



January 26, 2018

HOUSE BILL No. 1301

DIGEST OF HB 1301 (Updated January 24, 2018 1:00 pm - DI 97)

Citations Affected: IC 5-10; IC 5-22; IC 5-23; IC 8-2.1; IC 8-15.5; IC 8-15.7; IC 12-15; IC 27-1; IC 27-7; IC 27-8; IC 27-13; IC 27-15; IC 27-18; IC 34-30; noncode.

Synopsis: Insurance matters. Updates names of health care provider billing forms. Requires that public-private agreements must contain performance bond and payment bond requirements. Amends the financial responsibility requirement for a contract carrier that transports railroad employees. Provides for reduced limits and removal of commercial umbrella or excess liability coverage and requires notice of a reduction or removal. Repeals the law providing for a multistate surplus lines insurance compact, which has not gone into effect due to an insufficient number of states enacting the legislation. Amends the law concerning taxation of surplus lines producers on business sold to insureds whose home state is Indiana. Requires health maintenance organizations to be member insurers in the life and health insurance guaranty association. Makes conforming amendments.

Effective: July 1, 2018.

Carbaugh, Austin, Lehman, Hamm

January 11, 2018, read first time and referred to Committee on Insurance.
January 25, 2018, amended, reported — Do Pass.

HB 1301—LS 6898/DI 97



January 26, 2018

Second Regular Session of the 120th General Assembly (2018)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2017 Regular Session of the General Assembly.

HOUSE BILL No. 1301

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 5-10-8.1-8 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 8. A provider shall
3 submit only the following forms for payment by an administrator:
4 (1) ~~HCFA-1500~~. **CMS-1500**.
5 (2) ~~HCFA-1450 (UB-92)~~. **CMS-1450 (UB-04)**.
6 (3) American Dental Association (ADA) claim form.
7 SECTION 2. IC 5-22-2-23, AS AMENDED BY P.L.255-2017,
8 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
9 JULY 1, 2018]: Sec. 23. (a) "Public funds" means money:
10 (1) derived from the revenue sources of the governmental body;
11 and
12 (2) deposited into the general or a special fund of the
13 governmental body.
14 (b) The term does not include either of the following:
15 (1) Money ~~received by~~ **paid to** a person under an authorized
16 public-private agreement under IC 5-23.
17 (2) Proceeds of bonds payable exclusively by a private entity.

HB 1301—LS 6898/DI 97



1 SECTION 3. IC 5-23-3-2 IS AMENDED TO READ AS FOLLOWS
 2 [EFFECTIVE JULY 1, 2018]: Sec. 2. BOT agreements may provide
 3 the following:

4 (1) The design, construction, operation, management,
 5 maintenance, or financing of the cost of a public facility shall be
 6 partially or entirely the responsibility of the operator.

7 (2) The governmental body shall lease the public facility and real
 8 property owned by the governmental body upon which the public
 9 facility is to be located to the operator for a predetermined period.
 10 The BOT agreement must provide for ownership of all
 11 improvements by the governmental body, unless the
 12 governmental body elects to provide for ownership of the public
 13 facility by the operator during the term of the BOT agreement. In
 14 this case, ownership reverts back to the governmental body upon
 15 the termination of the BOT agreement.

16 (3) The BOT agreement must identify which costs are to be the
 17 responsibility of the operator and which costs are to be the
 18 responsibility of the governmental body.

19 (4) The operator may be authorized to retain a mutually agreed
 20 upon percentage of the revenues received in the operation and
 21 management of the public facility, or the operator may be paid an
 22 amount established by the governmental body, which shall be
 23 applied as follows:

24 (A) Capital outlay costs for the public facility and public
 25 service plus interest and principal repayment for any debt
 26 incurred.

27 (B) Costs associated with the operation, management, and
 28 maintenance of the public facility.

29 (C) Payment to the governmental body for reimbursement of
 30 the costs of maintenance, law enforcement, and other services
 31 if the services are performed by the governmental body under
 32 the BOT agreement.

33 (D) An agreed upon return on investment to the operator.

34 (5) The operator may pay the governmental body either a lease
 35 payment or a percentage of gross revenue per month for the
 36 operator's operation and use of the public facility.

37 (6) The BOT agreement ~~may~~ **must**:

38 (A) require a performance bond **in an amount equal to at**
 39 **least fifty percent (50%) of the cost to design and construct**
 40 **the public facility**; and

41 (B) provide for the payment of contractors and subcontractors
 42 under IC 4-13.6-7, IC 5-16-5, or IC 36-1-12, whichever is



1 applicable.
 2 SECTION 4. IC 8-2.1-22-46, AS AMENDED BY P.L.1-2006,
 3 SECTION 152, IS AMENDED TO READ AS FOLLOWS
 4 [EFFECTIVE JULY 1, 2018]: Sec. 46. (a) Notwithstanding any other
 5 provision of this chapter, common and contract carriers and other
 6 carriers engaged in the transportation of passengers or household goods
 7 for hire, over regular or irregular routes, whether operating pursuant to
 8 a certificate or permit or as an exempt carrier under section 2.1(5) of
 9 this chapter, shall file with the department proof of financial
 10 responsibility in the form of surety bonds or policies of insurance or
 11 shall qualify as a self-insured. The minimum level of financial
 12 responsibility required shall be **as follows:**

13 **(1) Except as provided in subdivision (2), the minimum level**
 14 **established under 49 U.S.C. 13906(a)(1).**

15 **(2) For contract carriers that transport railroad employees,**
 16 **at least five million dollars (\$5,000,000).**

17 (b) A person who violates this section commits a Class C infraction.
 18 However, the offense is a Class A misdemeanor if the person has a
 19 prior unrelated judgment for violating this section.

20 (c) In addition to any other penalty imposed upon a person for a
 21 conviction of a Class A misdemeanor under subsection (b), the law
 22 enforcement agency may impound the vehicles owned by the person.
 23 Unless the vehicle is impounded or forfeited under a law other than this
 24 section, the vehicle shall be released to the carrier when the carrier
 25 complies with this section.

26 SECTION 5. IC 8-15.5-5-2, AS AMENDED BY P.L.91-2014,
 27 SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 28 JULY 1, 2018]: Sec. 2. A public-private agreement entered into under
 29 this article must provide for the following:

30 (1) The original term of the public-private agreement, which may
 31 not exceed seventy-five (75) years.

32 (2) Provisions for a:

33 (A) lease, franchise, or license of the project and the real
 34 property owned by the authority upon which the project is
 35 located or is to be located; or

36 (B) management agreement or other contract to operate the
 37 project and the real property owned by the authority upon
 38 which the project is located or is to be located;

39 for a predetermined period. The public-private agreement must
 40 provide for ownership of all improvements and real property by
 41 the authority in the name of the state or by a governmental entity,
 42 or both.



- 1 (3) Monitoring of the operator's maintenance practices by the
 2 authority and the taking of actions by the authority that it
 3 considers appropriate to ensure that the project is properly
 4 maintained.
 5 (4) The basis upon which user fees that may be collected by the
 6 operator, as determined under this article, are established.
 7 (5) Compliance with applicable state and federal laws and local
 8 ordinances.
 9 (6) Grounds for termination of the public-private agreement by
 10 the authority or the operator.
 11 (7) The date of termination of the operator's authority and duties
 12 under this article.
 13 (8) Procedures for amendment of the agreement.
 14 (9) Provisions requiring the completion of all environmental
 15 analyses of the project required by state and federal law in the
 16 manner and at the times required by the appropriate state and
 17 federal agencies.
 18 (10) An expedited method for resolving disputes between or
 19 among the authority, the parties to the public-private agreement,
 20 and units of local government that contain any part of the project,
 21 as required by IC 8-15.5-10-8.
 22 **(11) For a public-private agreement entered into after June**
 23 **30, 2018, bond requirements as follows:**
 24 **(A) A performance bond in an amount equal to at least**
 25 **fifty percent (50%) of the cost to design and construct the**
 26 **project.**
 27 **(B) A payment bond conditioned on payment for labor and**
 28 **material furnished for use in construction of the project.**
 29 SECTION 6. IC 8-15.7-5-1.5, AS ADDED BY P.L.85-2010,
 30 SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 31 JULY 1, 2018]: Sec. 1.5. In addition to the other requirements of this
 32 article, a public-private agreement entered into under this article must
 33 include the following:
 34 (1) A requirement for the completion of all environmental
 35 analyses of the project required by state and federal law in the
 36 manner and at the times required by the appropriate state and
 37 federal agencies.
 38 (2) A requirement for ownership by the department in the name
 39 of the state of Indiana of:
 40 (A) all the real property on which the project is located; and
 41 (B) all of the improvements on that real property.
 42 (3) An expedited method for resolving disputes between or among



1 the department, the parties to the public-private agreement, and
2 affected jurisdictions, as required by IC 8-15.7-12-2.

3 **(4) For a public-private agreement entered into after June 30,**
4 **2018, bond requirements as follows:**

5 **(A) A performance bond in an amount equal to at least**
6 **fifty percent (50%) of the cost to design and construct the**
7 **project.**

8 **(B) A payment bond conditioned on payment for labor and**
9 **material furnished for use in construction of the project.**

10 SECTION 7. IC 12-15-12-13 IS AMENDED TO READ AS
11 FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 13. (a) The office and
12 an entity with which the office contracts for the payment of claims shall
13 accept claims submitted on any of the following forms by an individual
14 or organization that is a contractor or subcontractor of the office:

- 15 (1) ~~HCFA-1500~~; **CMS-1500**.
16 (2) ~~HCFA-1450 (UB-92)~~; **CMS-1450 (UB-04)**.
17 (3) American Dental Association (ADA) claim form.
18 (4) Pharmacy and compound drug form.

19 (b) The office and an entity with which the office contracts for the
20 payment of claims:

- 21 (1) may designate as acceptable claim forms other than a form
22 listed in subsection (a); and
23 (2) may not mandate the use of a crossover claim form.

24 SECTION 8. IC 27-1-15.6-2, AS AMENDED BY P.L.146-2015,
25 SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
26 JULY 1, 2018]: Sec. 2. **Except as otherwise provided in this section,**
27 **the following definitions apply throughout this chapter, IC 27-1-15.7,**
28 **and IC 27-1-15.8:**

- 29 (1) "Bureau" refers to the child support bureau established by
30 IC 31-25-3-1.
31 (2) "Business entity" means a corporation, an association, a
32 partnership, a limited liability company, a limited liability
33 partnership, or another legal entity.
34 (3) "Commissioner" means the insurance commissioner appointed
35 under IC 27-1-1-2.
36 (4) "Consultant" means a person who:
37 (A) holds himself or herself out to the public as being engaged
38 in the business of offering; or
39 (B) for a fee, offers;
40 any advice, counsel, opinion, or service with respect to the
41 benefits, advantages, or disadvantages promised under any policy
42 of insurance that could be issued in Indiana.



- 1 (5) "Delinquent" means the condition of being at least:
 2 (A) two thousand dollars (\$2,000); or
 3 (B) three (3) months;
 4 past due in the payment of court ordered child support.
- 5 (6) "Designated home state license" means a license issued by the
 6 commissioner to an insurance producer who:
 7 (A) maintains the insurance producer's principal place of
 8 residence or principal place of business in a state that does not
 9 license insurance producers for the line of authority for which
 10 the insurance producer seeks licensure in Indiana; and
 11 (B) is permitted by the commissioner to designate Indiana as
 12 the insurance producer's nonresident home state.
- 13 (7) "FINRA" refers to the independent Financial Industry
 14 Regulatory Authority.
- 15 (8) "Home state" means the District of Columbia or any state or
 16 territory of the United States in which an insurance producer:
 17 (A) maintains the insurance producer's principal place of
 18 residence or principal place of business; and
 19 (B) is licensed to act as an insurance producer.
- 20 **This subdivision does not apply to IC 27-1-15.8.**
- 21 (9) "Insurance producer" means a person required to be licensed
 22 under the laws of Indiana to sell, solicit, or negotiate insurance.
- 23 (10) "License" means a document issued by the commissioner
 24 authorizing a person to act as an insurance producer for the lines
 25 of authority specified in the document. The license itself does not
 26 create any authority, actual, apparent, or inherent, in the holder to
 27 represent or commit an insurance carrier.
- 28 (11) "Limited line credit insurance" includes the following:
 29 (A) Credit life insurance.
 30 (B) Credit disability insurance.
 31 (C) Credit property insurance.
 32 (D) Credit unemployment insurance.
 33 (E) Involuntary unemployment insurance.
 34 (F) Mortgage life insurance.
 35 (G) Mortgage guaranty insurance.
 36 (H) Mortgage disability insurance.
 37 (I) Guaranteed automobile protection (gap) insurance.
 38 (J) Any other form of insurance:
 39 (i) that is offered in connection with an extension of credit
 40 and is limited to partially or wholly extinguishing that credit
 41 obligation; and
 42 (ii) that the insurance commissioner determines should be



- 1 designated a form of limited line credit insurance.
- 2 (12) "Limited line credit insurance producer" means a person who
- 3 sells, solicits, or negotiates one (1) or more forms of limited line
- 4 credit insurance coverage to individuals through a master,
- 5 corporate, group, or individual policy.
- 6 (13) "Limited lines insurance" means any of the following:
- 7 (A) The lines of insurance defined in section 18 of this
- 8 chapter.
- 9 (B) Any line of insurance the recognition of which is
- 10 considered necessary by the commissioner for the purpose of
- 11 complying with section 8(e) of this chapter.
- 12 (C) For purposes of section 8(e) of this chapter, any form of
- 13 insurance with respect to which authority is granted by a home
- 14 state that restricts the authority granted by a limited lines
- 15 producer's license to less than total authority in the associated
- 16 major lines described in section 7(a)(1) through 7(a)(6) of this
- 17 chapter.
- 18 (14) "Limited lines producer" means a person authorized by the
- 19 commissioner to sell, solicit, or negotiate limited lines insurance.
- 20 (15) "Limited lines travel insurance producer" means a person
- 21 designated by an insurer to sell, solicit, or negotiate a travel
- 22 insurance policy. The term includes the following:
- 23 (A) A managing general underwriter.
- 24 (B) A managing general agent.
- 25 (C) A limited lines producer.
- 26 (16) "Negotiate" means the act of conferring directly with or
- 27 offering advice directly to a purchaser or prospective purchaser of
- 28 a particular contract of insurance concerning any of the
- 29 substantive benefits, terms, or conditions of the contract, provided
- 30 that the person engaged in that act either sells insurance or
- 31 obtains insurance from insurers for purchasers.
- 32 (17) "Person" means an individual or a business entity.
- 33 (18) "Sell" means to exchange a contract of insurance by any
- 34 means, for money or its equivalent, on behalf of a company.
- 35 (19) "Solicit" means attempting to sell insurance or asking or
- 36 urging a person to apply for a particular kind of insurance from a
- 37 particular company.
- 38 (20) "Surplus lines producer" means a person who sells, solicits,
- 39 negotiates, or procures from an insurance company not licensed
- 40 to transact business in Indiana an insurance policy that cannot be
- 41 procured from insurers licensed to do business in Indiana.
- 42 (21) "Terminate" means:



- 1 (A) the cancellation of the relationship between an insurance
 2 producer and the insurer; or
 3 (B) the termination of a producer's authority to transact
 4 insurance.
 5 (22) "Travel insurance" means insurance coverage for personal
 6 risks incident to planned travel, including the following:
 7 (A) Interruption or cancellation of a trip or an event.
 8 (B) Loss of baggage or personal effects.
 9 (C) Damage to accommodations or rental vehicles.
 10 (D) Sickness, accident, disability, or death that occurs during
 11 travel.
 12 The term does not include a major medical plan that provides
 13 comprehensive medical insurance for a traveler on a trip that lasts
 14 at least six (6) months, including a traveler who is an individual
 15 who works overseas as an ~~expatriot~~ **expatriate** or is deployed as
 16 a member of the military.
 17 (23) "Travel retailer" means a business entity that offers and
 18 delivers travel insurance on behalf of and under the direction of
 19 a limited lines travel insurance producer.
 20 (24) "Uniform business entity application" means the current
 21 version of the national association of insurance commissioners
 22 uniform business entity application for resident and nonresident
 23 business entities.
 24 (25) "Uniform application" means the current version of the
 25 national association of insurance commissioners uniform
 26 application for resident and nonresident producer licensing.
 27 SECTION 9. IC 27-1-15.8-1 IS AMENDED TO READ AS
 28 FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 1. **(a) Except as**
 29 **provided in this section**, the definitions in IC 27-1-15.6-2 apply
 30 throughout this chapter.
 31 **(b) As used in this chapter, "affiliate" means, with respect to an**
 32 **insured, an entity that controls, is controlled by, or is under**
 33 **common control with the insured.**
 34 **(c) As used in this chapter, "affiliated group" means a group of**
 35 **affiliates.**
 36 **(d) As used in this chapter, "control" means:**
 37 **(1) ownership or power to vote at least twenty-five percent**
 38 **(25%) of any class of voting securities; or**
 39 **(2) power to determine the election of a majority of the**
 40 **directors or trustees;**
 41 **of an entity.**
 42 **(e) As used in this chapter, "home state" means the following:**



1 **(1) With respect to an insured:**

2 **(A) the state in which the insured maintains:**

3 **(i) the insured's principal place of business; or**

4 **(ii) if the insured is an individual, the insured's principal**
 5 **residence; or**

6 **(B) if one hundred percent (100%) of the insured risk is**
 7 **located outside the state described in clause (A), the state**
 8 **to which the greatest percentage of the insured's taxable**
 9 **premium for the insurance contract is allocated.**

10 **(2) With respect to an affiliated group, if more than one (1)**
 11 **insured from the affiliated group is a named insured on a**
 12 **single nonadmitted insurance policy or contract, the home**
 13 **state determined under subdivision (1) of the member of the**
 14 **affiliated group that has the largest percentage of premium**
 15 **attributed to the member under the nonadmitted insurance**
 16 **policy or contract.**

17 **(f) As used in this chapter, "nonadmitted insurance policy or**
 18 **contract" means an insurance policy or contract that is issued by**
 19 **an insurer that is not authorized to transact the business of**
 20 **insurance under the law of the home state.**

21 **(g) As used in this chapter, "principal place of business" means,**
 22 **with respect to determining the home state of an insured, the state**
 23 **where the:**

24 **(1) insured maintains the insured's headquarters; and**

25 **(2) insured's officers direct, control, and coordinate the**
 26 **business activities of the insured.**

27 SECTION 10. IC 27-1-15.8-4, AS AMENDED BY P.L.173-2007,
 28 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 29 JULY 1, 2018]: Sec. 4. (a) In addition to all other charges, fees, and
 30 taxes that may be imposed by law, a surplus lines producer licensed
 31 under this chapter shall, on or before February 1 ~~and August 1~~ of each
 32 year, collect from the insured and remit to the department for the use
 33 and benefit of the state of Indiana an amount equal to two and one-half
 34 percent (2 1/2%) of all gross premiums upon all policies and contracts
 35 procured:

36 **(1) by the surplus lines producer;**

37 **(2) under the provisions of this section;**

38 **(3) for insureds whose home state is Indiana; and**

39 **(4) during the preceding ~~six (6)~~ twelve (12) month period ending**
 40 **December 31. ~~and June 30~~, respectively.**

41 The declarations page of a policy referred to in this subsection must
 42 itemize the amounts of all charges for taxes, fees, and premiums.



1 (b) A licensed surplus lines producer shall execute and file with the
2 department of insurance on or before the twentieth day of each month
3 an affidavit that specifies all transactions, policies, and contracts
4 procured during the preceding calendar month, including:

5 (1) the description and location of the insured property or risk and
6 the name of the insured;

7 (2) the gross premiums charged in the policy or contract;

8 (3) the name and home office address of the insurer whose policy
9 or contract is issued, and the kind of insurance effected; and

10 (4) a statement that:

11 (A) the licensee, after diligent effort, was unable to procure
12 from any insurer authorized to transact the particular class of
13 insurance business in Indiana the full amount of insurance
14 required to protect the insured; and

15 (B) the insurance placed under this chapter is not placed for
16 the purpose of procuring it at a premium rate lower than would
17 be accepted by an insurer authorized and licensed to transact
18 insurance business in Indiana.

19 (c) A licensed surplus lines producer shall file with the department,
20 not later than March 31 of each year, the financial statement, dated as
21 of December 31 of the preceding year, of each unauthorized insurer
22 from whom the surplus lines producer has procured a policy or
23 contract. The insurance commissioner may, in the commissioner's
24 discretion, after reviewing the financial statement of the unauthorized
25 insurer, order the surplus lines producer to cancel an unauthorized
26 insurer's policies and contracts if the commissioner is of the opinion
27 that the financial statement or condition of the unauthorized insurer
28 does not warrant continuance of the risk.

29 (d) A licensed surplus lines producer shall keep a separate account
30 of all business transacted under this section. The account may be
31 inspected at any time by the commissioner or the commissioner's
32 deputy or examiner.

33 (e) An insurer that issues a policy or contract to insure a risk under
34 this section is considered to have appointed the commissioner as the
35 insurer's attorney upon whom process may be served in Indiana in any
36 suit, action, or proceeding based upon or arising out of the policy or
37 contract.

38 (f) The commissioner may revoke or refuse to renew a surplus lines
39 producer's license for failure to comply with this section.

40 (g) A surplus lines producer licensed under this chapter may accept
41 and place policies or contracts authorized under this section for an
42 insurance producer duly licensed in Indiana, and may compensate the



1 insurance producer even though the insurance producer is not licensed
2 under this chapter.

3 (h) If a surplus lines producer does not remit an amount due to the
4 department within the time prescribed in subsection (a), the
5 commissioner shall assess the surplus lines producer a penalty of ten
6 percent (10%) of the amount due. The commissioner shall assess a
7 further penalty of an additional one percent (1%) of the amount due for
8 each month or portion of a month that any amount due remains unpaid
9 after the first month. Penalties assessed under this subsection are
10 payable by the surplus lines producer and are not collectible from an
11 insured.

12 SECTION 11. IC 27-7-5-2, AS AMENDED BY P.L.148-2013,
13 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
14 JULY 1, 2018]: Sec. 2. (a) Except as provided in subsections (d), (f),
15 and (h), the insurer shall make available, in each automobile liability
16 or motor vehicle liability policy of insurance which is delivered or
17 issued for delivery in this state with respect to any motor vehicle
18 registered or principally garaged in this state, insuring against loss
19 resulting from liability imposed by law for bodily injury or death
20 suffered by any person and for injury to or destruction of property to
21 others arising from the ownership, maintenance, or use of a motor
22 vehicle, or in a supplement to such a policy, the following types of
23 coverage:

24 (1) in limits for bodily injury or death and for injury to or
25 destruction of property not less than those set forth in IC 9-25-4-5
26 under policy provisions approved by the commissioner of
27 insurance, for the protection of persons insured under the policy
28 who are legally entitled to recover damages from owners or
29 operators of uninsured or underinsured motor vehicles because of
30 bodily injury, sickness or disease, including death, and for the
31 protection of persons insured under the policy who are legally
32 entitled to recover damages from owners or operators of
33 uninsured motor vehicles for injury to or destruction of property
34 resulting therefrom; or

35 (2) in limits for bodily injury or death not less than those set forth
36 in IC 9-25-4-5 under policy provisions approved by the
37 commissioner of insurance, for the protection of persons insured
38 under the policy provisions who are legally entitled to recover
39 damages from owners or operators of uninsured or underinsured
40 motor vehicles because of bodily injury, sickness or disease,
41 including death resulting therefrom.

42 The uninsured and underinsured motorist coverages must be provided



1 by insurers for either a single premium or for separate premiums, in
 2 limits at least equal to the limits of liability specified in the bodily
 3 injury liability provisions of an insured's policy, unless such coverages
 4 have been rejected in writing by the insured. However, underinsured
 5 motorist coverage must be made available in limits of not less than fifty
 6 thousand dollars (\$50,000). At the insurer's option, the bodily injury
 7 liability provisions of the insured's policy may be required to be equal
 8 to the insured's underinsured motorist coverage. Insurers may not sell
 9 or provide underinsured motorist coverage in an amount less than fifty
 10 thousand dollars (\$50,000). Insurers must make underinsured motorist
 11 coverage available to all existing policyholders on the date of the first
 12 renewal of existing policies that occurs on or after January 1, 1995, and
 13 on any policies newly issued or delivered on or after January 1, 1995.
 14 Uninsured motorist coverage or underinsured motorist coverage may
 15 be offered by an insurer in an amount exceeding the limits of liability
 16 specified in the bodily injury and property damage liability provisions
 17 of the insured's policy.

18 (b) A named insured of an automobile or motor vehicle liability
 19 policy has the right, in writing, to:

- 20 (1) reject both the uninsured motorist coverage and the
 21 underinsured motorist coverage provided for in this section; or
 22 (2) reject either the uninsured motorist coverage alone or the
 23 underinsured motorist coverage alone, if the insurer provides the
 24 coverage not rejected separately from the coverage rejected.

25 A rejection of coverage under this subsection by a named insured is a
 26 rejection on behalf of all other named insureds, all other insureds, and
 27 all other persons entitled to coverage under the policy. No insured may
 28 have uninsured motorist property damage liability insurance coverage
 29 under this section unless the insured also has uninsured motorist bodily
 30 injury liability insurance coverage under this section. Following
 31 rejection of either or both uninsured motorist coverage or underinsured
 32 motorist coverage, unless later requested in writing, the insurer need
 33 not offer uninsured motorist coverage or underinsured motorist
 34 coverage in or supplemental to a renewal or replacement policy issued
 35 to the same insured by the same insurer or a subsidiary or an affiliate
 36 of the originally issuing insurer. Renewals of policies issued or
 37 delivered in this state which have undergone interim policy
 38 endorsement or amendment do not constitute newly issued or delivered
 39 policies for which the insurer is required to provide the coverages
 40 described in this section.

41 (c) A rejection under subsection (b) must specify:

- 42 (1) that the named insured is rejecting:



- 1 (A) the uninsured motorist coverage;
- 2 (B) the underinsured motorist coverage; or
- 3 (C) both the uninsured motorist coverage and the underinsured
- 4 motorist coverage;
- 5 that would otherwise be provided under the policy; and
- 6 (2) the date on which the rejection is effective.
- 7 (d) ~~An insurer is not required to make available~~ **The following**
- 8 **apply to** the coverage described in subsection (a) in **connection with**
- 9 a commercial umbrella or excess liability policy, including a
- 10 commercial umbrella or excess liability policy that is issued or
- 11 delivered to a motor carrier (as defined in IC 8-2.1-17-10) that is in
- 12 compliance with the minimum levels of financial responsibility set
- 13 forth in 49 CFR Part 387:
- 14 (1) **An insurer is not required to make available in a**
- 15 **commercial umbrella or excess liability policy the coverage**
- 16 **described in subsection (a).**
- 17 (2) **An insurer that, through a rider or an endorsement,**
- 18 **reduces or removes from a commercial umbrella or excess**
- 19 **liability policy the coverage described in subsection (a) shall:**
- 20 (A) **through the United States mail; or**
- 21 (B) **by electronic means;**
- 22 **provide to the named insured written notice of the reduction**
- 23 **or removal.**
- 24 (3) **An insurer that makes available in a commercial umbrella**
- 25 **or excess liability policy the coverage described in subsection**
- 26 **(a):**
- 27 (A) **may make available the coverage in limits determined**
- 28 **by the insurer; and**
- 29 (B) **is not required to make available the coverage in limits**
- 30 **equal to the limits specified in the commercial umbrella or**
- 31 **excess liability policy.**
- 32 (e) A rejection under subsection (b) of uninsured motorist coverage
- 33 or underinsured motorist coverage in an underlying commercial policy
- 34 of insurance is also a rejection of uninsured motorist coverage or
- 35 underinsured motorist coverage in a commercial umbrella or excess
- 36 liability policy.
- 37 (f) An insurer is not required to make available the coverage
- 38 described in subsection (a) in connection with coverage that:
- 39 (1) is related to or included in a commercial policy of property
- 40 and casualty insurance described in Class 2 or Class 3 of
- 41 IC 27-1-5-1; and
- 42 (2) covers a loss related to a motor vehicle:



- 1 (A) of which the insured is not the owner; and
- 2 (B) that is used:
 - 3 (i) by the insured or an agent of the insured; and
 - 4 (ii) for purposes authorized by the insured.
- 5 (g) For purposes of subsection (f), "owner" means:
 - 6 (1) a person who holds the legal title to a motor vehicle;
 - 7 (2) a person who rents or leases a motor vehicle and has exclusive
 - 8 use of the motor vehicle for more than thirty (30) days;
 - 9 (3) the conditional vendee or lessee under an agreement for the
 - 10 conditional sale or lease of a motor vehicle; or
 - 11 (4) the mortgagor under an agreement for the conditional sale or
 - 12 lease of a motor vehicle under which the mortgagor has:
 - 13 (A) the right to purchase; and
 - 14 (B) an immediate right of possession of;
 - 15 the motor vehicle upon the performance of the conditions stated
 - 16 in the agreement.
- 17 (h) The following apply to the coverage described in subsection (a)
- 18 in relation to a personal umbrella or excess liability policy:
 - 19 (1) An insurer is not required to make available the coverage
 - 20 described in subsection (a) under a personal umbrella or excess
 - 21 liability policy.
 - 22 (2) An insurer that reduces or removes, through a rider or an
 - 23 endorsement, coverage described in subsection (a) under a
 - 24 personal umbrella or excess liability policy shall:
 - 25 (A) through the United States mail; or
 - 26 (B) by electronic means;
 - 27 provide to the named insured written notice of the reduction or
 - 28 removal.
 - 29 (3) An insurer that makes available the coverage described in
 - 30 subsection (a) under a personal umbrella or excess liability
 - 31 policy:
 - 32 (A) may make available the coverage in limits determined by
 - 33 the insurer; and
 - 34 (B) is not required to make available the coverage in limits
 - 35 equal to the limits specified in the personal umbrella or excess
 - 36 liability policy.
- 37 SECTION 12. IC 27-8-5.7-7 IS AMENDED TO READ AS
- 38 FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 7. A provider shall
- 39 submit only the following forms for payment by an insurer:
 - 40 (1) ~~HCFA-1500~~; **CMS-1500**.
 - 41 (2) ~~HCFA-1450 (UB-92)~~; **CMS-1450 (UB-04)**.
 - 42 (3) American Dental Association (ADA) claim form.



1 SECTION 13. IC 27-8-8-2, AS AMENDED BY P.L.276-2013,
 2 SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 3 JULY 1, 2018]: Sec. 2. (a) The definitions in this section apply
 4 throughout this chapter.

5 (b) "Account" means one (1) of the two (2) accounts created under
 6 section 3 of this chapter.

7 (c) "Annuity contract", except as provided in section 2.3(e) of this
 8 chapter, includes:

9 (1) a guaranteed investment contract;

10 (2) a deposit administration contract;

11 (3) a structured settlement annuity;

12 (4) an annuity issued to or in connection with a government
 13 lottery; and

14 (5) an immediate or a deferred annuity contract.

15 (d) "Assessment base year" means, for an impaired insurer or
 16 insolvent insurer, the most recent calendar year for which required
 17 premium information is available preceding the calendar year during
 18 which the impaired insurer's or insolvent insurer's coverage date
 19 occurs.

20 (e) "Association", except when the context otherwise requires,
 21 means the Indiana life and health insurance guaranty association
 22 created by section 3 of this chapter.

23 (f) "Benefit plan" means a specific plan, fund, or program that is
 24 established or maintained by an employer or an employee organization,
 25 or both, that:

26 (1) provides retirement income to employees; or

27 (2) results in a deferral of income by employees for a period
 28 extending to or beyond the termination of employment.

29 (g) "Board" refers to the board of directors of the association
 30 selected under IC 27-8-8-4.

31 (h) "Called", when used in the context of assessments, means that
 32 notice has been issued by the association to member insurers requiring
 33 the member insurers to pay, within a time frame set forth in the notice,
 34 an assessment that has been authorized by the board.

35 (i) "Commissioner" refers to the insurance commissioner appointed
 36 under IC 27-1-1-2.

37 (j) "Contractual obligation" means an enforceable obligation under
 38 a covered policy for which and to the extent that coverage is provided
 39 under section 2.3 of this chapter.

40 (k) "Coverage date" means, with respect to a member insurer, the
 41 date on which the earlier of the following occurs:

42 (1) The member insurer becomes an insolvent insurer.



- 1 (2) The association determines that the association will provide
 2 coverage under section 5(a) of this chapter with respect to the
 3 member insurer.
- 4 (l) "Covered policy" means a:
 5 (1) nongroup policy or contract;
 6 (2) certificate under a group policy or contract; or
 7 (3) part of a policy, contract, or certificate described in
 8 subdivisions (1) and (2);
 9 for which coverage is provided under section 2.3 of this chapter.
- 10 (m) "Extracontractual claims" includes claims that relate to bad faith
 11 in the payment of claims, punitive or exemplary damages, or attorney's
 12 fees and costs.
- 13 (n) "Funding agreement" has the meaning set forth in
 14 IC 27-1-12.7-1.
- 15 (o) **"Health benefit plan insurance" means coverage under a**
 16 **hospital or medical expense policy or certificate or a health**
 17 **maintenance organization subscriber contract. The term does not**
 18 **include the following:**
 19 (1) **Accident only, credit, dental only, vision only, Medicare**
 20 **supplement, or disability income insurance.**
 21 (2) **Coverage for:**
 22 (A) **long term care;**
 23 (B) **home health care;**
 24 (C) **community based care; or**
 25 (D) **a combination of coverage specified in clauses (A)**
 26 **through (C).**
 27 (3) **Coverage for onsite medical clinics.**
 28 (4) **Specified disease, hospital confinement indemnity, or**
 29 **limited benefit health insurance if the types of coverage do not**
 30 **provide coordination of benefits and are provided under**
 31 **separate policies, contracts, or certificates.**
- 32 (p) **"Health care provider" means a health care provider that**
 33 **renders health care services covered under health benefit plan**
 34 **insurance.**
- 35 (q) "Impaired insurer" means a member insurer that is:
 36 (1) not an insolvent insurer; and
 37 (2) placed under an order of rehabilitation or conservation by a
 38 court with jurisdiction.
- 39 (r) "Insolvent insurer" means a member insurer that is placed
 40 under an order of liquidation with a finding of insolvency by a court
 41 with jurisdiction.
- 42 (s) **"Insurance" includes health benefit plan insurance.**



1 **(t) "Insured" includes an enrollee under a health maintenance**
 2 **organization contract.**

3 **(u) "Insurer" includes a health maintenance organization.**

4 ~~(q)~~ **(v) "Member insurer" means any person that holds a certificate**
 5 **of authority to transact in Indiana any kind of insurance for which**
 6 **coverage is provided under section 2.3 of this chapter. The term**
 7 **includes an insurer whose certificate of authority to transact such**
 8 **insurance in Indiana may have been suspended, revoked, not renewed,**
 9 **or voluntarily withdrawn but does not include the following:**

10 (1) A for-profit or nonprofit hospital or medical service
 11 organization.

12 ~~(2) A health maintenance organization under IC 27-13.~~

13 ~~(3)~~ **(2)** A fraternal benefit society under IC 27-11.

14 ~~(4)~~ **(3)** The Indiana Comprehensive Health Insurance Association
 15 or any other mandatory state pooling plan or arrangement.

16 ~~(5)~~ **(4)** An assessment company or another person that operates on
 17 an assessment plan (as defined in IC 27-1-2-3(y)).

18 ~~(6)~~ **(5)** An interinsurance or reciprocal exchange authorized by
 19 IC 27-6-6.

20 ~~(7)~~ **(6)** A prepaid limited service health maintenance organization
 21 or a limited service health maintenance organization under
 22 IC 27-13-34.

23 ~~(8)~~ **(7)** A farm mutual insurance company under IC 27-5.1.

24 ~~(9)~~ **(8)** A person operating as a Lloyds under IC 27-7-1.

25 ~~(10)~~ **(9)** The political subdivision risk management fund
 26 established by IC 27-1-29-10 and the political subdivision
 27 catastrophic liability fund established by IC 27-1-29.1-7.

28 ~~(11)~~ **(10)** The small employer health reinsurance board
 29 established by IC 27-8-15.5-5.

30 ~~(12)~~ **(11)** A person similar to any person described in subdivisions
 31 (1) through ~~(11)~~: **(10)**.

32 ~~(r)~~ **(w) "Moody's Corporate Bond Yield Average" means:**

33 (1) the monthly average of the composite yield on seasoned
 34 corporate bonds as published by Moody's Investors Service, Inc.;
 35 or

36 (2) if the monthly average described in subdivision (1) is no
 37 longer published, an alternative publication of interest rates or
 38 yields determined appropriate by the association.

39 ~~(s)~~ **(x) "Multiple employer welfare arrangement" has the meaning**
 40 **set forth in IC 27-1-34-1.**

41 ~~(t)~~ **(y) "Owner" means the person:**

42 (1) identified as the legal owner of a policy or contract according



- 1 to the terms of the policy or contract; or
 2 (2) otherwise vested with legal title to a policy or contract through
 3 a valid assignment completed in accordance with the terms of the
 4 policy or contract and properly recorded as the owner on the
 5 books of the insurer.
 6 The term does not include a person with a mere beneficial interest in
 7 a policy or contract.
 8 ~~(tt)~~ **(z)** "Person" means an individual, a corporation, a limited
 9 liability company, a partnership, an association, a governmental entity,
 10 a voluntary organization, a trust, a trustee, or another business entity or
 11 organization.
 12 ~~(vv)~~ **(aa)** "Plan sponsor" refers to only one (1) of the following with
 13 respect to a benefit plan:
 14 (1) The employer, in the case of a benefit plan established or
 15 maintained by a single employer.
 16 (2) The holding company or controlling affiliate, in the case of a
 17 benefit plan established or maintained by affiliated companies
 18 comprising a consolidated corporation.
 19 (3) The employee organization, in the case of a benefit plan
 20 established or maintained by an employee organization.
 21 (4) In a case of a benefit plan established or maintained:
 22 (A) by two (2) or more employers;
 23 (B) by two (2) or more employee organizations; or
 24 (C) jointly by one (1) or more employers and one (1) or more
 25 employee organizations;
 26 and that is not of a type described in subdivision (2), the
 27 association, committee, joint board of trustees, or other similar
 28 group of representatives of the parties that establish or maintain
 29 the benefit plan.
 30 **(bb) "Policy" means a:**
 31 **(1) nongroup policy or contract;**
 32 **(2) certificate under a group policy or contract; or**
 33 **(3) part of a policy, contract, or certificate described in**
 34 **subdivisions (1) and (2).**
 35 ~~(ww)~~ **(cc)** "Premiums" means amounts, deposits, and considerations
 36 received on covered policies, less returned premiums, returned
 37 deposits, returned considerations, dividends, and experience credits.
 38 The term does not include the following:
 39 (1) Amounts, deposits, and considerations received for policies or
 40 contracts or parts of policies or contracts for which coverage is
 41 not provided under section 2.3(d) of this chapter, as qualified by
 42 section 2.3(e) of this chapter, except that an assessable premium



1 must not be reduced on account of the limitations set forth in
2 section 2.3(e)(3), 2.3(e)(15), or 2.3(f)(2) of this chapter.

3 (2) Premiums in excess of five million dollars (\$5,000,000) on an
4 unallocated annuity contract not issued or not connected with a
5 governmental benefit plan established under Section 401, 403(b),
6 or 457 of the United States Internal Revenue Code.

7 ~~(x)~~ **(dd)** "Principal place of business" refers to the single state in
8 which individuals who establish policy for the direction, control, and
9 coordination of the operations of an entity as a whole primarily exercise
10 the direction, control, and coordination, as determined by the
11 association in the association's reasonable judgment by considering the
12 following factors:

13 (1) The state in which the primary executive and administrative
14 headquarters of the entity is located.

15 (2) The state in which the principal office of the chief executive
16 officer of the entity is located.

17 (3) The state in which the board of directors or similar governing
18 person of the entity conducts the majority of the board of
19 directors' or governing person's meetings.

20 (4) The state in which the executive or management committee of
21 the board of directors or similar governing person of the entity
22 conducts the majority of the committee's meetings.

23 (5) The state from which the management of the overall
24 operations of the entity is directed.

25 However, in the case of a plan sponsor, if more than fifty percent (50%)
26 of the participants in the plan sponsor's benefit plan are employed in a
27 single state, that state is considered to be the principal place of business
28 of the plan sponsor. The principal place of business of a plan sponsor
29 of a benefit plan described in subsection ~~(v)~~**(4)**, **(aa)****(3)**, if more than
30 fifty percent (50%) of the participants in the plan sponsor's benefit plan
31 are not employed in a single state, is considered to be the principal
32 place of business of the association, committee, joint board of trustees,
33 or other similar group of representatives of the parties that establish or
34 maintain the benefit plan and, in the absence of a specific or clear
35 designation of a principal place of business, is considered to be the
36 principal place of business of the employer or employee organization
37 that has the largest investment in the benefit plan in question on the
38 coverage date.

39 ~~(y)~~ **(ee)** "Receivership court" refers to the court in an insolvent
40 insurer's or impaired insurer's state that has jurisdiction over the
41 conservation, rehabilitation, or liquidation of the insolvent insurer or
42 impaired insurer.



- 1 ~~(z)~~ **(ff)** "Resident" means the following:
- 2 (1) An individual who resides in Indiana on the applicable
- 3 coverage date.
- 4 (2) A person that is not an individual and has the person's
- 5 principal place of business in Indiana on the applicable coverage
- 6 date.
- 7 ~~(aa)~~ **(gg)** "State" includes a state, the District of Columbia, Puerto
- 8 Rico, and a United States possession, territory, or protectorate.
- 9 ~~(bb)~~ **(hh)** "Structured settlement annuity" means an annuity
- 10 purchased to fund periodic payments for a plaintiff or other claimant
- 11 in payment for or with respect to personal injury suffered by the
- 12 plaintiff or other claimant.
- 13 ~~(cc)~~ **(ii)** "Supplemental contract" means a written agreement entered
- 14 into for the distribution of proceeds under a life, health, or annuity
- 15 policy or contract.
- 16 ~~(dd)~~ **(jj)** "Unallocated annuity contract" means an annuity contract
- 17 or group annuity certificate:
- 18 (1) the owner of which is not a natural person; and
- 19 (2) that does not identify at least one (1) specific natural person
- 20 as an annuitant;
- 21 except to the extent of any annuity benefits guaranteed to a natural
- 22 person by an insurer under the contract or certificate. For purposes of
- 23 this chapter, an unallocated annuity contract shall not be considered a
- 24 group policy or group contract.
- 25 SECTION 14. IC 27-8-8-2.1, AS AMENDED BY P.L.276-2013,
- 26 SECTION 32, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 27 JULY 1, 2018]: Sec. 2.1. (a) For purposes of this chapter:
- 28 (1) a policy or contract issued on a blanket basis is a group policy
- 29 or group contract;
- 30 (2) each individual insured under a policy or contract issued on a
- 31 blanket basis is a certificate holder under the policy or contract;
- 32 and
- 33 (3) a policy or contract issued on a franchise plan to members of
- 34 a qualified group is a nongroup policy or nongroup contract.
- 35 (b) For purposes of this chapter, a benefit plan may have only one
- 36 (1) plan sponsor.
- 37 (c) For purposes of this chapter, an individual who, on the
- 38 applicable coverage date:
- 39 (1) is a citizen of the United States; and
- 40 (2) resides in a:
- 41 (A) foreign country; or
- 42 (B) United States possession, territory, or protectorate;



1 that does not have an association similar to the association created
 2 by this chapter;
 3 is considered to be a resident of the state of domicile of the insurer that
 4 issued the policies or contracts.

5 **(d) For purposes of this chapter, benefits provided under a long**
 6 **term care insurance rider to:**

7 **(1) a life insurance policy; or**

8 **(2) an annuity contract;**

9 **are considered to be the same kind of benefits as the benefits under**
 10 **the life insurance policy or annuity contract to which the rider**
 11 **benefits relate.**

12 SECTION 15. IC 27-8-8-2.3, AS AMENDED BY P.L.276-2013,
 13 SECTION 33, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 14 JULY 1, 2018]: Sec. 2.3. (a) Except as otherwise excluded or limited
 15 by this chapter, this chapter provides coverage for policies and
 16 contracts specified in subsection (d) as follows:

17 (1) To a person, other than a certificate holder under a group
 18 policy or a group contract, that, regardless of where the person
 19 resides, is the **health care provider**, beneficiary, nonowner
 20 assignee, or payee of a person covered under subdivision (2).

21 (2) To a person that is a certificate holder under a group policy or
 22 group contract, and to a person that is the owner of a nongroup
 23 policy or nongroup contract that is not an unallocated annuity
 24 contract or a structured settlement annuity, and that:

25 (A) is a resident; or

26 (B) is not a resident if all the following conditions are
 27 satisfied:

28 (i) The member insurer that issued the policy or contract is
 29 domiciled in Indiana.

30 (ii) The state in which the person resides has an association
 31 similar to the association.

32 (iii) The nonresident is not eligible for coverage by the other
 33 association referred to in item (ii) solely because the
 34 member insurer was not licensed in the state of residence at
 35 the time specified in the guaranty association law of the state
 36 of residence.

37 (3) For an unallocated annuity contract, subdivisions (1) and (2)
 38 do not apply, and this chapter provides coverage to the following:

39 (A) A person that is the owner of the unallocated annuity
 40 contract, if the contract was issued to or in connection with a
 41 benefit plan whose plan sponsor is a resident or, if the plan
 42 sponsor is not a resident, if all the following conditions are



- 1 satisfied:
- 2 (i) The member insurer that issued the unallocated annuity
- 3 contract is domiciled in Indiana.
- 4 (ii) The state in which the plan sponsor resides has an
- 5 association similar to the association.
- 6 (iii) The other association referred to in item (ii) does not
- 7 provide coverage of the unallocated annuity contract solely
- 8 because the member insurer was not licensed in the state of
- 9 residence at the time specified in the guaranty association
- 10 law of the state of residence.
- 11 (B) A person that is the owner of an unallocated annuity
- 12 contract issued to or in connection with a government lottery,
- 13 if the owner is a resident or, if the owner is not a resident, if all
- 14 the following conditions are satisfied:
- 15 (i) The member insurer that issued the unallocated annuity
- 16 contract is domiciled in Indiana.
- 17 (ii) The state in which the owner resides has an association
- 18 similar to the association.
- 19 (iii) The other association referred to in item (ii) does not
- 20 provide coverage of the unallocated annuity contract solely
- 21 because the member insurer was not licensed in the state of
- 22 residence at the time specified in the guaranty association
- 23 law of the state of residence.
- 24 (4) For a structured settlement annuity, subdivisions (1) and (2)
- 25 do not apply, and this chapter provides coverage to a person that
- 26 is a payee under the structured settlement annuity (or beneficiary
- 27 of a payee if the payee is deceased), if the payee:
- 28 (A) is a resident, regardless of where the contract owner
- 29 resides; or
- 30 (B) is not a resident if all the following conditions are
- 31 satisfied:
- 32 (i) The member insurer that issued the structured settlement
- 33 annuity is domiciled in Indiana.
- 34 (ii) The state in which the payee resides has an association
- 35 similar to the association.
- 36 (iii) Neither the payee nor the beneficiary of the payee (if the
- 37 payee is deceased) is eligible for coverage by the other
- 38 association referred to in item (ii) solely because the
- 39 member insurer was not licensed in the state of residence at
- 40 the time specified in the guaranty association law of the state
- 41 of residence.
- 42 (b) This chapter does not provide coverage to a person that is:



1 (1) a payee or beneficiary of a contract owner that is a resident, if
 2 the payee or beneficiary is afforded any coverage by the
 3 association of another state; or

4 (2) otherwise covered under subsection(a)(3), if any coverage is
 5 provided to the person by the association of another state.

6 (c) To avoid duplicate coverage, if a person that would otherwise
 7 receive coverage under this chapter is provided coverage under the
 8 laws of another state, the person is not eligible for coverage under this
 9 chapter. In determining the application of this subsection when a
 10 person may be covered by the association of more than one (1) state as
 11 an owner, a payee, a beneficiary, or an assignee, this chapter must be
 12 construed in conjunction with the laws of the other state to result in
 13 coverage by only one (1) association.

14 (d) Except as otherwise excluded or limited by this chapter, this
 15 chapter provides coverage to the persons specified in subsection (a)
 16 for:

17 (1) direct nongroup life **insurance and health insurance policies**
 18 **or contracts; or**

19 **(2) direct nongroup annuity policies and contracts; and**

20 **(3) supplemental contracts to direct nongroup life, health, or**
 21 **annuity policies and contracts described in subdivisions (1) and**
 22 **(2);**

23 ~~(2)~~ **(4) certificates under direct group life insurance and health**
 24 **and annuity insurance policies and contracts;**

25 **(5) certificates under direct group annuity contracts; and**

26 ~~(3)~~ **(6) unallocated annuity contracts;**

27 issued by member insurers.

28 (e) **Except for a part of a certificate, policy, or contract**
 29 **(including a rider) that provides long term care or another health**
 30 **insurance benefit**, this chapter does not provide coverage for or with
 31 respect to the following:

32 (1) A part of a certificate, policy, or contract:

33 (A) not guaranteed by the **member** insurer; or

34 (B) under which the risk is borne by the payee, certificate
 35 holder, or the policy or contract owner.

36 (2) A reinsurance policy or contract, unless and to the extent that
 37 assumption certificates have been issued under the reinsurance
 38 policy or contract.

39 (3) A part of a certificate, policy, or contract to the extent that the
 40 certificate's, policy's, or contract's interest rate, crediting rate, or
 41 similar factor employed in calculating returns or changes in
 42 values, whether expressly stated in the certificate, policy, or



1 contract or determined by use of an index or other external
2 referent stated in the certificate, policy, or contract, either:

3 (A) when averaged over a period of four (4) years immediately
4 before the applicable coverage date, exceeds the rate of
5 interest determined by subtracting two (2) percentage points
6 from Moody's Corporate Bond Yield Average averaged for the
7 same four (4) year period or for a lesser period if the
8 certificate, policy, or contract was issued less than four (4)
9 years before the applicable coverage date; or

10 (B) in effect under the certificate, policy, or contract on and
11 after the applicable coverage date, exceeds the rate of interest
12 determined by subtracting three (3) percentage points from
13 Moody's Corporate Bond Yield Average as most recently
14 available on the applicable coverage date.

15 (4) The obligations of a plan or program of an employer, an
16 association, or another person to provide life, health, or annuity
17 benefits to the employer's, association's, or other person's
18 employees, members, or others, including obligations arising
19 under and benefits payable by the employer, association, or other
20 person under a multiple employer welfare arrangement.

21 (5) A minimum premium group insurance plan.

22 (6) A stop-loss or excess loss insurance policy or contract
23 providing for the indemnification of or payment to a policy owner,
24 a contract owner, a plan, or another person obligated to pay life,
25 health, or annuity benefits or to provide services in connection
26 with a benefit plan or another plan, fund, or program for the
27 provision of employee welfare or pension benefits.

28 (7) An administrative services only contract.

29 (8) A part of a certificate, policy, or contract to the extent that the
30 certificate, policy, or contract provides for:

31 (A) dividends or experience rating credits;

32 (B) voting rights; or

33 (C) payment of fees or allowances to a person, including the
34 certificate holder or policy or contract owner, in connection
35 with service with respect to or administration of the certificate,
36 policy, or contract.

37 (9) A certificate, policy, or contract issued in Indiana by a
38 member insurer when the member insurer did not have a
39 certificate of authority to issue the certificate, policy, or contract
40 in Indiana.

41 (10) An unallocated annuity contract issued to or in connection
42 with a benefit plan protected by the federal Pension Benefit



- 1 Guaranty Corporation, regardless of whether the federal Pension
 2 Benefit Guaranty Corporation has yet been required to make
 3 payments with respect to the benefit plan.
- 4 (11) An unallocated annuity contract or part of an unallocated
 5 annuity contract that is not issued to or in connection with a
 6 benefit plan or a government lottery.
- 7 (12) A certificate, policy, or contract or part of a certificate,
 8 policy, or contract with respect to which the Class B assessments
 9 contemplated by section 6 of this chapter may not be made or
 10 collected under federal or state law.
- 11 (13) An obligation or claim that does not arise under the express
 12 written terms of the policy or contract issued by the member
 13 insurer to the contract owner or policy owner, including any of the
 14 following obligations and claims:
- 15 (A) Obligations and claims based on marketing materials.
 16 (B) Obligations and claims based on side letters, riders, or
 17 other documents issued by the member insurer without
 18 meeting applicable policy **or contract** form filing or approval
 19 requirements.
 20 (C) Obligations and claims based on actual or alleged
 21 misrepresentations.
 22 (D) Obligations and claims that are extracontractual claims.
 23 (E) Obligations and claims for penalties or consequential,
 24 incidental, punitive, or exemplary damages.
- 25 (14) An obligation to provide a book value accounting guaranty
 26 for defined contribution benefit plan participants by reference to
 27 a portfolio of assets that is owned by the:
- 28 (A) benefit plan; or
 29 (B) benefit plan's trustee;
 30 that is not an affiliate of the member insurer.
- 31 (15) A part of a certificate, policy, or contract to the extent the:
- 32 (A) certificate, policy, or contract provides for the certificate's,
 33 policy's, or contract's interest rate, crediting rate, or similar
 34 factor employed in calculating returns or changes in values, to
 35 be determined by use of an index or other external referent
 36 stated in the certificate, policy, or contract; and
 37 (B) returns or changes in value have not been credited to the
 38 certificate, policy, or contract, or as to which the certificate
 39 holder's or policy or contract owner's rights are subject to
 40 forfeiture, as of the applicable coverage date.
- 41 If a certificate's, policy's, or contract's returns or changes in values
 42 are credited to the certificate, policy, or contract less frequently



- 1 than annually, for purposes of determining the returns and values
- 2 that have been credited and are not subject to forfeiture under this
- 3 subdivision, the returns and changes in value determined by using
- 4 the procedures defined in the certificate, policy, or contract must
- 5 be considered credited as if the contractual date of crediting
- 6 returns or changes in values were the applicable coverage date,
- 7 and those credited returns or changes in value are not subject to
- 8 forfeiture under this subdivision, but will be subject to any other
- 9 applicable limitations under this chapter.
- 10 (16) A funding agreement.
- 11 (17) An annuity not subject to regulation as described in
- 12 IC 27-1-12.4.
- 13 (18) A certificate, policy, or contract that provides a hospital,
- 14 medical, prescription drug, or other health care benefit under:
 - 15 (A) Part C of Title XVIII of the federal Social Security Act (42
 - 16 U.S.C. 1395w-21 through 1395w-28);
 - 17 (B) Part D of Title XVIII of the federal Social Security Act (42
 - 18 U.S.C. 1395w-101 through 1395w-153);
 - 19 (C) **Title XIX of the federal Social Security Act (42 U.S.C.**
 - 20 **1396 et seq.); or**
 - 21 ~~(D)~~ (D) regulations adopted under a law specified in clause
 - 22 (A), ~~or~~ (B), ~~or~~ (C).
- 23 **(19) A part of a long term care, long term disability, or other**
- 24 **health insurance policy or contract to the extent that, on and**
- 25 **after the date on which the member insurer becomes an**
- 26 **impaired insurer or insolvent insurer under this chapter,**
- 27 **benefits under the policy or contract increase or accrue at a**
- 28 **rate or other factor that exceeds the average Core Consumer**
- 29 **Price Index published by the federal Bureau of Labor**
- 30 **Statistics over the preceding three (3) calendar years.**
- 31 (f) The benefits that the association is obligated to cover do not
- 32 exceed the lesser of the following:
 - 33 (1) The contractual obligations for which the member insurer is
 - 34 liable or would have been liable if the member insurer were not
 - 35 an impaired insurer or insolvent insurer.
 - 36 (2) The applicable limitations as follows:
 - 37 (A) With respect to certificates, policies, and contracts not
 - 38 subject to clause (B), (C), (E), or (F), with respect to one (1)
 - 39 life, regardless of the number of policies or contracts, the
 - 40 following limitations:
 - 41 (i) Three hundred thousand dollars (\$300,000) in life
 - 42 insurance death benefits, but not more than one hundred



- 1 thousand dollars (\$100,000) in net cash surrender and net
 2 cash withdrawal values.
- 3 (ii) One hundred thousand dollars (\$100,000) in health
 4 insurance benefits (other than disability **income** insurance,
 5 ~~basic hospital, medical, and surgical insurance, major~~
 6 ~~medical insurance, health benefit plan insurance~~, and long
 7 term care insurance), including net cash surrender and net
 8 cash withdrawal values.
- 9 (iii) Three hundred thousand dollars (\$300,000) in health
 10 insurance benefits that are disability **income** insurance.
- 11 (iv) Three hundred thousand dollars (\$300,000) in health
 12 insurance benefits under one (1) or more long term care
 13 insurance policies (as defined in IC 27-8-12-5).
- 14 (v) Five hundred thousand dollars (\$500,000) in health
 15 **benefit plan** insurance benefits. ~~that are basic hospital,~~
 16 ~~medical, and surgical insurance or major medical insurance.~~
- 17 (vi) Two hundred fifty thousand dollars (\$250,000) in the
 18 present value of annuity benefits, including net cash
 19 surrender and net cash withdrawal values.
- 20 (B) With respect to unallocated annuity contracts issued to or
 21 in connection with a governmental benefit plan established
 22 under Section 401, 403(b), or 457 of the United States Internal
 23 Revenue Code, two hundred fifty thousand dollars (\$250,000)
 24 in the present value of annuity benefits, including net cash
 25 surrender and net cash withdrawal values, per participant.
- 26 (C) With respect to structured settlement annuities, two
 27 hundred fifty thousand dollars (\$250,000) in the present value
 28 of annuity benefits, including net cash surrender and net cash
 29 withdrawal values, per payee.
- 30 (D) In addition to the foregoing limitations, the association is
 31 not obligated to cover more than:
- 32 (i) an aggregate of three hundred thousand dollars
 33 (\$300,000) in benefits with respect to any one (1) person
 34 under clauses (A), (B), and (C), except with respect to
 35 benefits for ~~basic hospital, medical, and surgical insurance~~
 36 ~~and major medical health benefit plan~~ insurance under
 37 clause (A)(v), an aggregate of five hundred thousand dollars
 38 (\$500,000) with respect to any one (1) person; or
- 39 (ii) with respect to one (1) owner of multiple nongroup
 40 policies of life insurance, whether the policy owner is an
 41 individual, a firm, a corporation, or another person, and
 42 whether the persons insured are officers, managers,



- 1 employees, or other persons, five million dollars
 2 (\$5,000,000) in benefits, including net cash surrender and
 3 net cash withdrawal values, regardless of the number of
 4 policies and contracts held by the owner.
- 5 (E) With respect to unallocated annuity contracts issued to or
 6 in connection with a government lottery, five million dollars
 7 (\$5,000,000) in benefits per contract owner, regardless of the
 8 number of contracts held by the contract owner.
- 9 (F) With respect to unallocated annuity contracts:
 10 (i) issued to or in connection with a benefit plan; and
 11 (ii) not subject to clause (B);
 12 five million dollars (\$5,000,000) in benefits per plan sponsor,
 13 regardless of the number of unallocated annuity contracts
 14 entitled to coverage under this chapter.
- 15 (g) The limitations set forth in subsection (f) are limitations on the
 16 benefits for which the association is obligated before taking into
 17 account the:
 18 (1) association's subrogation and assignment rights; or
 19 (2) extent to which the benefits could be provided out of the
 20 assets of the impaired insurer or insolvent insurer attributable to
 21 covered policies.
- 22 The costs of discharging the association's obligations under this chapter
 23 may be met by the use of assets attributable to covered policies or
 24 reimbursed to the association under the association's subrogation and
 25 assignment rights.
- 26 (h) In discharging the association's obligations to provide coverage
 27 under this chapter, the association is not required to:
 28 (1) guarantee, assume, **reissue**, reinsure, or perform;
 29 (2) cause to be guaranteed, assumed, **reissued**, reinsured, or
 30 performed; or
 31 (3) otherwise assure the discharge of;
 32 the obligations of the insolvent insurer or impaired insurer under a
 33 covered policy that do not materially affect the economic values or
 34 economic benefits of the covered policy.
- 35 SECTION 16. IC 27-8-8-4, AS AMENDED BY P.L.193-2006,
 36 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 37 JULY 1, 2018]: Sec. 4. (a) The board of directors of the association
 38 shall consist of not less than ~~five (5)~~ **seven (7)** nor more than ~~nine (9)~~
 39 **eleven (11)** member insurers serving terms established in the plan of
 40 operation. The members of the board shall be selected by member
 41 insurers subject to the approval of the commissioner.
- 42 (b) Vacancies on the board shall be filled for the remaining period



1 of the term by a majority vote of the remaining board members, subject
2 to the approval of the commissioner.

3 (c) To select the initial board and initially organize the association,
4 the commissioner shall give notice to all member insurers of the time
5 and place of the organizational meeting. At the organizational meeting,
6 each member insurer is entitled to one (1) vote in person or by proxy.
7 If the board is not selected within sixty (60) days after notice of the
8 organizational meeting, the commissioner may appoint the initial
9 members of the board.

10 (d) In approving selections to the board, the commissioner shall
11 consider whether all member insurers are fairly represented.

12 (e) Members of the board may be reimbursed from the assets of the
13 association for expenses incurred by the members as members of the
14 board. The association shall not otherwise compensate members of the
15 board for the members' services on the board.

16 SECTION 17. IC 27-8-8-5, AS AMENDED BY P.L.193-2006,
17 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
18 JULY 1, 2018]: Sec. 5. (a) If a member insurer is an impaired insurer,
19 the association may, in the association's sole discretion and subject to
20 any conditions imposed by the association that do not impair the
21 contractual obligations of the impaired insurer and that are approved
22 by the commissioner:

23 (1) guarantee, assume, **reissue**, reinsure, or perform, or cause to
24 be guaranteed, assumed, **reissued**, reinsured, or performed, the
25 contractual obligations of any of the covered policies of the
26 impaired insurer or otherwise assure the discharge of the
27 contractual obligations of the covered policies of the impaired
28 insurer; and

29 (2) provide money, pledges, loans, notes, guarantees, or use other
30 means as determined by the association in the association's sole
31 discretion to be necessary or appropriate to effectuate subdivision
32 (1).

33 (b) An obligation undertaken by the association under subsection (a)
34 with respect to a covered policy of an impaired insurer ceases on the
35 date the covered policy is replaced by the policy owner, insured, or
36 association.

37 (c) If a member insurer is an insolvent insurer, the association shall,
38 in the association's sole discretion, do one (1) of the following for each
39 covered policy:

40 (1) Guarantee, assume, **reissue**, reinsure, or perform, or cause to
41 be guaranteed, assumed, **reissued**, reinsured, or performed, the
42 contractual obligations of the covered policy or otherwise assure



- 1 the discharge of the contractual obligations of the covered policy.
 2 (2) Terminate existing benefits and coverage and provide benefits
 3 and coverages in accordance with the following provisions:
 4 (A) For premiums identical to the premiums that would have
 5 been payable under the covered policy, assure payment of
 6 benefits arising under the contractual obligations, except for
 7 terms of conversion and nonrenewability, for:
 8 (i) with respect to a group covered policy, claims incurred
 9 not later than the earlier of the next renewal date under the
 10 covered policy or forty-five (45) days, but not less than thirty
 11 (30) days, after the coverage date for the insolvent insurer;
 12 and
 13 (ii) with respect to a nongroup covered policy, claims
 14 incurred not later than the earlier of the next renewal date
 15 under the covered policy or one (1) year, but in no event less
 16 than thirty (30) days, after the coverage date for the
 17 insolvent insurer.
 18 (B) Make diligent efforts to provide each:
 19 (i) known insured or annuitant, for a nongroup covered
 20 policy; and
 21 (ii) owner, for a group covered policy;
 22 at least thirty (30) days notice of the termination of the benefits
 23 provided.
 24 (C) Make available substitute coverage, on an individual basis,
 25 to each:
 26 (i) owner of a nongroup covered policy if the owner had a
 27 right to continue the nongroup covered policy in force until
 28 a specified age or for a specified period, during which time
 29 the insurer had no unilateral right to make changes in the
 30 nongroup covered policy's provisions or had only a
 31 unilateral right to make changes in premiums only by class;
 32 and
 33 (ii) insured or annuitant under a group covered policy if the
 34 insured or annuitant is not eligible for any replacement
 35 group coverage and had a right, before termination of the
 36 group covered policy, to convert to individual coverage.
 37 (D) In making available any substitute coverage under clause
 38 (C), the association may offer to reissue the terminated
 39 coverage or to issue an alternative policy or contract. If made
 40 available under clause (C), alternative or reissued policies and
 41 contracts must be offered without requiring evidence of
 42 insurability and must not impose any waiting period or



- 1 coverage exclusion, other than a waiting period or coverage
 2 exclusion provided for in this chapter, that would not have
 3 applied under the terminated covered policy. The association
 4 may cause any alternative or reissued policy or contract to be
 5 assumed or reinsured.
- 6 (E) Use of alternative policies and contracts by the association
 7 is subject to the approval of the ~~domiciliary insurance~~
 8 ~~regulatory authority and the receivership court.~~ **commissioner.**
 9 The association may adopt alternative policies and contracts
 10 of various types for future issuance without regard to any
 11 particular impairment or insolvency. Alternative policies and
 12 contracts must contain at least the minimum statutory
 13 provisions required in Indiana and provide benefits that are
 14 reasonable in relation to the premium charged. The association
 15 shall set the premium in accordance with a table of rates
 16 adopted by the association. The premium must:
- 17 (i) reflect the amount of insurance to be provided and the
 - 18 age and class of risk of each insured; and
 - 19 (ii) not reflect changes in the health of the insured after the
 - 20 terminated covered policy was last underwritten.
- 21 Subject to coverage exceptions, exclusions, and limitations
 22 provided for in this chapter, an alternative policy or contract
 23 issued by the association must provide coverage similar, in
 24 material respects, to the coverage under the terminated
 25 covered policy as determined by the association.
- 26 (F) If the association elects to reissue terminated coverage at
 27 a premium rate different from the premium rate charged under
 28 the terminated covered policy, the association shall set the
 29 premium in accordance with a table of rates adopted by the
 30 association. The premium:
- 31 (i) must reflect the amount of insurance to be provided and
 - 32 the age and class of risk of each insured; and
 - 33 (ii) is subject to approval of the ~~domiciliary insurance~~
 34 ~~regulatory authority and the receivership court.~~
 35 **commissioner.**
- 36 (G) The association's obligations with respect to coverage
 37 under a covered policy of an insolvent insurer or under a
 38 reissued or alternative policy or contract ceases on the date the
 39 coverage or covered policy is replaced by another similar
 40 policy by the policy owner, insured, or association.
- 41 (H) Subject to subsection (u), when proceeding under this
 42 subdivision with respect to a covered policy carrying



- 1 guaranteed minimum interest rates, the association shall assure
 2 the payment or crediting of a rate of interest consistent with
 3 section 2.3(e)(3) of this chapter.
- 4 (3) Take any combination of the actions set forth in subdivisions
 5 (1) and (2).
- 6 (d) The association may provide money, pledges, loans, notes, or
 7 guarantees, or use other means that the association, in the association's
 8 sole discretion, determines are necessary or appropriate to discharge
 9 the association's duties under subsection (c).
- 10 (e) Failure to pay premiums within thirty-one (31) days after the
 11 date that payment is due under the terms of a guaranteed, assumed,
 12 alternative, or reissued policy or contract or substitute coverage
 13 terminates the association's obligations under this chapter with respect
 14 to the policy, contract, or coverage, except with respect to claims
 15 incurred or net cash surrender value due under this chapter.
- 16 (f) Premiums due for coverage after the coverage date for an
 17 impaired insurer or insolvent insurer belong to and are payable at the
 18 direction of the association, and the association is liable for unearned
 19 premiums payable to policy or contract owners with respect to
 20 premiums received by the association.
- 21 (g) The protection provided by this chapter does not apply where
 22 any guaranty protection is provided to residents of this state by the laws
 23 of the domiciliary state of the impaired insurer or insolvent insurer if
 24 the domiciliary state is a state other than Indiana.
- 25 (h) In carrying out its duties under subsection (c), the association
 26 may, subject to approval by a court in Indiana, impose:
- 27 (1) permanent policy or contract liens, if the association finds
 28 that:
- 29 (A) the amounts that can be assessed under this chapter are
 30 less than the amounts needed to assure full and prompt
 31 performance of the association's duties under this chapter; or
 32 (B) economic or financial conditions, as they affect member
 33 insurers, are sufficiently adverse so as to render the imposition
 34 of the permanent policy or contract liens to be in the public
 35 interest; and
- 36 (2) temporary moratoriums or liens on payments of cash values
 37 and policy loans or any other right to withdraw funds held in
 38 conjunction with a covered policy, in addition to any contractual
 39 provisions for deferral of cash or policy loan value.
- 40 In addition, in the event of a temporary moratorium or moratorium
 41 charge imposed by the receivership court on payments of cash values
 42 or policy loans or any other right to withdraw funds held in conjunction



1 with a covered policy out of the assets of the impaired insurer or
 2 insolvent insurer, the association may defer the payment of cash values,
 3 policy loans, or other rights by the association for the period of the
 4 moratorium or moratorium charge imposed by the receivership court,
 5 except for claims covered by the association to be paid in accordance
 6 with a hardship procedure established by the liquidator or rehabilitator
 7 and approved by the receivership court.

8 (i) A deposit in Indiana, held by law or required by the
 9 commissioner for the benefit of creditors, including policy owners, that
 10 is not turned over to the domiciliary receiver before or promptly after
 11 the coverage date for an impaired insurer or insolvent insurer under
 12 IC 27-9-4-3 must be promptly paid to the association. The association:

- 13 (1) may retain a part of an amount paid to the association under
 14 this subsection equal to the percentage determined by dividing the
 15 aggregate amount of policy owners' claims related to the
 16 impairment or insolvency for which the association provides
 17 statutory benefits by the aggregate amount of all policy owners'
 18 claims in Indiana related to the impairment or insolvency; and
 19 (2) shall remit to the domiciliary receiver the difference between
 20 the amount paid to the association and the amount retained by the
 21 association under this subsection.

22 An amount retained by the association under this subsection must be
 23 treated as a distribution of estate assets under IC 27-9-3-32 or similar
 24 provision of the state of domicile of the impaired insurer or insolvent
 25 insurer.

26 (j) If the association fails to act within a reasonable period of time
 27 as provided in subsection (c) with respect to an insolvent insurer, the
 28 commissioner has the powers and duties of the association under this
 29 chapter with respect to the insolvent insurer.

30 (k) The association may, upon the commissioner's request, assist
 31 and advise the commissioner concerning rehabilitation, payment of
 32 claims, continuance of coverage, or the performance of other
 33 contractual obligations of an impaired insurer or insolvent insurer.

34 (l) The association has standing and the right to appear or intervene
 35 before a court or an agency in Indiana or elsewhere with jurisdiction
 36 over an impaired insurer or insolvent insurer for which the association
 37 is or may become obligated under this chapter or with jurisdiction over
 38 a person or property against which the association may have rights
 39 through subrogation or otherwise. Standing extends to all matters
 40 germane to the rights, powers, and duties of the association, including
 41 proposals for reinsuring, modifying, or guaranteeing the policies or
 42 contracts of the impaired insurer or insolvent insurer and the



1 determination of the policies or contracts and contractual obligations.

2 (m) A person receiving benefits under this chapter is considered to
3 have assigned:

4 (1) the person's rights under; and

5 (2) any cause of action against another person for losses arising
6 under, resulting from, or otherwise relating to;

7 the covered policy to the association to the extent of the benefits
8 received because of this chapter, whether the benefits are payments of
9 or on account of contractual obligations or continuation of coverage or
10 provision of substitute or alternative coverage. The association may
11 require an assignment to it of those rights and causes of action by a
12 payee, policy or contract owner, certificate holder, beneficiary, insured,
13 or annuitant as a condition precedent to the receipt of any right or
14 benefits conferred by this chapter on the person.

15 (n) The subrogation rights of the association under subsections (m)
16 and (o) have the same priority against the assets of the impaired insurer
17 or insolvent insurer as those possessed by the person entitled to receive
18 benefits under this chapter.

19 (o) In addition to the rights conferred by subsections (m) and (n),
20 the association has all common law rights of subrogation and any other
21 equitable or legal remedy with respect to a covered policy that would
22 have been available to the:

23 (1) impaired insurer or insolvent insurer;

24 (2) owner, beneficiary, **insured**, or payee of a policy or contract
25 with respect to the policy or contract, including, in the case of a
26 structured settlement annuity, rights of the owner, beneficiary, or
27 payee of the annuity, to the extent of benefits received under this
28 chapter, against a person:

29 (A) who is originally or by succession responsible for the
30 losses arising from the personal injury relating to the annuity
31 or payment for the annuity; and

32 (B) whose responsibility is not solely because of the person
33 serving as an assignee in respect of a qualified assignment
34 under Section 130 of the Internal Revenue Code; and

35 (3) certificate holder, or the beneficiary or payee of the certificate
36 holder, with respect to a certificate.

37 (p) If subsection (m), (n), or (o) is invalid or ineffective with respect
38 to a person or claim, the amount payable by the association with
39 respect to the related covered policies must be reduced by the amount
40 realized by another person with respect to the person or claim that is
41 attributable to the covered policies.

42 (q) If the association provides benefits with respect to a covered



1 policy and a person recovers amounts to which the association has
 2 rights as described in subsection (m), (n), or (o), the person shall pay
 3 to the association the part of the recovery attributable to the covered
 4 policies.

5 (r) The association may do the following:

6 (1) Enter into contracts necessary or appropriate to carry out the
 7 provisions and purposes of this chapter.

8 (2) Sue or, subject to section 14 of this chapter, be sued, including
 9 taking legal actions necessary or appropriate to recover unpaid
 10 assessments under section 6 of this chapter and to resolve claims
 11 or potential claims against or on behalf of the association.

12 (3) Borrow money to effect the purposes of this chapter and issue
 13 notes or other evidences of indebtedness of the association with
 14 respect to borrowings. Notes or other evidences of indebtedness
 15 described in this subdivision that are not in default are legal
 16 investments for domestic **member** insurers and may be carried as
 17 admitted assets.

18 (4) Employ or retain persons necessary or appropriate to handle
 19 the financial transactions of the association and to perform other
 20 functions necessary or appropriate under this chapter.

21 (5) Take legal action 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
 24 approved by the commissioner, the powers of a domestic life or
 25 health insurer. However, in no case may the association issue
 26 **insurance** policies or **annuity** contracts other than those issued to
 27 perform the association's obligations under this chapter.

28 (7) Request information from a person seeking coverage from the
 29 association to aid the association in determining and discharging
 30 the association's obligations under this chapter with respect to the
 31 person. The person shall promptly comply with the request.

32 (8) Settle claims and potential claims by or against the
 33 association.

34 (9) Exercise all rights, privileges, and powers granted to the
 35 association by any other laws of Indiana or another jurisdiction.

36 **(10) In accordance with the terms of the policy or contract,**
 37 **file for an actuarially justified rate or premium increase for**
 38 **a covered policy.**

39 ~~(10)~~ **(11)** Take other necessary or appropriate action to discharge
 40 the association's duties and obligations under this chapter or to
 41 exercise the association's rights and powers under this chapter.

42 (s) The association may belong to one (1) or more organizations of



1 one (1) or more other state associations of similar purpose to further the
2 purpose and administer the powers and duties of the association.

3 (t) The association has discretion and may exercise reasonable
4 business judgment to determine the means by which the association is
5 to discharge, in an economical and efficient manner, the association's
6 obligations under this chapter.

7 (u) In discharging the association's obligations and exercising the
8 association's rights and powers under subsections (a) and (c), the
9 association may, subject to approval of the receivership court, provide
10 substitute coverage for a covered policy that provides for the covered
11 policy's interest rate, crediting rate, or similar factor employed in
12 calculating returns or changes in value to be determined by use of an
13 index or other external referent stated in the covered policy by issuing
14 an alternative policy or contract in accordance with the following
15 provisions:

16 (1) Instead of the index or other external referent stated in the
17 covered policy, the alternative policy or contract may provide for:

18 (A) a fixed interest rate;

19 (B) payment of dividends with minimum guarantees; or

20 (C) a different method for calculating returns or changes in
21 value.

22 (2) A:

23 (A) requirement for evidence of insurability; or

24 (B) waiting period or an exclusion, other than a waiting period
25 or an exclusion provided for in this chapter;

26 that would not have applied under the covered policy may not be
27 imposed.

28 (3) The alternative policy or contract must provide coverage
29 similar, in material respects, to the coverage under the covered
30 policy, after taking into account the exceptions, exclusions, and
31 limitations provided for in this chapter, as determined by the
32 association.

33 SECTION 18. IC 27-8-8-5.2, AS ADDED BY P.L.193-2006,
34 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
35 JULY 1, 2018]: Sec. 5.2. (a) At any time within one (1) year after the
36 coverage date for an impaired insurer or insolvent insurer, the
37 association may elect, subject to subdivisions (1) through (4), to
38 succeed to the rights and obligations of the impaired insurer or
39 insolvent insurer that accrue on or after the coverage date and that
40 relate to covered policies under one (1) or more indemnity reinsurance
41 agreements entered into by the impaired insurer or insolvent insurer as
42 a ceding insurer. However, the association may not exercise an election



1 with respect to a reinsurance agreement if the receiver, rehabilitator, or
 2 liquidator of the impaired insurer or insolvent insurer has previously
 3 and expressly disaffirmed the reinsurance agreement. The election by
 4 the association must be effected by a notice to the receiver,
 5 rehabilitator, or liquidator and to the affected reinsurers specifying the
 6 reinsurance agreement concerning which the association has made the
 7 foregoing election. If the association makes an election, the following
 8 apply with respect to the agreements selected by the association:

9 (1) The association is responsible for:

10 (A) all unpaid premiums due under the agreements for periods
 11 before and after the coverage date; and

12 (B) the performance of all other obligations of the impaired
 13 insurer or insolvent insurer to be performed after the coverage
 14 date;

15 that relate to covered policies. The association may charge
 16 covered policies that are only partially covered by the association,
 17 through reasonable allocation methods, the costs for reinsurance
 18 in excess of the obligations of the association.

19 (2) The association is entitled to any amount payable by the
 20 reinsurer under the selected agreements:

21 (A) with respect to losses or events that occur during periods
 22 after the coverage date; and

23 (B) that relate to covered policies.

24 Of the amount received from the reinsurer, the association is
 25 obliged to pay to the beneficiary under the covered policy on
 26 account of which the amount was paid a portion of the amount
 27 equal to the excess of the amount received by the association over
 28 benefits paid by the association on account of the covered policy
 29 less the retention of the impaired insurer or insolvent insurer
 30 applicable to the loss or event.

31 (3) Within thirty (30) days after the association's election, the
 32 association and each indemnity reinsurer shall calculate the net
 33 balance due to or from the association under each reinsurance
 34 agreement as of the date of the association's election, giving full
 35 credit to all items paid by the:

36 (A) impaired insurer or insolvent insurer, or the impaired
 37 insurer's or insolvent insurer's receiver, rehabilitator, or
 38 liquidator; or

39 (B) indemnity reinsurer;

40 during the period between the coverage date and the date of the
 41 association's election. Either the association or indemnity
 42 reinsurer shall pay the net balance due the other not more than



1 five (5) days after the completion of the calculation. If the
 2 receiver, rehabilitator, or liquidator has received any amount due
 3 the association under subdivision (2), the receiver, rehabilitator,
 4 or liquidator shall remit the amount to the association as promptly
 5 as practicable.

6 (4) If the association, within sixty (60) days of the election, pays
 7 the premiums due for periods before and after the coverage date
 8 that relate to covered policies, the reinsurer is not entitled to:

9 (A) terminate the reinsurance agreements insofar as the
 10 agreements relate to covered policies; or

11 (B) set off any unpaid premium due for periods before the
 12 coverage date against amounts due the association.

13 (b) If the association transfers any of the association's obligations to
 14 another insurer, and if the association and the other insurer agree, the
 15 other insurer succeeds to the rights and obligations of the association
 16 under subsection (a) with respect to the transferred obligations
 17 effective as of the date agreed upon by the association and the other
 18 insurer and regardless of whether the association has made the election
 19 referred to in subsection (a), except that the:

20 (1) indemnity reinsurance agreements automatically terminate for
 21 new reinsurance unless the indemnity reinsurer and the other
 22 insurer agree to the contrary; and

23 (2) obligations of the association described in subsection (a)(2) no
 24 longer apply on and after the date the indemnity reinsurance
 25 agreement is transferred to the third party insurer.

26 This subsection does not apply if the association has previously notified
 27 the receiver, rehabilitator, or liquidator and the affected reinsurer in
 28 writing that the association will not exercise the election referred to in
 29 subsection (a).

30 (c) Subsections (a) and (b) supersede any other law or affected
 31 reinsurance agreement that provides for or requires payment of
 32 reinsurance proceeds, on account of losses or events that occur after the
 33 coverage date, to the receiver, liquidator, or rehabilitator of the
 34 impaired insurer or insolvent insurer. The receiver, rehabilitator, or
 35 liquidator remains entitled to amounts payable by the reinsurer under
 36 the reinsurance agreement with respect to losses or events that occur
 37 before the coverage date, subject to applicable setoff provisions.

38 (d) Except as provided in subsections (a), (b), and (c), this chapter
 39 does not alter or modify the terms and conditions of indemnity
 40 reinsurance agreements of the insolvent insurer.

41 (e) This chapter does not:

42 (1) abrogate or limit the rights of a reinsurer to claim that the



1 reinsurer is entitled to rescind a reinsurance agreement; or
 2 (2) give a policy owner, **insured**, or beneficiary an independent
 3 cause of action against an indemnity reinsurer that is not
 4 otherwise set forth in the indemnity reinsurance agreement.

5 SECTION 19. IC 27-8-8-6, AS AMENDED BY P.L.193-2006,
 6 SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 7 JULY 1, 2018]: Sec. 6. (a) For the purpose of providing funds
 8 necessary to carry out the powers and duties of the association and
 9 necessary to pay administrative costs and expenses incurred by the
 10 commissioner in supervising the association and discharging the
 11 commissioner's obligations under this chapter, the board shall assess
 12 the member insurers, separately for each account, at a time and for
 13 amounts as the board finds necessary. Assessments are due not less
 14 than thirty (30) days after prior written notice to the member insurers
 15 and accrue interest at six percent (6%) per annum on and after the due
 16 date.

17 (b) There are two (2) classes of assessments as follows:

18 (1) Class A assessments are assessments that are authorized and
 19 called by the board for the purpose of meeting administrative and
 20 legal costs and other expenses. Class A assessments may be
 21 authorized and called whether or not related to a particular
 22 impaired insurer or insolvent insurer.

23 (2) Class B assessments are assessments that are authorized and
 24 called by the board to the extent necessary to carry out the powers
 25 and duties of the association under this chapter with regard to an
 26 impaired insurer or insolvent insurer.

27 (c) The amount of a Class A assessment must be determined by the
 28 board and may be authorized and called on a pro rata or non-pro rata
 29 basis. If pro rata, the board may provide that the assessment be credited
 30 against future Class B assessments. ~~The total of all non-pro rata~~
 31 ~~assessments must not exceed one hundred fifty dollars (\$150) per~~
 32 ~~member insurer in any one (1) calendar year.~~

33 (d) The amount of a Class B assessment, **except for assessments**
 34 **related to long term care insurance**, must be allocated for assessment
 35 purposes: ~~among~~

36 (1) **between** the accounts; **and**

37 (2) **among the subaccounts of the life insurance and annuity**
 38 **account;**

39 under an allocation formula that may be based on the premiums or
 40 reserves of the impaired insurer or insolvent insurer or another standard
 41 considered by the board in the board's sole discretion as fair and
 42 reasonable under the circumstances.



1 (e) The amount of a Class B assessment related to long term
 2 care insurance must be allocated for assessment purposes
 3 according to the following:

4 (1) The allocation to:

5 (A) health benefit plan insurance member insurers is fifty
 6 percent (50%) of the assessment; and

7 (B) life insurance and annuity member insurers is fifty
 8 percent (50%) of the assessment.

9 (2) A life insurance and annuity member insurer's share of the
 10 assessment must be determined as follows:

11 **STEP ONE: Determine the life insurance and annuity**
 12 **member insurer's share of the following:**

13 (A) The health insurance account.

14 (B) The life insurance and annuity account.

15 **STEP TWO: Determine the remainder of:**

16 (A) the life insurance member insurer's share of the life
 17 insurance and annuity account; minus

18 (B) the life insurance member insurer's share of the
 19 health insurance account.

20 **STEP THREE: Divide the remainder determined under**
 21 **STEP TWO by the share determined under STEP ONE**
 22 **(A).**

23 **STEP FOUR: Multiply the quotient determined under**
 24 **STEP THREE by five/tenths (0.5).**

25 For purposes of this subsection, "life insurance and annuity
 26 member insurer" means a member insurer for which the sum of
 27 the member insurer's assessable life insurance premiums plus
 28 annuity premiums is equal to or greater than the member insurer's
 29 total assessable health benefit plan insurance premiums. For
 30 purposes of this subsection, "assessable" refers only to premiums
 31 on insurance or annuities sold in Indiana.

32 (e) (f) Class B assessments against member insurers for each
 33 account and subaccount with respect to an impaired insurer or
 34 insolvent insurer must be allocated among the assessed member
 35 insurers in the proportion that the premiums received in Indiana by
 36 each assessed member insurer on policies and contracts covered by the
 37 account or subaccount during the assessment base year for the impaired
 38 insurer or insolvent insurer bears to premiums received in Indiana by
 39 all assessed members on policies and contracts covered by the same
 40 account or subaccount during the same assessment base year.

41 (f) (g) Assessments for funds to meet the requirements of the
 42 association with respect to an impaired insurer or insolvent insurer



1 must not be authorized or called until necessary to implement the
 2 purposes of this chapter. Classification of assessments under subsection
 3 (b) and computation of assessments under subsections (c), (d), ~~and~~ (e),
 4 **and (f)** must be made with a reasonable degree of accuracy,
 5 recognizing that exact determinations are not always possible. The
 6 association shall notify each member insurer of the member insurer's
 7 anticipated share of an assessment that has been authorized but not yet
 8 called not more than one hundred eighty (180) days after the
 9 assessment is authorized.

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

21 ~~(h)~~ **(i)** Subject to subsection ~~(i)~~; **(j)**, the total of all assessments
 22 authorized by the association in one (1) calendar year against a member
 23 insurer for a given subaccount of the life insurance and annuity account
 24 or for the health insurance account with respect to any single
 25 assessment base year must not exceed two percent (2%) of the member
 26 insurer's premiums received in Indiana on the policies and contracts
 27 covered by the subaccount or account during the applicable assessment
 28 base year.

29 ~~(i)~~ **(j)** If two (2) or more assessments are authorized in one (1)
 30 calendar year with respect to impaired insurers or insolvent insurers
 31 having different assessment base years, the annual premium used for
 32 purposes of determining the aggregate assessment percentage
 33 limitation referenced in subsection ~~(h)~~ **(i)** must be equal to the higher
 34 of the annual premiums for the applicable subaccount or account as
 35 calculated under this section.

36 ~~(j)~~ **(k)** If the maximum assessment, together with other assets of the
 37 association in an account, does not provide in one (1) year in the
 38 account an amount sufficient to carry out the responsibilities of the
 39 association, additional funds must be assessed as soon as permitted by
 40 this chapter.

41 ~~(k)~~ **(l)** The board may provide in the plan of operation a method of
 42 or procedure for allocating funds among claims relating to one (1) or



1 more impaired insurers or insolvent insurers when the maximum
2 assessment is insufficient to cover anticipated claims.

3 ~~(h)~~ **(m)** If the maximum assessment for a subaccount of the life
4 insurance and annuity account in one (1) year does not provide an
5 amount sufficient to carry out the responsibilities of the association, the
6 board shall, under subsection ~~(e)~~, **(f)**, access the other subaccounts of
7 the life insurance and annuity account for the necessary additional
8 amount, subject to the maximum stated in subsections ~~(h)~~ **and (i) and**
9 **(j)**.

10 ~~(m)~~ **(n)** The board may, by an equitable method or procedure as
11 established in the plan of operation, refund to member insurers, in
12 proportion to the contribution of each member insurer to the account,
13 the amount by which the assets of the account exceed the amount the
14 board determines is necessary to carry out the obligations of the
15 association with regard to the account, including assets accruing from
16 assignment, subrogation, net realized gains, and income from
17 investments. A reasonable amount may be retained in an account to
18 provide funds for the continuing expenses of the association and for the
19 future discharge of the association's obligations.

20 ~~(n)~~ **(o)** It is proper for a member insurer, in determining its premium
21 rates and policyowner dividends as to any type of insurance within the
22 scope of this chapter, to consider the amount reasonably necessary to
23 meet its assessment obligations under this chapter.

24 ~~(o)~~ **(p)** The association shall issue to each member insurer paying an
25 assessment under this chapter, other than a Class A assessment, a
26 certificate of contribution, in a form prescribed by the commissioner,
27 for the amount of the assessment paid. All outstanding certificates are
28 of equal dignity and priority without reference to amounts or dates of
29 issue. A certificate of contribution may be shown by the member
30 insurer in its financial statement as an asset in the form and for the
31 amount and period of time as the commissioner may approve.

32 SECTION 20. IC 27-8-8-8, AS AMENDED BY P.L.193-2006,
33 SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
34 JULY 1, 2018]: Sec. 8. (a) The commissioner shall do the following:

35 (1) Upon request of the board, provide the association with a
36 statement of the premiums in Indiana and other appropriate states
37 for each member insurer.

38 (2) When an impairment is declared and the amount of the
39 impairment is determined, serve a demand on the impaired
40 insurer to make good the impairment within a reasonable time.
41 Notice to the impaired insurer shall constitute notice to its
42 shareholders. The failure of the **impaired** insurer to promptly



- 1 comply with the demand shall not excuse the association from the
2 performance of its powers and duties under this chapter.
- 3 (3) In any liquidation or rehabilitation proceeding involving a
4 domestic insurer, be appointed as the liquidator or rehabilitator.
- 5 (b) The commissioner may suspend or revoke, after notice and
6 hearing, the certificate of authority to transact insurance in Indiana of
7 a member insurer that fails to pay an assessment when due or fails to
8 comply with the plan of operation. As an alternative, the commissioner
9 may levy a forfeiture on a member insurer that fails to pay an
10 assessment when due. A forfeiture shall not exceed five percent (5%)
11 of the unpaid assessment per month, but no forfeiture shall be less than
12 one hundred dollars (\$100) per month.
- 13 (c) A final action of the association or the board may be appealed to
14 the commissioner by a member insurer if the appeal is taken within
15 sixty (60) days of the member insurer's receipt of notice of the final
16 action being appealed. A final action or order of the commissioner is
17 subject to judicial review in a court with jurisdiction in accordance
18 with the Indiana law that applies to the actions or orders of the
19 commissioner.
- 20 (d) The liquidator, rehabilitator, or conservator of an impaired
21 insurer or insolvent insurer may notify all interested persons of the
22 effect of this chapter.
- 23 SECTION 21. IC 27-8-8-9, AS AMENDED BY P.L.193-2006,
24 SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
25 JULY 1, 2018]: Sec. 9. (a) To aid in the detection and prevention of
26 **member** insurer insolvencies or impairments, the commissioner shall
27 do the following:
- 28 (1) Notify the insurance regulatory authorities of all the other
29 states not more than thirty (30) days after the date an action taken
30 by the commissioner occurs when the commissioner takes any of
31 the following actions against a member insurer:
- 32 (A) Revokes the member insurer's certificate of authority.
33 (B) Suspends the member insurer's certificate of authority.
34 (C) Issues a formal order that the member insurer restrict its
35 premium writing, obtain additional contributions to surplus,
36 withdraw from Indiana, reinsure all or any part of its business,
37 or increase capital, surplus, or any other account for the
38 security of policy owners or creditors.
- 39 (2) Report to the association when the commissioner takes any of
40 the actions set forth in subdivision (1) or when the commissioner
41 has received a report from any other insurance regulatory
42 authority indicating that an action has been taken in another state.



- 1 The report to the association must contain all significant details
 2 of the action taken or of the report received from another
 3 insurance regulatory authority.
- 4 (3) Report to the association when the commissioner has
 5 reasonable cause to believe from an examination, whether
 6 completed or in process, of a member insurer that the member
 7 insurer may be impaired or insolvent.
- 8 (4) Furnish to the association the NAIC Insurance Regulatory
 9 Information System (IRIS) ratios and listings of companies not
 10 included in the ratios developed by the National Association of
 11 Insurance Commissioners. The association may use the
 12 information contained in the ratios and listings in carrying out its
 13 duties and responsibilities under this chapter. The report and the
 14 information contained in the report must be kept confidential by
 15 the association until made public by the commissioner or other
 16 lawful authority.
- 17 (b) The commissioner may seek the advice and recommendations
 18 of the association concerning a matter affecting the commissioner's
 19 duties and responsibilities in regard to the financial condition of
 20 member insurers and ~~companies insurers~~ seeking admission to transact
 21 insurance business in Indiana.
- 22 (c) The association may, upon majority vote by the board, make
 23 reports and recommendations to the commissioner on any matter
 24 germane to the solvency, liquidation, rehabilitation, or conservation of
 25 a member insurer or germane to the solvency of any ~~company insurer~~
 26 seeking to do an insurance business in Indiana. The reports and
 27 recommendations are not public documents.
- 28 (d) The association may, upon majority vote by the board, notify the
 29 commissioner of any information indicating that a member insurer may
 30 be impaired or insolvent.
- 31 (e) The association may, upon majority vote by the board, make
 32 recommendations to the commissioner for the detection and prevention
 33 of **member** insurer insolvencies.
- 34 SECTION 22. IC 27-8-8-10, AS AMENDED BY P.L.193-2006,
 35 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 36 JULY 1, 2018]: Sec. 10. (a) Records must be kept of all meetings of the
 37 board to discuss the activities of the association in carrying out its
 38 powers and duties under sections 5, 5.2, and 5.4 of this chapter.
 39 Records of the association with respect to an impaired insurer or
 40 insolvent insurer must not be disclosed except:
- 41 (1) after the termination of the liquidation, rehabilitation, or
 42 conservation proceeding involving the impaired insurer or



- 1 insolvent insurer; or
 2 (2) upon the order of a court with jurisdiction if the order is made
 3 before the time described in subdivision (1).
 4 This subsection does not limit the duty of the association to submit a
 5 report of its activities under section 12 of this chapter.
- 6 (b) For the purpose of carrying out its obligations under this chapter,
 7 the association is a creditor of the impaired insurer or insolvent insurer
 8 to the extent of assets attributable to covered policies reduced by any
 9 amounts that the association has received, from a person other than the
 10 impaired insurer or insolvent insurer, as subrogee under section 5(m),
 11 5(o), and 5(q) of this chapter. Assets of the impaired insurer or
 12 insolvent insurer attributable to covered policies shall be used to
 13 continue all covered policies and pay all contractual obligations of the
 14 impaired insurer or insolvent insurer as required by this chapter.
 15 "Assets attributable to covered policies", as used in this subsection, is
 16 that proportion of the assets that the reserves that should have been
 17 established for such policies bear to the reserves that should have been
 18 established for all policies of insurance written by the impaired insurer
 19 or insolvent insurer.
- 20 (c) As a creditor of an impaired insurer or insolvent insurer under
 21 subsection (b) and consistent with IC 27-9-3-32, the association and
 22 other similar associations are entitled to receive disbursements of
 23 assets out of the marshaled assets, as the assets become available to
 24 reimburse the association or another similar association, as a credit
 25 against contractual obligations under this chapter. If the liquidator has
 26 not, within one hundred twenty (120) days after a member insurer
 27 becomes an insolvent insurer, made an application to the court for the
 28 approval of a proposal to disburse assets out of marshaled assets to
 29 guaranty associations having obligations because of the insolvency, the
 30 association is entitled to make application to the receivership court for
 31 approval of the association's own proposal to disburse the assets.
- 32 (d) Before the termination of a liquidation, rehabilitation, or
 33 conservation proceeding, the court may take into consideration the
 34 contributions of the respective parties, including the association, the
 35 shareholders, **and the policy owners, and the insureds** of the impaired
 36 insurer or insolvent insurer, and any other party with a bona fide
 37 interest, in making an equitable distribution of the ownership rights of
 38 the impaired insurer or insolvent insurer. In making the determination,
 39 the court shall consider the welfare of the policy owners **and insureds**
 40 of the continuing or successor **member** insurer.
- 41 (e) A distribution to stockholders of an impaired insurer or insolvent
 42 insurer must not be made until the total amount of valid claims of the



1 association, with interest, for funds expended in carrying out the
 2 association's powers and duties under sections 5, 5.2, 5.4, and 5.5 of
 3 this chapter with respect to the impaired insurer or insolvent insurer,
 4 have been fully recovered by the association.

5 SECTION 23. IC 27-8-8-11, AS AMENDED BY P.L.193-2006,
 6 SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 7 JULY 1, 2018]: Sec. 11. (a) Subject to subsections (b) through (d), if
 8 an order for liquidation or rehabilitation of ~~an~~ **a member** insurer
 9 domiciled in Indiana has been entered, the receiver appointed under the
 10 order shall have a right to recover on behalf of the **member** insurer,
 11 from any affiliate that controlled it, the amount of distributions, other
 12 than stock dividends paid by the **member** insurer on its capital stock,
 13 made at any time during the five (5) years preceding the filing of the
 14 petition for liquidation or rehabilitation.

15 (b) A distribution described in subsection (a) is not recoverable if
 16 the **member** insurer shows that when the distribution was paid the
 17 distribution was lawful and reasonable, and that the **member** insurer
 18 did not know and could not reasonably have known that the distribution
 19 might adversely affect the ability of the **member** insurer to fulfill the
 20 **member** insurer's policy and contract obligations.

21 (c) A person who was an affiliate that controlled the **member**
 22 insurer at the time a distribution described in subsection (a) was paid
 23 is liable up to the amount of distributions the person received. A person
 24 who was an affiliate that controlled the **member** insurer at the time the
 25 distributions were declared shall be liable up to the amount of
 26 distributions that would have been received if the distributions had
 27 been paid immediately. If two (2) or more persons are liable with
 28 respect to the same distributions, they are jointly and severally liable.

29 (d) The maximum amount recoverable under this section shall be
 30 the amount needed in excess of all other available assets of the
 31 insolvent insurer to pay the policy and contract obligations of the
 32 insolvent insurer.

33 (e) If a person liable under subsection (c) is insolvent, the affiliates
 34 that controlled the person at the time the distribution was paid shall be
 35 jointly and severally liable for any resulting deficiency in the amount
 36 recovered from the insolvent affiliate.

37 SECTION 24. IC 27-8-8-16.2 IS ADDED TO THE INDIANA
 38 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 39 [EFFECTIVE JULY 1, 2018]: **Sec. 16.2. (a) A member insurer that**
 40 **is not eligible to take a credit under section 16 of this chapter may,**
 41 **after approval by the commissioner, place a surcharge on the**
 42 **member insurer's premiums in a sum reasonably calculated to**



1 **recoup the member insurer's assessments over a reasonable period,**
 2 **as approved by the commissioner.**

3 **(b) Any amount recouped under subsection (a) is not considered**
 4 **to be a premium for any other purpose, including computation of**
 5 **gross premium tax, medical loss ratio, or insurance producer**
 6 **commission.**

7 SECTION 25. IC 27-8-8-18, AS AMENDED BY P.L.193-2006,
 8 SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 9 JULY 1, 2018]: Sec. 18. (a) A person, including ~~an~~ **a member** insurer,
 10 insurance producer, employee, agent, or affiliate of ~~an~~ **a member**
 11 insurer, shall not make, publish, disseminate, circulate, or place before
 12 the public or cause, directly or indirectly, to be made, published,
 13 disseminated, circulated, or placed before the public, in any newspaper,
 14 magazine, or other publication, or in the form of a notice, circular,
 15 pamphlet, letter, or poster, or over any radio station or television
 16 station, or in any other way, an advertisement, an announcement, or a
 17 statement, written or oral, that uses the existence of the association for
 18 the purpose of the sale of, solicitation of, or inducement to purchase
 19 any form of insurance covered by this chapter. This section does not
 20 apply to the association or any other entity that does not sell or solicit
 21 insurance.

22 (b) Not later than January 1, 2007, the association shall:

23 (1) prepare a summary document:

24 (A) describing the general purposes and current limitations of
 25 this chapter; and

26 (B) complying with subsection (c); and

27 (2) submit the summary document to the commissioner for
 28 approval.

29 Sixty (60) days after the date on which the commissioner approves the
 30 summary document, a member insurer may not deliver a policy or
 31 contract to a policy or contract owner unless the summary document is
 32 delivered to the policy or contract owner at the time of delivery of the
 33 policy or contract. The summary document must also be available upon
 34 request by a policy owner. The distribution, delivery, or contents or
 35 interpretation of the summary document does not guarantee that the
 36 policy or contract or the owner of the policy or contract is covered in
 37 the event of the impairment or insolvency of a member insurer. The
 38 summary document must be revised by the association as amendment
 39 to this chapter requires. Failure to receive the summary document does
 40 not give a policy owner, a contract owner, a certificate holder, or an
 41 insured greater rights than the rights specified in this chapter.

42 (c) The summary document prepared under subsection (b) must



1 contain a clear and conspicuous disclaimer on the face of the summary
 2 document. The commissioner shall approve the form and content of the
 3 disclaimer. The disclaimer must, at a minimum, convey all the
 4 following:

5 (1) State the name and address of the association and the
 6 department of insurance.

7 (2) Prominently warn that:

8 (A) the association might not cover the policy or contract; and

9 (B) even if coverage were currently provided, coverage is:

10 (i) subject to substantial limitations and exclusions;

11 (ii) generally conditioned on continued residence in Indiana;

12 and

13 (iii) subject to possible change as a result of future
 14 amendments to this chapter and court decisions.

15 (3) State the types of policies for which the association currently
 16 provides coverage.

17 (4) State that the member insurer and the member insurer's agents
 18 are prohibited by law from using the existence of the association
 19 for the purpose of selling, soliciting, or inducing purchase of any
 20 form of insurance.

21 (5) State that the policy owner or contract owner should not rely
 22 on coverage under this chapter when selecting an insurer.

23 (6) Explain:

24 (A) rights available following; and

25 (B) procedures for filing a complaint to allege;

26 a violation of any provision of this chapter.

27 (7) Provide other information as directed by the commissioner,
 28 including sources for information that:

29 (A) is not proprietary; and

30 (B) is subject to disclosure under IC 5-14-3;

31 concerning the financial condition of an insurer.

32 (d) A member insurer shall retain evidence of compliance with
 33 subsection (b) until the policy or contract for which the notice is given
 34 is no longer in effect.

35 SECTION 26. IC 27-13-36.2-5 IS AMENDED TO READ AS
 36 FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 5. A provider shall
 37 submit only the following forms for payment by a health maintenance
 38 organization:

39 (1) ~~HCFA-1500~~. **CMS-1500**.

40 (2) ~~HCFA-1450 (UB-92)~~. **CMS-1450 (UB-04)**.

41 (3) American Dental Association (ADA) claim form.

42 SECTION 27. IC 27-15-6-2 IS AMENDED TO READ AS



1 FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 2. The plan of
 2 conversion and the amendment to the articles of incorporation of the
 3 converting mutual become effective upon the date and time of ~~approval~~
 4 **return** of the articles of amendment by the secretary of state as
 5 provided in IC 27-1-8-8, unless a later date and time are specified in
 6 the articles of amendment, in which event the plan of conversion and
 7 amendment become effective and take place at the later date and time.

8 SECTION 28. IC 27-18 IS REPEALED [EFFECTIVE JULY 1,
 9 2018]. (Surplus Lines Insurance Compact).

10 SECTION 29. IC 34-30-2-119.8 IS REPEALED [EFFECTIVE
 11 JULY 1, 2018]. ~~Sec. 119.8. IC 27-18-6-1(a) (Concerning:~~

12 ~~(1) the members, officers, executive director, employees, and~~
 13 ~~representatives; and~~

14 ~~(2) the members of the executive committee and of any other~~
 15 ~~committee;~~

16 ~~of the surplus lines insurance multistate compliance compact~~
 17 ~~commission).~~

18 SECTION 30. [EFFECTIVE JULY 1, 2018] (a) As used in this
 19 SECTION, "member insurer" has the meaning set forth in
 20 IC 27-8-8-2, as amended by this act.

21 (b) The amendments made in IC 27-8-8 by this act:

22 (1) do not apply to a member insurer that has been placed
 23 under an order of rehabilitation or liquidation before July 1,
 24 2018; and

25 (2) apply to a member insurer that is placed under an order
 26 of rehabilitation or liquidation after June 30, 2018.

27 (c) This SECTION expires July 1, 2021.



COMMITTEE REPORT

Mr. Speaker: Your Committee on Insurance, to which was referred House Bill 1301, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, line 38, after "to" insert "**at least fifty percent (50%) of**".

Page 2, after line 42, begin a new paragraph and insert:

"SECTION 4. IC 8-2.1-22-46, AS AMENDED BY P.L.1-2006, SECTION 152, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 46. (a) Notwithstanding any other provision of this chapter, common and contract carriers and other carriers engaged in the transportation of passengers or household goods for hire, over regular or irregular routes, whether operating pursuant to a certificate or permit or as an exempt carrier under section 2.1(5) of this chapter, shall file with the department proof of financial responsibility in the form of surety bonds or policies of insurance or shall qualify as a self-insured. The minimum level of financial responsibility required shall be **as follows**:

(1) Except as provided in subdivision (2), the minimum level established under 49 U.S.C. 13906(a)(1).

(2) For contract carriers that transport railroad employees, at least five million dollars (\$5,000,000).

(b) A person who violates this section commits a Class C infraction. However, the offense is a Class A misdemeanor if the person has a prior unrelated judgment for violating this section.

(c) In addition to any other penalty imposed upon a person for a conviction of a Class A misdemeanor under subsection (b), the law enforcement agency may impound the vehicles owned by the person. Unless the vehicle is impounded or forfeited under a law other than this section, the vehicle shall be released to the carrier when the carrier complies with this section."

Page 3, line 41, after "equal to" insert "**at least fifty percent (50%) of**".

Page 4, line 21, after "equal to" insert "**at least fifty percent (50%) of**".

Page 4, delete lines 39 through 42.

Delete pages 5 through 17.

Page 18, delete lines 1 through 15.

Page 24, delete lines 4 through 42.

Page 25, delete lines 1 through 29.

Page 25, between lines 29 and 30, begin a new paragraph and insert:



"SECTION 8. IC 27-7-5-2, AS AMENDED BY P.L.148-2013, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 2. (a) Except as provided in subsections (d), (f), and (h), the insurer shall make available, in each automobile liability or motor vehicle liability policy of insurance which is delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state, insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person and for injury to or destruction of property to others arising from the ownership, maintenance, or use of a motor vehicle, or in a supplement to such a policy, the following types of coverage:

- (1) in limits for bodily injury or death and for injury to or destruction of property not less than those set forth in IC 9-25-4-5 under policy provisions approved by the commissioner of insurance, for the protection of persons insured under the policy who are legally entitled to recover damages from owners or operators of uninsured or underinsured motor vehicles because of bodily injury, sickness or disease, including death, and for the protection of persons insured under the policy who are legally entitled to recover damages from owners or operators of uninsured motor vehicles for injury to or destruction of property resulting therefrom; or
- (2) in limits for bodily injury or death not less than those set forth in IC 9-25-4-5 under policy provisions approved by the commissioner of insurance, for the protection of persons insured under the policy provisions who are legally entitled to recover damages from owners or operators of uninsured or underinsured motor vehicles because of bodily injury, sickness or disease, including death resulting therefrom.

The uninsured and underinsured motorist coverages must be provided by insurers for either a single premium or for separate premiums, in limits at least equal to the limits of liability specified in the bodily injury liability provisions of an insured's policy, unless such coverages have been rejected in writing by the insured. However, underinsured motorist coverage must be made available in limits of not less than fifty thousand dollars (\$50,000). At the insurer's option, the bodily injury liability provisions of the insured's policy may be required to be equal to the insured's underinsured motorist coverage. Insurers may not sell or provide underinsured motorist coverage in an amount less than fifty thousand dollars (\$50,000). Insurers must make underinsured motorist coverage available to all existing policyholders on the date of the first



renewal of existing policies that occurs on or after January 1, 1995, and on any policies newly issued or delivered on or after January 1, 1995. Uninsured motorist coverage or underinsured motorist coverage may be offered by an insurer in an amount exceeding the limits of liability specified in the bodily injury and property damage liability provisions of the insured's policy.

(b) A named insured of an automobile or motor vehicle liability policy has the right, in writing, to:

- (1) reject both the uninsured motorist coverage and the underinsured motorist coverage provided for in this section; or
- (2) reject either the uninsured motorist coverage alone or the underinsured motorist coverage alone, if the insurer provides the coverage not rejected separately from the coverage rejected.

A rejection of coverage under this subsection by a named insured is a rejection on behalf of all other named insureds, all other insureds, and all other persons entitled to coverage under the policy. No insured may have uninsured motorist property damage liability insurance coverage under this section unless the insured also has uninsured motorist bodily injury liability insurance coverage under this section. Following rejection of either or both uninsured motorist coverage or underinsured motorist coverage, unless later requested in writing, the insurer need not offer uninsured motorist coverage or underinsured motorist coverage in or supplemental to a renewal or replacement policy issued to the same insured by the same insurer or a subsidiary or an affiliate of the originally issuing insurer. Renewals of policies issued or delivered in this state which have undergone interim policy endorsement or amendment do not constitute newly issued or delivered policies for which the insurer is required to provide the coverages described in this section.

(c) A rejection under subsection (b) must specify:

- (1) that the named insured is rejecting:
 - (A) the uninsured motorist coverage;
 - (B) the underinsured motorist coverage; or
 - (C) both the uninsured motorist coverage and the underinsured motorist coverage;

that would otherwise be provided under the policy; and

- (2) the date on which the rejection is effective.

(d) ~~An insurer is not required to make available~~ **The following apply to** the coverage described in subsection (a) in **connection with** a commercial umbrella or excess liability policy, including a commercial umbrella or excess liability policy that is issued or delivered to a motor carrier (as defined in IC 8-2.1-17-10) that is in



compliance with the minimum levels of financial responsibility set forth in 49 CFR Part 387:

(1) An insurer is not required to make available in a commercial umbrella or excess liability policy the coverage described in subsection (a).

(2) An insurer that, through a rider or an endorsement, reduces or removes from a commercial umbrella or excess liability policy the coverage described in subsection (a) shall:

(A) through the United States mail; or

(B) by electronic means;

provide to the named insured written notice of the reduction or removal.

(3) An insurer that makes available in a commercial umbrella or excess liability policy the coverage described in subsection (a):

(A) may make available the coverage in limits determined by the insurer; and

(B) is not required to make available the coverage in limits equal to the limits specified in the commercial umbrella or excess liability policy.

(e) A rejection under subsection (b) of uninsured motorist coverage or underinsured motorist coverage in an underlying commercial policy of insurance is also a rejection of uninsured motorist coverage or underinsured motorist coverage in a commercial umbrella or excess liability policy.

(f) An insurer is not required to make available the coverage described in subsection (a) in connection with coverage that:

(1) is related to or included in a commercial policy of property and casualty insurance described in Class 2 or Class 3 of IC 27-1-5-1; and

(2) covers a loss related to a motor vehicle:

(A) of which the insured is not the owner; and

(B) that is used:

(i) by the insured or an agent of the insured; and

(ii) for purposes authorized by the insured.

(g) For purposes of subsection (f), "owner" means:

(1) a person who holds the legal title to a motor vehicle;

(2) a person who rents or leases a motor vehicle and has exclusive use of the motor vehicle for more than thirty (30) days;

(3) the conditional vendee or lessee under an agreement for the conditional sale or lease of a motor vehicle; or

(4) the mortgagor under an agreement for the conditional sale or



lease of a motor vehicle under which the mortgagor has:

(A) the right to purchase; and

(B) an immediate right of possession of;

the motor vehicle upon the performance of the conditions stated in the agreement.

(h) The following apply to the coverage described in subsection (a) in relation to a personal umbrella or excess liability policy:

(1) An insurer is not required to make available the coverage described in subsection (a) under a personal umbrella or excess liability policy.

(2) An insurer that reduces or removes, through a rider or an endorsement, coverage described in subsection (a) under a personal umbrella or excess liability policy shall:

(A) through the United States mail; or

(B) by electronic means;

provide to the named insured written notice of the reduction or removal.

(3) An insurer that makes available the coverage described in subsection (a) under a personal umbrella or excess liability policy:

(A) may make available the coverage in limits determined by the insurer; and

(B) is not required to make available the coverage in limits equal to the limits specified in the personal umbrella or excess liability policy."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1301 as introduced.)

CARBAUGH

Committee Vote: yeas 10, nays 1.

