

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 548

BY BUSINESS COMMITTEE

AN ACT

1 RELATING TO INSURANCE; AMENDING SECTION 41-4303, IDAHO CODE, TO PROVIDE THAT  
2 BENEFITS PROVIDED BY A LONG-TERM CARE RIDER SHALL BE CONSIDERED THE SAME  
3 TYPE OF BENEFITS AS THE BASE LIFE INSURANCE POLICY OR ANNUITY CONTRACT  
4 TO WHICH IT RELATES; AMENDING SECTION 41-4308, IDAHO CODE, TO PROVIDE  
5 THAT THE IDAHO LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION MAY TER-  
6 MINATE CERTAIN HEALTH BENEFIT PLANS UPON ENTRY OF AN ORDER OF LIQUIDA-  
7 TION WITH APPROVAL OF THE DIRECTOR; AND AMENDING SECTION 41-4309, IDAHO  
8 CODE, TO PROVIDE AN EXCEPTION FOR ALLOCATION OF CERTAIN CLASS B ASSESS-  
9 MENTS AND TO PROVIDE FOR ALLOCATION OF CLASS B ASSESSMENTS FOR LONG-TERM  
10 CARE INSURANCE.  
11

12 Be It Enacted by the Legislature of the State of Idaho:

13 SECTION 1. That Section 41-4303, Idaho Code, be, and the same is hereby  
14 amended to read as follows:

15 41-4303. COVERAGE AND LIMITATIONS. (1) This chapter shall provide  
16 coverage for the policies and contracts specified in subsection (2) of this  
17 section:

18 (a) To persons, except for nonresident certificate holders under group  
19 policies or contracts who, regardless of where they reside, are the ben-  
20 efiticiaries, assignees or payees of the persons covered under paragraph  
21 (b) of this subsection.

22 (b) To persons who are owners of or certificate holders under the poli-  
23 cies or contracts, other than structured settlement annuities, and in  
24 each case who:

25 (i) Are residents; or

26 (ii) Are not residents, but only under all of the following condi-  
27 tions:

28 1. The insurer that issued the policies or contracts is  
29 domiciled in this state;

30 2. The states in which the persons reside have associations  
31 similar to the association created by this chapter; and

32 3. The persons are not eligible for coverage by an asso-  
33 ciation in any other state due to the fact that the insurer  
34 was not licensed in the state at the time specified in the  
35 state's guaranty association law.

36 (c) For structured settlement annuities specified in subsection (2) of  
37 this section, paragraphs (a) and (b) of this subsection shall not ap-  
38 ply, and this chapter shall, except as provided in paragraphs (d) and  
39 (e) of this subsection, provide coverage to a person who is a payee under  
40 a structured settlement annuity, or beneficiary of a payee if the payee  
41 is deceased, if the payee:

1 (i) Is a resident, regardless of where the contract owner re-  
2 sides; or

3 (ii) Is not a resident, but only under both of the following condi-  
4 tions:

5 1. (A) The contract owner of the structured settlement  
6 annuity is a resident; or

7 (B) The contract owner of the structured settlement  
8 annuity is not a resident; but the insurer that issued  
9 the structured settlement annuity is domiciled in this  
10 state; and the state in which the contract owner re-  
11 sides has an association similar to the association  
12 created in this chapter; and

13 2. Neither the payee or beneficiary nor the contract owner  
14 is eligible for coverage by the association of the state in  
15 which the payee or contract owner resides.

16 (d) The provisions of this chapter shall not provide coverage to a per-  
17 son who is a payee or beneficiary of a contract owner resident of this  
18 state, if the payee or beneficiary is afforded any coverage by the asso-  
19 ciation of another state.

20 (e) This chapter is intended to provide coverage to a person who is a  
21 resident of this state and, in special circumstances, to a nonresident.  
22 In order to avoid duplicate coverage, if a person who would otherwise  
23 receive coverage under this chapter is provided coverage under the laws  
24 of any other state, the person shall not be provided coverage under this  
25 chapter. In determining the application of the provisions of this para-  
26 graph in situations where a person could be covered by the association  
27 of more than one (1) state, whether as an owner, payee, beneficiary or  
28 assignee, the provisions of this chapter shall be construed in conjunc-  
29 tion with other state laws to result in coverage by only one (1) associa-  
30 tion.

31 (2) (a) The provisions of this chapter shall provide coverage to  
32 the persons specified in subsection (1) of this section for direct,  
33 non-group life, health or annuity policies or contracts and for cer-  
34 tificates under direct group policies and contracts and for supple-  
35 mental contracts to any of these, except as limited by this chapter.  
36 Annuity contracts and certificates under group annuity contracts in-  
37 clude allocated funding agreements, structured settlement annuities  
38 and any immediate or deferred annuity contracts.

39 (b) The provisions of this chapter shall not provide coverage for:

40 (i) A portion of a policy or contract not guaranteed by the in-  
41 surer, or under which the risk is borne by the policy or contract  
42 owner;

43 (ii) A policy or contract of reinsurance, unless assumption cer-  
44 tificates have been issued pursuant to the reinsurance policy or  
45 contract;

46 (iii) A portion of a policy or contract to the extent that the rate  
47 of interest on which it is based, or the interest rate, crediting  
48 rate or similar factor determined by use of an index or other ex-  
49 ternal reference stated in the policy or contract employed in cal-  
50 culating returns or changes in value:

1 1. Averaged over the period of four (4) years prior to the  
2 date on which the member insurer becomes an impaired or in-  
3 solvent insurer under this chapter, whichever is earlier,  
4 exceeds the rate of interest determined by subtracting two  
5 (2) percentage points from Moody's corporate bond yield aver-  
6 age averaged for that same four (4) year period or for such  
7 lesser period if the policy or contract was issued less than  
8 four (4) years before the member insurer becomes an impaired  
9 or insolvent insurer under the provisions of this chapter,  
10 whichever is earlier; and

11 2. On and after the date on which the member insurer be-  
12 comes an impaired or insolvent insurer under the provisions  
13 of this chapter, whichever is earlier, exceeds the rate of  
14 interest determined by subtracting three (3) percentage  
15 points from Moody's corporate bond yield average as most re-  
16 cently available;

17 (iv) A portion of a policy or contract issued to a plan or pro-  
18 gram of an employer, association or other person to provide life,  
19 health or annuity benefits to its employees, members or others, to  
20 the extent that the plan or program is self-funded or uninsured in-  
21 cluding, but not limited to, benefits payable by an employer, as-  
22 sociation or other person under:

23 1. A multiple employer welfare arrangement as defined in  
24 section 3(40) of the employee retirement income security act  
25 of 1974, 29 U.S.C. section 1002(40);

26 2. A minimum premium group insurance plan;

27 3. A stop-loss group insurance plan; or

28 4. An administrative services only contract;

29 (v) A portion of a policy or contract to the extent that it pro-  
30 vides for:

31 1. Dividends or experience rating credits;

32 2. Voting rights; or

33 3. Payment of any fees or allowances to any person, includ-  
34 ing the policy or contract owner, in connection with the ser-  
35 vice to or administration of the policy or contract;

36 (vi) A policy or contract issued in this state by a member insurer  
37 at a time when it was not licensed or did not have a certificate of  
38 authority to issue the policy or contract in this state;

39 (vii) A portion of a policy or contract to the extent that the as-  
40 sessments required in section 41-4309, Idaho Code, with respect to  
41 the policy or contract are preempted by federal or state law;

42 (viii) An obligation that does not arise under the express written  
43 terms of the policy or contract issued by the insurer to the con-  
44 tract owner or policy owner, including without limitation:

45 1. Claims based on marketing materials;

46 2. Claims based on side letters, riders or other documents  
47 that were issued by the insurer without meeting applicable  
48 policy form filing or approval requirements;

49 3. Misrepresentations of or regarding policy benefits;

50 4. Extra-contractual claims; or

- 1                   5. A claim for penalties or consequential or incidental dam-  
2                   ages;
- 3                   (ix) A contractual agreement that establishes the member in-  
4                   surer's obligations to provide a book value accounting guaranty  
5                   for defined contribution benefit plan participants by reference  
6                   to a portfolio of assets that is owned by the benefit plan or its  
7                   trustee, which in each case is not an affiliate of the member in-  
8                   surer;
- 9                   (x) An unallocated annuity contract;
- 10                   (xi) A portion of a policy or contract to the extent it provides  
11                   for interest or other changes in value to be determined by the use  
12                   of an index or other external reference stated in the policy or  
13                   contract, but which have not been credited to the policy or con-  
14                   tract, or as to which the policy or contract owner's rights are  
15                   subject to forfeiture, as of the date the member insurer becomes an  
16                   impaired or insolvent insurer under the provisions of this chap-  
17                   ter, whichever is earlier. If a policy's or contract's interest or  
18                   changes in value are credited less frequently than annually, then  
19                   for purposes of determining the values that have been credited and  
20                   are not subject to forfeiture under this subparagraph, the inter-  
21                   est or change in value determined by using the procedures defined  
22                   in the policy or contract will be credited as if the contractual  
23                   date of crediting interest or changing values was the date of im-  
24                   pairment or insolvency, whichever is earlier, and will not be sub-  
25                   ject to forfeiture; and
- 26                   (xii) A policy or contract providing any hospital, medical, pre-  
27                   scription drug or other health care benefits pursuant to 42 U.S.C.  
28                   part C or 42 U.S.C. part D, commonly known as medicare parts C and  
29                   D, or any regulations issued pursuant thereto.
- 30                   (3) The benefits that the association may become obligated to cover  
31                   shall in no event exceed the lesser of:
- 32                   (a) The contractual obligations for which the insurer is liable or  
33                   would have been liable if it were not an impaired or insolvent insurer;  
34                   or
- 35                   (b) Subject to the aggregate per life limitation in paragraph (c) of  
36                   this subsection with respect to one (1) policy or contract:
- 37                   (i) Three hundred thousand dollars (\$300,000) in life insurance  
38                   death benefits, but not more than one hundred thousand dollars  
39                   (\$100,000) in net cash surrender and net cash withdrawal values  
40                   for life insurance;
- 41                   (ii) Three hundred thousand dollars (\$300,000) in health insur-  
42                   ance claims or benefit payments or one hundred thousand dollars  
43                   (\$100,000) in net cash surrender and net cash withdrawal values  
44                   for health benefits, except for major medical insurance as defined  
45                   in section 41-4305, Idaho Code, and as provided for in subpara-  
46                   graph (iii) of this paragraph;
- 47                   (iii) Five hundred thousand dollars (\$500,000) for major medical  
48                   insurance as defined in section 41-4305, Idaho Code;

1 (iv) Two hundred fifty thousand dollars (\$250,000) in the present  
 2 value of annuity benefits, including net cash surrender and net  
 3 cash withdrawal values;

4 (v) With respect to each payee of a structured settlement annu-  
 5 ity, or beneficiary or beneficiaries of the payee if deceased, two  
 6 hundred fifty thousand dollars (\$250,000) in present value annu-  
 7 ity benefits, in the aggregate, including net cash surrender and  
 8 net cash withdrawal values;

9 (c) However, in no event shall the association be obligated to cover  
 10 more than:

11 (i) An aggregate of three hundred thousand dollars (\$300,000) in  
 12 benefits with respect to any one (1) life under paragraph (b) of  
 13 this subsection, except with respect to benefits for major medical  
 14 insurance as provided in paragraph (b) (iii) of this subsection,  
 15 in which case the aggregate liability of the association shall not  
 16 exceed five hundred thousand dollars (\$500,000) with respect to  
 17 any one (1) life; or

18 (ii) With respect to one (1) owner of multiple non-group poli-  
 19 cies of life insurance, whether the policy owner is an individual,  
 20 firm, corporation or other person, and whether the persons insured  
 21 are officers, managers, employees or other persons, more than five  
 22 million dollars (\$5,000,000) in benefits, regardless of the num-  
 23 ber of policies and contracts held by the owner; or

24 (d) The limitations set forth in this subsection are limitations on  
 25 the benefits for which the association is obligated before taking into  
 26 account either its subrogation and assignment rights or the extent to  
 27 which those benefits could be provided out of the assets of the impaired  
 28 or insolvent insurer attributable to covered policies. The costs of the  
 29 association's obligations under the provisions of this chapter may be  
 30 met by the use of assets attributable to covered policies or reimbursed  
 31 to the association pursuant to its subrogation and assignment rights.

32 (e) For purposes of this act, benefits provided by a long-term care  
 33 rider to a life insurance policy or annuity contract shall be considered  
 34 the same type of benefits as the base life insurance policy or annuity  
 35 contract to which it relates.

36 (4) In performing its obligations to provide coverage under section  
 37 41-4308, Idaho Code, the association shall not be required to guarantee, as-  
 38 sume, reinsure or perform, or cause to be guaranteed, assumed, reinsured or  
 39 performed, the contractual obligations of the insolvent or impaired insurer  
 40 under a covered policy or contract that do not materially affect the economic  
 41 values or economic benefits of the covered policy or contract.

42 SECTION 2. That Section 41-4308, Idaho Code, be, and the same is hereby  
 43 amended to read as follows:

44 41-4308. POWERS AND DUTIES OF THE ASSOCIATION. (1) If a member insurer  
 45 is an impaired insurer, the association may, in its discretion, and subject  
 46 to any conditions imposed by the association that do not impair the contrac-  
 47 tual obligations of the impaired insurer and that are approved by the direc-  
 48 tor:

1 (a) Guarantee, assume or reinsure, or cause to be guaranteed, assumed,  
2 or reinsured, any or all of the policies or contracts of the impaired in-  
3 surer; and

4 (b) Provide such moneys, pledges, loans, notes, guarantees or other  
5 means as are proper to effectuate paragraph (a) of this subsection and  
6 assure payment of the contractual obligations of the impaired insurer  
7 pending action under paragraph (a) of this subsection.

8 (2) If a member insurer is an insolvent insurer, the association shall,  
9 in its discretion, either:

10 (a) (i) 1. Guarantee, assume or reinsure, or cause to be  
11 guaranteed, assumed or reinsured, the policies or contracts  
12 of the insolvent insurer; or

13 2. Assure payment of the contractual obligations of the in-  
14 solvent insurer; and

15 (ii) Provide moneys, pledges, loans, notes, guarantees, or other  
16 means reasonably necessary to discharge the association's duties;  
17 or

18 (b) Provide benefits and coverages in accordance with the following  
19 provisions:

20 (i) With respect to life and health insurance policies and an-  
21 nuities, assure payment of benefits for premiums identical to the  
22 premiums and benefits, except for terms of conversion and renewa-  
23 bility, that would have been payable under the policies or con-  
24 tracts of the insolvent insurer, for claims incurred:

25 1. With respect to group policies and contracts, not later  
26 than the earlier of the next renewal date under those poli-  
27 cies or contracts or forty-five (45) days, but in no event  
28 less than thirty (30) days, after the date on which the as-  
29 sociation becomes obligated with respect to the policies and  
30 contracts;

31 2. With respect to non-group policies, contracts, and annu-  
32 ities not later than the earlier of the next renewal date, if  
33 any, under the policies or contracts or one (1) year, but in  
34 no event less than thirty (30) days, from the date on which  
35 the association becomes obligated with respect to the poli-  
36 cies or contracts;

37 (ii) Make diligent efforts to provide all known insureds or an-  
38 nuitants, for non-group policies and contracts, or group policy  
39 owners with respect to group policies and contracts, thirty (30)  
40 days' notice of the termination, pursuant to subparagraph (i) of  
41 this paragraph, of the benefits provided;

42 (iii) With respect to non-group life and health insurance poli-  
43 cies and annuities covered by the association, make available to  
44 each known insured or annuitant, or owner if other than the insured  
45 or annuitant, and with respect to an individual formerly insured  
46 or formerly an annuitant under a group policy who is not eligible  
47 for replacement group coverage, make available substitute cover-  
48 age on an individual basis in accordance with the provisions of  
49 subparagraph (iv) of this paragraph, if the insureds or annuitants  
50 had a right under law or the terminated policy or annuity to con-

1 vert coverage to individual coverage or to continue an individual  
2 policy or annuity in force until a specified age or for a specified  
3 time, during which the insurer had no right unilaterally to make  
4 changes in any provision of the policy or annuity or had a right  
5 only to make changes in premium by class:

6 (iv) 1. In providing the substitute coverage required under  
7 subparagraph (iii) of this paragraph, the association may  
8 offer either to reissue the terminated coverage or to issue  
9 an alternative policy;

10 2. Alternative or reissued policies shall be offered with-  
11 out requiring evidence of insurability, and shall not pro-  
12 vide for any waiting period or exclusion that would not have  
13 applied under the terminated policy; and

14 3. The association may reinsure any alternative or reissued  
15 policy;

16 (v) 1. Alternative policies adopted by the association  
17 shall be subject to the approval of the domiciliary in-  
18 surance director. The association may adopt alternative  
19 policies of various types for future issuance without regard  
20 to any particular impairment or insolvency;

21 2. Alternative policies shall contain at least the mini-  
22 mum statutory provisions required in this state and provide  
23 benefits that shall not be unreasonable in relation to the  
24 premium charged. The association shall set the premium in  
25 accordance with a table of rates that it shall adopt. The  
26 premium shall reflect the amount of insurance to be provided  
27 and the age and class of risk of each insured, but shall not  
28 reflect any changes in the health of the insured after the  
29 original policy was last underwritten; and

30 3. Any alternative policy issued by the association shall  
31 provide coverage of a type similar to that of the policy is-  
32 sued by the impaired or insolvent insurer, as determined by  
33 the association;

34 (vi) If the association elects to reissue terminated coverage at  
35 a premium rate different from that charged under the terminated  
36 policy, the premium shall be set by the association in accordance  
37 with the amount of insurance provided and the age and class of  
38 risk, subject to approval of the domiciliary insurance director;

39 (vii) The association's obligations with respect to coverage under  
40 any policy of the impaired or insolvent insurer or under any  
41 reissued or alternative policy shall cease on the date the cover-  
42 age or policy is replaced by another similar policy by the policy  
43 owner, the insured or the association; and

44 (viii) When proceeding under this paragraph (b) of this subsec-  
45 tion with respect to a policy or contract carrying guaranteed  
46 minimum interest rates, the association shall assure the pay-  
47 ment or crediting of a rate of interest consistent with section  
48 41-4303(2)(b)(iii), Idaho Code.

49 (c) With respect to health benefit plans that are subject to state or  
50 federal guaranteed issue requirements, the association may terminate

1        the policies upon entry of an order of liquidation with approval of the  
2        director.

3        (3) Nonpayment of premiums within thirty-one (31) days after the date  
4        required under the terms of any guaranteed, assumed, alternative or reissued  
5        policy or contract or substitute coverage shall terminate the association's  
6        obligations under the policy or coverage under this chapter with respect to  
7        the policy or coverage, except with respect to any claims incurred or any net  
8        cash surrender value which may be due in accordance with the provisions of  
9        this chapter.

10       (4) Premiums due for coverage after entry of an order of liquidation of  
11       an insolvent insurer shall belong to and be payable at the direction of the  
12       association. If the liquidator of an insolvent insurer requests, the asso-  
13       ciation shall provide a report to the liquidator regarding such premium col-  
14       lected by the association. The association shall be liable for unearned pre-  
15       miums due to policy or contract owners arising after the entry of the order.

16       (5) The protection provided by this chapter shall not apply where any  
17       guarantee protection is provided to residents of this state by the laws of  
18       the domiciliary state or jurisdiction of the impaired or insolvent insurer  
19       other than this state.

20       (6) In carrying out its duties under subsection (2) of this section, the  
21       association may:

22       (a) Subject to approval by a court in this state, impose permanent  
23       policy or contract liens in connection with a guarantee, assumption or  
24       reinsurance agreement, if the association finds that the amounts which  
25       can be assessed under this chapter are less than the amounts needed to  
26       assure full and prompt performance of the association's duties under  
27       this chapter, or that the economic or financial conditions as they af-  
28       fect member insurers are sufficiently adverse to render the imposition  
29       of such permanent policy or contract liens, to be in the public inter-  
30       est; or

31       (b) Subject to approval by a court in this state, impose temporary  
32       moratoriums or liens on payments of cash values and policy loans, or any  
33       other right to withdraw funds held in conjunction with policies or con-  
34       tracts, in addition to any contractual provisions for deferral of cash  
35       or policy loan value. In addition, in the event of a temporary morato-  
36       rium or moratorium charge imposed by the receivership court on payment  
37       of cash values or policy loans, or on any other right to withdraw funds  
38       held in conjunction with policies or contracts, out of the assets of the  
39       impaired or insolvent insurer, the association may defer the payment  
40       of cash values, policy loans or other rights by the association for the  
41       period of the moratorium or moratorium charge imposed by the receiver-  
42       ship court, except for claims covered by the association to be paid in  
43       accordance with a hardship procedure established by the liquidator or  
44       rehabilitator and approved by the receivership court.

45       (7) A deposit in this state, held pursuant to law or required by the  
46       director for the benefit of creditors, including policy owners, not turned  
47       over to the domiciliary liquidator upon the entry of a final order of liqui-  
48       dation or order approving a rehabilitation plan of an insurer domiciled in  
49       this state or in a reciprocal state, pursuant to chapter 8, title 41, Idaho  
50       Code, shall be promptly paid to the association. The association shall be



1 entitled to retain a portion of any amount so paid to it equal to the per-  
2 centage determined by dividing the aggregate amount of policy owners' claims  
3 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  
5 related to that insolvency and shall remit to the domiciliary receiver the  
6 amount so paid to the association less the amount retained pursuant to this  
7 subsection. Any amount so paid to the association and retained by it shall  
8 be treated as a distribution of state assets pursuant to applicable state re-  
9 ceivership law dealing with early access disbursements.

10 (8) If the association fails to act within a reasonable period of time  
11 with respect to an insolvent insurer, as provided in subsection (2) of this  
12 section, the director shall have the powers and duties of the association un-  
13 der this chapter with respect to the insolvent insurer.

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

18 (10) The association shall have standing to appear or intervene before a  
19 court or agency in this state with jurisdiction over an impaired or insolvent  
20 insurer concerning which the association is or may become obligated under  
21 this chapter or with jurisdiction over any person or property against which  
22 the association may have rights through subrogation or otherwise. Standing  
23 shall extend to all matters germane to the powers and duties of the associ-  
24 ation including, but not limited to, proposals for reinsuring, modifying or  
25 guaranteeing the policies or contracts of the impaired or insolvent insurer  
26 and the determination of the policies or contracts and contractual obliga-  
27 tions. The association shall also have the right to appear or intervene be-  
28 fore a court or agency in another state with jurisdiction over an impaired  
29 or insolvent insurer for which the association is or may become obligated or  
30 with jurisdiction over any person or property against whom the association  
31 may have rights through subrogation or otherwise.

32 (11) (a) A person receiving benefits under this chapter shall be deemed  
33 to have assigned the rights under, and any causes of action against any  
34 person for losses arising under, resulting from or otherwise relating  
35 to the covered policy or contract to the association to the extent of  
36 the benefits received because of this chapter, whether the benefits are  
37 payments of, or on account of, contractual obligations, continuation of  
38 coverage or provision of substitute or alternative coverages. The as-  
39 sociation may require a written instrument of assignment to it of such  
40 rights and cause of action by any payee, policy or contract owner, bene-  
41 ficiary, insured or annuitant as a condition precedent to the receipt of  
42 any right or benefits conferred by this chapter upon the person.

43 (b) The subrogation rights of the association under this subsection  
44 shall have the same priority against the assets of the impaired or in-  
45 solvent insurer as that possessed by the person entitled to receive  
46 benefits under this chapter.

47 (c) In addition to paragraphs (a) and (b) of this subsection, the as-  
48 sociation shall have all common law rights of subrogation and any other  
49 equitable or legal remedy that would have been available to the impaired  
50 or insolvent insurer or owner, beneficiary or payee of a policy or con-

1 tract with respect to the policy or contract, including without limi-  
2 tation, in the case of a structured settlement annuity, any rights of  
3 the owner, beneficiary or payee of the annuity, to the extent of ben-  
4 efits received pursuant to this chapter, against a person originally  
5 or by succession responsible for the losses arising from the personal  
6 injury relating to the annuity or payment therefor, excepting any such  
7 person responsible solely by reason of serving as an assignee in respect  
8 of a qualified assignment under Internal Revenue Code, section 130.

9 (d) If the preceding provisions of this subsection are invalid or inef-  
10 fective with respect to any person or claim for any reason, the amount  
11 payable by the association with respect to the related covered obliga-  
12 tions shall be reduced by the amount realized by any other person with  
13 respect to the person or claim that is attributable to the policies, or  
14 portion thereof, covered by the association.

15 (e) If the association has provided benefits with respect to a covered  
16 obligation and a person recovers amounts as to which the association has  
17 rights as described in paragraphs (a) through (d) of this subsection,  
18 the person shall pay to the association the portion of the recovery at-  
19 tributable to the policies, or portion thereof, covered by the associa-  
20 tion.

21 (12) In addition to the rights and powers elsewhere in this chapter, the  
22 association may:

23 (a) Enter into such contracts as are necessary or proper to carry out  
24 the provisions and purposes of this chapter;

25 (b) Sue or be sued, including taking any legal actions necessary or  
26 proper to recover any unpaid assessments under section 41-4309, Idaho  
27 Code, and to settle claims or potential claims against it;

28 (c) Borrow money to effect the purposes of this chapter; any notes or  
29 other evidence of indebtedness of the association not in default shall  
30 be legal investments for domestic insurers and may be carried as admit-  
31 ted assets;

32 (d) Employ or retain such persons as are necessary or appropriate to  
33 handle the financial transactions of the association, and to perform  
34 such other functions as become necessary or proper under this chapter;

35 (e) Take such legal action as may be necessary or appropriate to avoid  
36 or recover payment of improper claims;

37 (f) Exercise, for the purposes of this chapter and to the extent ap-  
38 proved by the director, the powers of a domestic life or health insurer,  
39 but in no case may the association issue insurance policies or annuity  
40 contracts other than those issued to perform its obligations under this  
41 chapter;

42 (g) Reorganize itself with the prior written approval of the director  
43 from a nonprofit association into a corporation or other legal form of  
44 nonprofit entity permitted by the laws of the state of Idaho;

45 (h) Request information from a person seeking coverage from the asso-  
46 ciation in order to aid the association in determining its obligations  
47 under this chapter with respect to the person, and the person shall  
48 promptly comply with the request; and

1 (i) Take other necessary or appropriate action to discharge its duties  
2 and obligations under this chapter or to exercise its powers under this  
3 chapter.

4 (13) The association may join an organization of one (1) or more other  
5 state associations of similar purposes, to further the purposes and adminis-  
6 ter the powers and duties of the association.

7 (14) With respect to covered policies for which the association becomes  
8 obligated after an entry of an order of liquidation, the association may  
9 elect to succeed to the rights of the insolvent insurer arising after the or-  
10 der of liquidation under any contract of reinsurance to which the insolvent  
11 insurer was a party, to the extent that such contract provides coverage for  
12 losses occurring after the date of the order of liquidation. As a condition  
13 to making this election, the association must pay all unpaid premiums due  
14 under the contract for coverage relating to periods before and after the date  
15 of the order of liquidation.

16 (15) The board of directors of the association shall have discretion and  
17 may exercise reasonable business judgment to determine the means by which  
18 the association is to provide the benefits of this chapter in an economical  
19 and efficient manner.

20 (16) Where the association has arranged or offered to provide the ben-  
21 efits of this chapter to a covered person under a plan or arrangement that  
22 fulfills the association's obligations under this chapter, the person shall  
23 not be entitled to benefits from the association in addition to or other than  
24 those provided under the plan or arrangement.

25 (17) Venue in a suit against the association arising under this chapter  
26 shall be in Ada county. The association shall not be required to give an ap-  
27 peal bond in an appeal that relates to a cause of action arising under the  
28 provisions of this chapter.

29 (18) In carrying out its duties in connection with guaranteeing, assum-  
30 ing or reinsuring policies or contracts under subsection (1) or (2) of this  
31 section, the association may, subject to approval of the receivership court,  
32 issue substitute coverage for a policy or contract that provides an interest  
33 rate, crediting rate or similar factor determined by use of an index or other  
34 external reference stated in the policy or contract employed in calculating  
35 returns or changes in value by issuing an alternative policy or contract in  
36 accordance with the following provisions:

37 (a) In lieu of the index or other external reference provided for in the  
38 original policy or contract, the alternative policy or contract pro-  
39 vides for:

40 (i) A fixed interest rate;

41 (ii) Payment of dividends with minimum guarantees; or

42 (iii) A different method for calculating interest or changes in  
43 value;

44 (b) There is no requirement for evidence of insurability, waiting pe-  
45 riod or other exclusion that would not have applied under the replaced  
46 policy or contract; and

47 (c) The alternative policy or contract is substantially similar to the  
48 replaced policy or contract in all other material terms.

49 SECTION 3. That Section 41-4309, Idaho Code, be, and the same is hereby  
50 amended to read as follows:

1 41-4309. ASSESSMENTS. (1) For the purpose of providing the funds nec-  
2 essary to carry out the powers and duties of the association, the board of  
3 directors shall assess the member insurers, separately for each account, at  
4 such time and for such amounts as the board of directors finds necessary. As-  
5 sements shall be due not less than thirty (30) days after prior written no-  
6 tice to the member insurers and shall accrue interest at eight percent (8%)  
7 per annum on and after the due date.

8 (2) There shall be two (2) classes of assessments:

9 (a) Class A assessments shall be authorized and called for the purpose  
10 of meeting administrative and other expenses. Class A assessments may  
11 be authorized and called whether or not related to a particular impaired  
12 or insolvent insurer.

13 (b) Class B assessments shall be authorized and called to the extent  
14 necessary to carry out the powers and duties of the association under  
15 section 41-4308, Idaho Code, with regard to an impaired or an insolvent  
16 insurer.

17 (3) (a) The amount of a class A assessment shall be determined by the  
18 board of directors and may be authorized and called on a pro rata or non-  
19 pro rata basis. If pro rata, the board of directors may provide that it  
20 be credited against future class B assessments. The total of all non-  
21 pro rata assessments shall not exceed three hundred dollars (\$300) per  
22 member insurer in any one (1) calendar year.

23 (b) The amount of a class B assessment, except for assessments related  
24 to long-term care insurance, shall be allocated for assessment purposes  
25 among the accounts pursuant to an allocation formula, which may be based  
26 on the premiums or reserves of the impaired or insolvent insurer or any  
27 other standard deemed by the board of directors in its sole discretion  
28 as being fair and reasonable under the circumstances.

29 (c) The amount of a class B assessment for long-term care insurance  
30 shall be allocated according to a methodology selected by the associa-  
31 tion and approved by the director, which methodology shall provide for  
32 fifty percent (50%) of the assessment to be allocated to health member  
33 insurers and fifty percent (50%) to be allocated to life and annuity  
34 member insurers.

35 (d) Class B assessments against member insurers for each account  
36 shall be in the proportion that the premiums received on business in  
37 this state by each assessed member insurer on policies covered by each  
38 account for the calendar year preceding the assessments bears to such  
39 premiums received on business in this state for the calendar year pre-  
40 ceding the assessment by all assessed member insurers.

41 (e) Assessments for funds to meet the requirements of the association  
42 with respect to an impaired or insolvent insurer shall not be authorized  
43 or called until necessary to implement the purposes of this chapter.  
44 Classification of assessments under this subsection and subsection (2)  
45 of this section and computation of assessments under this subsection  
46 shall be made with a reasonable degree of accuracy, recognizing that  
47 exact determinations may not always be possible. The association shall  
48 notify each member insurer of its anticipated pro rata share of an au-  
49 thorized assessment not yet called within one hundred eighty (180) days  
50 after the assessment is authorized.

1 (4) The association may abate or defer, in whole or in part, the assess-  
2 ment of a member insurer if, in the opinion of the board of directors, payment  
3 of the assessment would endanger the ability of the member insurer to ful-  
4 fill its contractual obligations. In the event an assessment against a mem-  
5 ber insurer is abated, or deferred in whole or in part, the amount by which  
6 the assessment is abated or deferred may be assessed against the other mem-  
7 ber insurers in a manner consistent with the basis for assessments set forth  
8 in this section. Once the conditions that caused a deferral have been re-  
9 moved or rectified, the member insurer shall pay all assessments that were  
10 deferred pursuant to a repayment plan approved by the association.

11 (5) (a) The total of all class B assessments authorized by the associ-  
12 ation with respect to a member insurer for each account shall not in one  
13 (1) calendar year exceed two percent (2%) of such insurer's premiums re-  
14 ceived in this state during the calendar year preceding the assessment  
15 on the policies covered by the account. If the maximum assessment, to-  
16 gether with the other assets of the association in an account, does not  
17 provide in any one (1) year in an account an amount sufficient to carry  
18 out the responsibilities of the association, the necessary additional  
19 funds shall be assessed as soon thereafter as permitted by this chapter.

20 (b) The board of directors may provide in the plan of operation a method  
21 of allocating funds among claims, whether relating to one (1) or more  
22 impaired or insolvent insurers, when the maximum assessment will be in-  
23 sufficient to cover anticipated claims.

24 (6) The board of directors may, by an equitable method as established in  
25 the plan of operation, refund to member insurers, in proportion to the con-  
26 tribution of each insurer to that account, the amount by which the assets of  
27 the account exceed the amount the board of directors finds is necessary to  
28 carry out during the coming year the obligations of the association with re-  
29 gard to that account, including assets accruing from assignment, subroga-  
30 tion, net realized gains and income from investments.

31 A reasonable amount, as determined by the board of directors in its dis-  
32 cretion, may be retained by the association in any account to provide funds  
33 for the continuing and future expenses of the association and for future loss  
34 claims.

35 (7) It shall be proper for any member insurer, in determining its pre-  
36 mium rates and policy owner dividends as to any kind of insurance within the  
37 scope of this chapter, to consider the amount reasonably necessary to meet  
38 its assessment obligations under this chapter.

39 (8) The association shall issue to each insurer paying an assessment  
40 under this chapter, other than a class A assessment, a certificate of contri-  
41 bution in a form prescribed by the director for the amount of the assessment  
42 so paid. All outstanding certificates shall be of equal dignity and prior-  
43 ity without reference to amounts or dates of issue. A certificate of contri-  
44 bution may be shown by the insurer in its financial statement as an asset in  
45 such form and for such amount, if any, and period of time as the director may  
46 approve.

47 (9) (a) A member insurer that wishes to protest all or part of an as-  
48 sessment shall pay when due the full amount of the assessment as set  
49 forth in the notice provided by the association. The payment shall be  
50 available to meet association obligations during the pendency of the

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

4 (b) Within sixty (60) days following the payment of an assessment under  
5 protest by a member insurer, the association shall notify the member in-  
6 surer in writing of its determination with respect to the protest unless  
7 the association notifies the member insurer that additional time is re-  
8 quired to resolve the issues raised by the protest.

9 (c) Within thirty (30) days after a final decision has been made, the  
10 association shall notify the protesting member insurer in writing of  
11 that final decision. Within sixty (60) days of receipt of notice of the  
12 final decision, the protesting member insurer may appeal that final  
13 action to the director.

14 (d) In the alternative to rendering a final decision with respect to a  
15 protest based on a question regarding the assessment base, the associ-  
16 ation may refer protests to the director for a final decision, with or  
17 without a recommendation from the association.

18 (e) If the protest or appeal on the assessment is upheld, the amount  
19 paid in error or excess shall be returned to the member insurer.

20 (10) The association may request information of member insurers in or-  
21 der to aid in the exercise of its power under this section, and member insur-  
22 ers shall promptly comply with the request.