- 15                   contract transferred may not cover any new policies of insurance or annuities
- 16                   in addition to those transferred;
- 17           (b) ~~The obligations described in the proviso to subsection (1)(b) of this subpart~~
- 18                   ~~section~~ no longer apply on and after the date the indemnity reinsurance
- 19                   ~~agreement is transferred to the third party insurer~~ with respect to matters
- 20                   arising after the effective date of the transfer; 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)~~ The transferring party shall give notice in writing, return
- 24                   receipt requested, to the affected reinsurer not less than thirty days prior to the

1                   effective date of the transfer;

2       ~~(3)~~(5) The provisions of ~~this subpart~~ subsection N shall supersede the provisions of any law  
3                   of ~~this state law~~ or of any affected reinsurance ~~agreement contract~~ that provides for  
4                   or requires any payment of reinsurance proceeds, on account of losses or events that  
5                   occur in periods after the ~~coverage date~~ of the order of liquidation, to the receiver;  
6                   ~~liquidator, or rehabilitator~~ of the insolvent ~~member insurer~~ or any other person. The  
7                   receiver, ~~rehabilitator, or liquidator~~ shall remain entitled to any amounts payable by  
8                   the reinsurer under the reinsurance ~~agreement contracts~~ with respect to losses or  
9                   events that occur in periods prior to the ~~coverage date~~ ( of the order of liquidation,  
10                  subject to applicable setoff provisions); and

11       ~~(4)~~(6) Except as otherwise ~~expressly~~ provided ~~above~~ in this section, nothing ~~herein~~ in  
12                  subsection N alters or modifies the terms and conditions of ~~the indemnity any~~  
13                  reinsurance ~~agreements of the insolvent member insurer~~ contract. Nothing ~~herein~~ in  
14                  this section abrogates or limits any rights of any reinsurer to claim that it is entitled  
15                  to rescind a reinsurance ~~agreement contract~~. Nothing ~~herein~~ in this section gives a  
16                  policy owner or beneficiary an independent cause of action against ~~an indemnity a~~  
17                  reinsurer that is not otherwise set forth in the ~~indemnity reinsurance agreement~~  
18                  reinsurance contract. No provision in this section limits or affects the association's  
19                  rights as a creditor of the estate against the assets of the estate. No provision in this  
20                  section applies to reinsurance agreements covering property or casualty risks.

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

24           P. Where the association has arranged or offered to provide the benefits of this chapter to

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

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

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

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

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

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

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

22 58-29C-52. A. For the purpose of providing the funds necessary to carry out the powers and  
23 duties of the association, the board of directors shall assess the member insurers, separately for  
24 each account, at such time and for such amounts as the board finds necessary. Assessments shall

1 be due not less than thirty days after prior written notice to the member insurers and shall accrue  
2 interest at ten percent per annum on and after the due date.

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

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

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

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

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

1 available preceding the year in which the insurer became impaired) bears to  
2 premiums received on business in this state for those calendar years by all assessed  
3 member insurers.

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

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

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

1 preceding the year in which the insurer became an impaired or insolvent insurer.

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

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

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

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

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

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

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

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

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

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

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

1 final action to the director.

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

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

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

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

11 58-29C-53. A. (1) The association shall submit to the director a plan of operation and any  
12 amendments thereto necessary or suitable to assure the fair, reasonable, and equitable  
13 administration of the association. The plan of operation and any amendments thereto shall  
14 become effective upon the director's written approval or unless it has not been disapproved  
15 within thirty days.

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

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

24 C. The plan of operation shall, in addition to requirements enumerated elsewhere in this

1 chapter:

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

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

1 be made only to a corporation, association, or organization which extends protection not  
2 substantially less favorable and effective than that provided by this chapter.

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

4 58-29C-54. In addition to the duties and powers enumerated elsewhere in this chapter,

5 A. The director shall:

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

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

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

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

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

1 in a court of competent jurisdiction in accordance with the laws of this state that apply to the  
2 actions or orders of the director.

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

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

6 58-29C-57. A. This chapter may not be construed to reduce the liability for unpaid  
7 assessments of the insureds of an impaired or insolvent insurer operating under a plan with  
8 assessment liability.

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

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

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

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

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

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

1 (2) to (4), inclusive.

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

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

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

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

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

19 58-29C-60. There is no liability on the part of and no cause of action of any nature may arise  
20 against any member insurer or its agents or employees, the association or its agents or  
21 employees, members of the board of directors, or the director or the director's representatives,  
22 for any action or omission by them in the performance of their powers and duties under this  
23 chapter. ~~Immunity~~ This immunity shall extend to the participation in any organization of one  
24 or more other state associations of similar purposes and to any such organization and its agents

1 or employees.

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

3 58-29C-61. All proceedings in which the insolvent insurer is a party in any court in this state  
4 shall be stayed ~~sixty~~ one hundred eighty days from the date an order of liquidation,  
5 rehabilitation, or conservation is final to permit proper legal action by the association on any  
6 matters germane to its powers or duties. As to judgment under any decision, order, verdict, or  
7 finding based on default the association may apply to have such judgment set aside by the same  
8 court that made such judgment and shall be permitted to defend against such suit on the merits.

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

10 58-29C-62. A. No person, including an insurer, agent, or affiliate of an insurer may make,  
11 publish, disseminate, circulate, or place before the public, or cause directly or indirectly, to be  
12 made, published, disseminated, circulated, or placed before the public, in any newspaper,  
13 magazine, or other publication, or in the form of a notice, ~~circulate~~ circular, pamphlet, letter, or  
14 poster, or over any radio station or television station, or in any other way, any advertisement,  
15 announcement, or statement, written or oral, which uses the existence of the Life and Health  
16 Insurance Guaranty Association of this state for the purpose of sales, solicitation, or inducement  
17 to purchase any form of insurance covered by the South Dakota Life and Health Insurance  
18 Guaranty Association chapter. However, this section does not apply to the South Dakota Life  
19 and Health Insurance Guaranty Association or any other entity which does not sell or solicit  
20 insurance.

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

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

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

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

1       (6) Explain rights available and procedures for filing a complaint to allege a violation of  
2           any provisions of this chapter; and

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

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