

## HOUSE BILL No. 2810

By Committee on Federal and State Affairs

Requested by Travis Grauerholz on behalf of the American council of life insurers

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1 AN ACT concerning insurance; relating to the Kansas life and health  
2 insurance guaranty association; including health maintenance  
3 organizations as member insurers therein; broadening the assessment  
4 base for long-term care insolvencies; amending K.S.A. 40-3002, 40-  
5 3003, 40-3005, 40-3006, 40-3007, 40-3008, 40-3009, 40-3010, 40-  
6 3011, 40-3012, 40-3013, 40-3013a, 40-3016 and 40-3018 and repealing  
7 the existing sections; also repealing K.S.A. 40-3004.  
8

9 *Be it enacted by the Legislature of the State of Kansas:*

10 New Section 1. (a) All matters relating to the insolvency or  
11 impairment of any member insurer placed under an order of liquidation by  
12 a court of competent jurisdiction with a finding of insolvency before the  
13 effective date, or for which the association otherwise exercises its powers  
14 and duties under K.S.A. 40-3008, and amendments thereto, before July 1,  
15 2024, including past, present and future assessments and credits, shall be  
16 governed by the provisions of this act that were in effect before July 1,  
17 2024.

18 (b) All matters relating to the insolvency or impairment of any  
19 member insurer placed under an order of liquidation by a court of  
20 competent jurisdiction with a finding of insolvency on or after the  
21 effective date of this section, or for which the association otherwise  
22 exercises its powers and duties under K.S.A. 40-3008, and amendments  
23 thereto, on or after July 1, 2024, shall be governed by the provisions of the  
24 act in effect on the date such actions are officially taken.

25 Sec. 2. K.S.A. 40-3002 is hereby amended to read as follows: 40-  
26 3002. (a) The purpose of this act is to protect, subject to certain limitations,  
27 the persons specified in ~~subsection (a) of~~ K.S.A. 40-3003, and  
28 amendments thereto, against failure in the performance of contractual  
29 obligations, under life ~~and~~ health insurance policies and annuity policies,  
30 plans and contracts specified in ~~subsection (b) of~~ K.S.A. 40-3003, and  
31 amendments thereto, because of the impairment or insolvency of the  
32 member insurer that issued the policies or contracts.

33 (b) To provide this protection, an association of *member* insurers is  
34 created to pay benefits and to continue coverages as limited herein, and  
35 members of the association are subject to assessment to provide funds to

1 carry out the purpose of this act.

2 Sec. 3. K.S.A. 40-3003 is hereby amended to read as follows: 40-  
3 3003. (a) This act shall provide coverage; for the policies, *plans* and  
4 contracts specified in subsection (b), for:

5 (1) Persons who, regardless of where they reside, except for  
6 nonresident certificate holders under group policies or contracts, are the  
7 beneficiaries, assignees, payees or providers of the persons covered under  
8 paragraph (2); and

9 (2) persons who are ~~owners~~ *policyholders or contract holders* of or  
10 certificate holders *or enrollees* under such policies or contracts other than  
11 structured settlement annuities, and who *are*:

12 (A) ~~Are~~ Residents;

13 (B) ~~are~~ not residents, but only with respect to an annuity contract  
14 awarded pursuant to K.S.A. 60-3407 or 60-3409, and amendments thereto,  
15 an annuity contract for future economic loss procured pursuant to a  
16 settlement agreement in a medical malpractice liability action, as defined  
17 by K.S.A. 60-3401, and amendments thereto, or fixed-return accounts of  
18 the Kansas public employees deferred compensation plan under K.S.A.  
19 74-49b08 through 74-49b14, and amendments thereto; or

20 (C) ~~are~~ not residents, but only under all of the following conditions:

21 (i) The *member* insurers ~~which~~ *that* issued such policies or contracts  
22 are domiciled in this state;

23 (ii) the states in which such persons reside have one or more  
24 associations similar to the association created by this act; *and*

25 (iii) the persons are not eligible for coverage by an association in any  
26 other state due to the fact that the insurer *or health maintenance*  
27 *organization* was not licensed in the state at the time specified in the state's  
28 guaranty association law.

29 (3) (A) Paragraphs (1) and (2) of this subsection shall not apply to  
30 structured settlement annuities.

31 (B) Except as provided in paragraphs (4) and (5) of this subsection,  
32 this act shall provide coverage to a person who is a payee under a  
33 structured settlement annuity, or beneficiary of a payee if the payee is  
34 deceased, if the payee:

35 (i) (a) Is a resident, regardless of where the contract holder resides; or

36 (b) is not a resident, but only under both of the following conditions:

37 (1) The contract holder of the structured settlement annuity is a  
38 resident; or

39 (2) the contract holder of the structured settlement annuity is not a  
40 resident; but:

41 (A) The insurer that issued the structured settlement annuity is  
42 domiciled in this state; and

43 (B) the state in which the contract holder resides has an association

1 similar to the association created by this act; and  
 2 (ii) neither the payee or beneficiary nor the contract holder is eligible  
 3 for coverage by the association of the state in which the payee or contract  
 4 holder resides.

5 (4) This act shall not provide coverage to a person who:

6 (A) Is a payee or beneficiary of a contract holder resident of this state,  
 7 if the payee or beneficiary is afforded any coverage by the association of  
 8 another state; or

9 (B) *acquires rights to receive payments through a structured*  
 10 *settlement factoring transaction as defined in 26 U.S.C. 5891(c)(3)(A),*  
 11 *regardless of whether the transaction occurred before or after such section*  
 12 *became effective.*

13 (5) This act is intended to provide coverage to a person who is a  
 14 resident of this state and, in special circumstances, to a nonresident. In  
 15 order to avoid duplicate coverage, if a person who would otherwise  
 16 receive coverage under this act is provided coverage under the laws of any  
 17 other state, the person shall not be provided coverage under this act. In  
 18 determining the application of the provisions of this paragraph in  
 19 situations where a person could be covered by the association of more than  
 20 one state, whether as a *policyholder*, contract holder, payee, *enrollee*,  
 21 beneficiary or assignee, this act shall be construed in conjunction with  
 22 other state laws to result in coverage by only one association.

23 (b) (1) This act shall provide coverage to the persons specified in  
 24 subsection (a) for *policies or contracts of direct, nongroup life insurance,*  
 25 *health; insurance or ~~annuity policies or contracts;~~ annuities and*  
 26 *supplemental contracts or unallocated annuity contracts covering*  
 27 *individuals participating in a governmental deferred compensation plan*  
 28 *established under section 457 of the U.S. internal revenue code pursuant to*  
 29 *K.S.A. 74-49b08 through 74-49b14, and amendments thereto, whether or*  
 30 *not a resident, or the beneficiaries of each such individual if deceased, and*  
 31 *for certificates under direct group policies and contracts issued by member*  
 32 *insurers, except as limited by this act.*

33 (2) *As used in this act, health insurer includes health maintenance*  
 34 *organization subscriber contracts and certificates.*

35 Sec. 4. K.S.A. 40-3005 is hereby amended to read as follows: 40-  
 36 3005. As used in this act:

37 (a) "Account" means ~~either~~ *any* of the three accounts created under  
 38 K.S.A. 40-3006, and amendments thereto;

39 (b) "association" means the Kansas life and health insurance guaranty  
 40 association created under K.S.A. 40-3006, and amendments thereto;

41 (c) "commissioner" means the commissioner of insurance of this  
 42 state;

43 (d) "contractual obligation" means any obligation of a policy or

1 contract or certificate under a group policy or contract, or portion thereof,  
 2 for which coverage is provided under K.S.A. 40-3003, and amendments  
 3 thereto;

4 (e) *"covered contract" or "covered policy" means any policy or*  
 5 *contract within the scope of this act for which coverage is provided under*  
 6 *K.S.A. 40-3003, and amendments thereto;*

7 (f) *"extra-contractual claims" shall include, for example, claims*  
 8 *relating to bad faith in the payment of claims, punitive or exemplary*  
 9 *damages or attorney fees and costs;*

10 (g) *"health benefit plan" means any hospital or medical expense*  
 11 *policy or certificate, or health maintenance organization subscriber*  
 12 *contract or any other similar health contract. "Health benefit plan" does*  
 13 *not include:*

14 (1) *Accident only insurance;*

15 (2) *credit insurance;*

16 (3) *dental only insurance;*

17 (4) *vision only insurance;*

18 (5) *medicare supplement insurance;*

19 (6) *benefits for long-term care, home healthcare, community-based*  
 20 *care or any combination thereof;*

21 (7) *disability income insurance;*

22 (8) *coverage for on-site medical clinics; and*

23 (9) *specified disease, hospital confinement indemnity or limited*  
 24 *benefit health insurance if the types of coverage do not provide*  
 25 *coordination of benefits and are provided under separate policies or*  
 26 *certificates;*

27 (h) *"impaired insurer" means a member insurer which, after the*  
 28 *effective date of this act, is not an insolvent insurer, and is placed under an*  
 29 *order of rehabilitation or conservation by a court of competent jurisdiction;*

30 ~~(g)~~(i) *"insolvent insurer" means a member insurer which, after the*  
 31 *effective date of this act, is placed under an order of liquidation by a court*  
 32 *of competent jurisdiction with a finding of insolvency;*

33 ~~(h)~~(j) *"member insurer" means any insurer or health maintenance*  
 34 *organization licensed or holding a certificate of authority to transact in this*  
 35 *state any kind of insurance or health maintenance organization business*  
 36 *for which coverage is provided under K.S.A. 40-3003, and amendments*  
 37 *thereto, and includes any insurer or health maintenance organization*  
 38 *whose license or certificate of authority in this state may have been*  
 39 *suspended, revoked, nonrenewed or voluntarily withdrawn, but does not*  
 40 *include:*

41 (1) *A hospital or medical service organization regardless of whether*  
 42 *such hospital or medical service organization is organized for profit or not-*  
 43 *for-profit;*

1       (2) ~~a health maintenance organization;~~  
 2       ~~(3) a fraternal benefit society;~~  
 3       ~~(4)(3) a mandatory state pooling plan;~~  
 4       ~~(5)(4) a mutual assessment company or any entity that operates on an~~  
 5       assessment basis;  
 6       ~~(6)(5) an insurance exchange, except a reciprocal or interinsurance~~  
 7       exchange governed by the provisions of article 16 of chapter 40 of the  
 8       Kansas Statutes Annotated, and amendments thereto; ~~or~~  
 9       (6) *an organization that has a certificate or license limited to the*  
 10       *issuance of charitable gift annuities; or*  
 11       (7) any entity similar to any of the organizations listed in paragraphs  
 12       (1) through (6) ~~inclusive;~~  
 13       ~~(j)(k)~~ "(k) "Moody's corporate bond yield average" means the monthly  
 14       average corporates as published by Moody's investors service, inc., or any  
 15       successor thereto;  
 16       ~~(j)(l)~~ "(l) "person" means any individual, corporation, partnership,  
 17       association, voluntary organization or provider;  
 18       ~~(k)(m)~~ "(m) "policyholder" and "contract holder" means the person who is  
 19       identified as the legal owner under the terms of the policy or contract or  
 20       who is otherwise vested with legal title to the policy or contract through a  
 21       valid assignment completed in accordance with the terms of the policy or  
 22       contract and properly recorded as the owner on the books of the *member*  
 23       insurer. The terms "policyholder" and "contract holder" do not include  
 24       persons with a mere beneficial interest in a policy or contract;  
 25       ~~(k)(n)~~ "(n) "provider" means a person who is entitled to receive  
 26       compensation for providing medical services to an insured *or enrollee*  
 27       covered under any health insurance *or health maintenance organization*  
 28       contract, *certificate* or policy issued by a member insurer, regardless of  
 29       whether the provider is obligated by statute or by agreement with the  
 30       member insurer to hold any insured *or enrollee* covered by any health  
 31       insurance *or health maintenance organization* contract, *certificate* or  
 32       policy harmless from liability for services;  
 33       ~~(m)(o)~~ "(o) "premiums" means amounts received on covered policies or  
 34       contracts less premiums, considerations and deposits returned thereon, and  
 35       less dividends and experience credits thereon. Premiums does not include  
 36       any amounts received for any policies or contracts or for the portions of  
 37       any policies or contracts for which coverage is not provided under  
 38       ~~subsection (b) of K.S.A. 40-3003, and amendments thereto, except that~~  
 39       assessable premiums shall not be reduced on accounts for ~~subsection (n)~~  
 40       ~~(3) of K.S.A. 40-3008, and amendments thereto, relating to interest~~  
 41       limitations and ~~subsection (o)(2) of K.S.A. 40-3008, and amendments~~  
 42       thereto, relating to limitations with respect to any one life and any one  
 43       *policyholder or contract holder*. Premiums shall not include:

- 1 (1) Any premiums on any unallocated annuity contract; or
- 2 (2) any premiums in excess of \$5,000,000 with respect to multiple
- 3 nongroup policies of life insurance owned by one policyholder *or contract*
- 4 *holder*, regardless of the number of policies or contracts held by the
- 5 policyholder *or contract holder* and regardless of whether:

- 6 (A) The policyholder is an individual, firm, corporation or other
- 7 person; and

- 8 (B) the persons insured are officers, managers, employees or other
- 9 persons;

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

20 ~~(i)~~(q) "structured settlement annuity" means an annuity purchased in  
 21 order to fund periodic payments for a plaintiff or other claimant in  
 22 payment for or with respect to personal injury suffered by the plaintiff or  
 23 other claimant, but excludes an annuity policy or contract awarded  
 24 pursuant to K.S.A. 60-3407 or 60-3409, and amendments thereto;

25 ~~(j)~~(r) "supplemental contract" means any written agreement entered  
 26 into for the distribution of proceeds under a life, health or annuity policy  
 27 or contract; and

28 ~~(k)~~(s) "unallocated annuity contract" means any annuity contract or  
 29 group annuity certificate ~~which~~ *that* is not issued to and owned by an  
 30 individual, except to the extent of any annuity benefits guaranteed to an  
 31 individual by an insurer under such contract or certificate.

32 Sec. 5. K.S.A. 40-3006 is hereby amended to read as follows: 40-  
 33 3006. (a) There is hereby created a nonprofit legal entity to be known as  
 34 the Kansas life and health insurance guaranty association. All member  
 35 insurers shall be and remain members of the association as a condition of  
 36 their *license or authority to transact insurance or health maintenance*  
 37 *organization business* in this state. The association shall perform its  
 38 functions under the plan of operation established and approved under  
 39 K.S.A. 40-3010, and amendments thereto, and shall exercise its powers  
 40 through a board of directors established under K.S.A. 40-3007, and  
 41 amendments thereto. For purposes of administration and assessment, the  
 42 association shall maintain three accounts; *the*

- 43 (1) ~~The Health insurance~~ account;

1 (2) ~~the~~ life insurance account; and

2 (3) ~~the~~ annuity account, excluding unallocated annuities.

3 (b) The association shall come under the immediate supervision of  
4 the commissioner and shall be subject to the applicable provisions of the  
5 insurance laws of this state. Meetings or records of the association may be  
6 opened upon majority vote of the board of directors of the association.

7 Sec. 6. K.S.A. 40-3007 is hereby amended to read as follows: 40-  
8 3007. (a) The board of directors of the association shall consist of not ~~less~~  
9 *fewer* than five nor more than nine member insurers serving terms as  
10 established in the plan of operation. The members of the board shall be  
11 selected by member insurers subject to the approval of the commissioner.  
12 Vacancies on the board shall be filled for the remaining periods of the  
13 terms by a majority vote of the remaining board members, subject to the  
14 approval of the commissioner. ~~To select the initial board of directors, and~~  
15 ~~initially organize the association, the commissioner shall give notice to all~~  
16 ~~member insurers of the time and place of the organizational meeting. In~~  
17 ~~determining voting rights at the organizational meeting each member~~  
18 ~~insurer shall be entitled to one vote in person or by proxy. If the board of~~  
19 ~~directors is not selected within 60 days after notice of the organizational~~  
20 ~~meeting, the commissioner may appoint the initial members.~~

21 (b) In approving selections or in appointing members to the board,  
22 the commissioner shall consider, among other things, whether all member  
23 insurers are fairly represented.

24 (c) Members of the board may be reimbursed from the assets of the  
25 association for expenses incurred by them as members of the board of  
26 directors but members of the board shall not otherwise be compensated by  
27 the association for their services.

28 (d) *The terms of each member appointed and serving on the board of*  
29 *directors as of July 1, 2024, shall continue until the expiration of each*  
30 *member's current term. Upon expiration of each member's term, the*  
31 *commissioner shall decide whether to continue each member's position on*  
32 *the board or reduce the number of members of the board of directors in*  
33 *accordance with paragraph (e).*

34 (e) *On and after January 1, 2025, the board of directors shall consist*  
35 *of not fewer than five, but not more than nine members appointed in*  
36 *accordance with this paragraph. Members of the board of directors shall*  
37 *be selected by member insurers subject to the approval of the*  
38 *commissioner. Each member of the board of directors shall be appointed*  
39 *for a term of three years except that members shall be removable by the*  
40 *commissioner for inefficiency, neglect of duty or malfeasance.*

41 Sec. 7. K.S.A. 40-3008 is hereby amended to read as follows: 40-  
42 3008. (a) If a member insurer is an impaired insurer, the association may,  
43 in its discretion and subject to any conditions imposed by the association

1 that do not impair the contractual obligations of the impaired insurer and  
2 that are approved by the commissioner that:

3 (1) Guarantee, assume, *reissue* or reinsure, or cause to be guaranteed,  
4 assumed, *reissued* or reinsured, any or all of the policies or contracts of  
5 the impaired insurer; and

6 (2) provide such moneys, pledges, loans, notes, guarantees or other  
7 means as are proper to effectuate the provisions of paragraph (1) and  
8 assure payment of the contractual obligations of the impaired insurer  
9 pending action under paragraph (1).

10 (b) If a member insurer is an insolvent insurer, the association shall,  
11 in its discretion, either:

12 (1) (A) (i) Guarantee, assume, *reissue* or reinsure; or cause to be  
13 guaranteed, assumed or reinsured, the policies or contracts of the insolvent  
14 insurer; or

15 (ii) assure payment of the contractual obligations of the insolvent  
16 insurer; and

17 (B) provide such moneys, pledges, loans, notes, guarantees or other  
18 means as are reasonably necessary to discharge such duties; or

19 (2) with respect to ~~life and health insurance policies and annuities~~  
20 *policies and contracts*, provide benefits and coverages in accordance with  
21 subsection (c).

22 (c) When proceeding under ~~paragraph (2)~~ of subsection (b)(2), the  
23 association shall:

24 (1) Assure payment of benefits for premiums identical to the  
25 premiums and benefits, ~~except for terms of conversion and renewability,~~  
26 that would have been payable under the policies or contracts of the  
27 insolvent insurer, for claims incurred:

28 (A) With respect to group policies and contracts, not later than the  
29 earlier of the next renewal date under such policies or contracts or 45 days,  
30 but in no event less than 30 days, after the date on which the association  
31 becomes obligated with respect to such policies and contracts;

32 (B) with respect to nongroup policies, contracts and annuities not  
33 later than the earlier of the next renewal date, if any, under such policies or  
34 contracts or one year, but in no event less than 30 days, from the date on  
35 which the association becomes obligated with respect to such policies or  
36 contracts;

37 (2) make diligent efforts to provide all known insureds, *enrollees*,  
38 annuitants or group policyholders *or contract holders* with respect to  
39 group policies and contracts, 30 days' notice of the termination of the  
40 benefits provided; and

41 (3) with respect to ~~nongroup life and health insurance policies and~~  
42 ~~annuities~~ *policies and contracts covered by the association*, make available  
43 to each known insured, *enrollee* or annuitant, or owner if other than the



1 insured or annuitant, and with respect to an individual formerly an insured,  
2 *enrollee*, or an annuitant under a group policy *or contract* who is not  
3 eligible for replacement group coverage, make available substitute  
4 coverage on an individual basis in accordance with the provisions of  
5 paragraph (4), if the insureds, *enrollees* or annuitants had a right under law  
6 or the terminated policy, *contract* or annuity to convert coverage to  
7 individual coverage or to continue an individual policy, *contract* or annuity  
8 in force until a specified age or for a specified time, during which the  
9 insurer *or health maintenance organization* had no right unilaterally to  
10 make changes in any provision of the policy, *contract* or annuity or had a  
11 right only to make changes in premium by class;

12 (4) (A) in providing the substitute coverage required under paragraph  
13 (3), the association may offer either to reissue the terminated coverage or  
14 to issue an alternative policy *or contract at actuarially justified rates*;

15 (B) alternative or reissued policies *or contracts* shall be offered  
16 without requiring evidence of insurability, and shall not provide for any  
17 waiting period or exclusion that would not have applied under the  
18 terminated policy *or contract*; and

19 (C) the association may reinsure any alternative or reissued policy *or*  
20 *contract*;

21 (5) (A) alternative policies *or contracts* adopted by the association  
22 shall be subject to the approval of the commissioner. The association may  
23 adopt alternative policies *or contracts* of various types for future issuance  
24 without regard to any particular impairment or insolvency;

25 (B) alternative policies *or contracts* shall contain at least the  
26 minimum statutory provisions required in this state and provide benefits  
27 that shall not be unreasonable in relation to the premiums charged. The  
28 association shall set the premiums in accordance with a table of rates  
29 ~~which~~ *that* it shall adopt. The premiums shall reflect the amount of  
30 insurance *or coverage* to be provided and the age and class of risk of each  
31 insured *or enrollee*, but shall not reflect any changes in the health of the  
32 insured *or enrollee* after the original policy *or contract* was last  
33 underwritten;

34 (C) any alternative policy *or contract* issued by the association shall  
35 provide coverage of a type similar to that of the policy *or contract* issued  
36 by the impaired or insolvent insurer, as determined by the association;

37 (6) if the association elects to reissue the insured's terminated  
38 coverage at a premium rate different from that charged under the  
39 terminated policy *or contract*, the premium shall be *actuarially justified*  
40 *and* set by the association in accordance with the amount of insurance *or*  
41 *coverage* provided and the age and class of risk, subject to *prior* approval  
42 of the domiciliary insurance commissioner and the receivership court.

43 (d) The association's obligations with respect to coverage under any

1 policy *or contract* of the impaired or insolvent insurer or under any  
2 reissued or alternative policy *or contract* shall cease on the date such  
3 coverage or policy *or contract* is replaced by another similar policy *or*  
4 *contract* by the policyholder *or contract holder*, the insured, *the enrollee* or  
5 the association.

6 (e) When proceeding under ~~paragraph (2)~~ of subsection (b)(2) with  
7 respect to any policy or contract carrying guaranteed minimum interest  
8 rates, the association shall assure the payment or crediting of a rate of  
9 interest consistent with subsection ~~(n)(3)(o)(3)~~.

10 (f) Nonpayment of premiums within 31 days after the date required  
11 under the terms of any guaranteed, assumed, alternative or reissued policy  
12 or contract or substitute coverage shall terminate the association's  
13 obligations under such policy, *contract* or coverage under this act with  
14 respect to such policy, *contract* or coverage, except with respect to any  
15 claims incurred or any net cash surrender value ~~which~~ *that* may be due in  
16 accordance with the provisions of this act.

17 (g) Premiums due after entry of an order of liquidation of an  
18 insolvent insurer shall belong to and be payable at the direction of the  
19 association, and the association shall be liable for unearned premiums due  
20 to ~~policy or contract owners~~ *policyholders or contract holders* arising after  
21 the entry of such order.

22 (h) The protection provided by this act shall not apply where any  
23 guaranty protection is provided to residents of this state by the laws of the  
24 domiciliary state or jurisdiction of the impaired or insolvent insurer other  
25 than this state.

26 (i) In carrying out its duties under subsection (b), the association may,  
27 subject to approval by a court in this state:

28 (1) Impose permanent policy or contract liens in connection with any  
29 guarantee, assumption or reinsurance agreement, if the association finds  
30 that the amounts ~~which~~ *that* can be assessed under this act are less than the  
31 amounts needed to assure full and prompt performance of the association's  
32 duties under this act, or that the economic or financial conditions as they  
33 affect member insurers are sufficiently adverse to render the imposition of  
34 such permanent policy or contract liens to be in the public interest; and

35 (2) impose temporary moratoriums or liens on payments of cash  
36 values and policy loans, or any other right to withdraw funds held in  
37 conjunction with policies or contracts, in addition to any contractual  
38 provisions for deferral of cash or policy loan value. *In addition, in the*  
39 *event of a temporary moratorium or moratorium charge imposed by the*  
40 *receivership court on payment of cash values or policy loans or on any*  
41 *other right to withdraw funds held in conjunction with policies or*  
42 *contracts, out of the assets of the impaired or insolvent insurer, the*  
43 *association may defer the payment of cash values, policy loans or other*

1 *rights by the association for the period of the moratorium or moratorium*  
2 *charge imposed by the receivership court, except for claims covered by the*  
3 *association to be paid in accordance with a hardship procedure*  
4 *established by the liquidator or rehabilitator and approved by the*  
5 *receivership court.*

6 (j) *A deposit in this state, held pursuant to law or required by the*  
7 *commissioner for the benefit of creditors, including policyholders or*  
8 *contract holders, not turned over to the domiciliary liquidator upon the*  
9 *entry of a final order of liquidation or order approving a rehabilitation*  
10 *plan of a member insurer domiciled in this state or in a reciprocal state,*  
11 *pursuant to K.S.A. 40-222b, and amendments thereto, shall be promptly*  
12 *paid to the association. The association shall be entitled to retain a*  
13 *portion of any amount so paid equal to the percentage determined by*  
14 *dividing the aggregate amount of policyholders' or contract holders'*  
15 *claims related to that insolvency for which the association has provided*  
16 *statutory benefits by the aggregate amount of all policyholders' or*  
17 *contract holders' claims in this state related to that insolvency and shall*  
18 *remit to the domiciliary receiver the amount so paid to the association less*  
19 *the amount retained pursuant to this subsection. Any amount so paid to the*  
20 *association and retained by such association shall be treated as a*  
21 *distribution of estate assets pursuant to applicable state receivership law*  
22 *dealing with early access disbursements.*

23 (k) *If the association fails to act within a reasonable period of time as*  
24 *provided in subsections (b) and (c), the commissioner shall have the*  
25 *powers and duties of the association under this act with respect to impaired*  
26 *or insolvent insurers.*

27 ~~(l)~~ *The association may render assistance and advice to the*  
28 *commissioner, upon request, concerning rehabilitation, payment of claims,*  
29 *continuance of coverage or the performance of other contractual*  
30 *obligations of any impaired or insolvent insurer.*

31 ~~(m)~~ (1) *The association shall have standing to appear or intervene*  
32 *before any court in this state with jurisdiction over:*

33 (A) *An impaired or insolvent insurer concerning which the*  
34 *association is or may become obligated under this act; or*

35 (B) *any person or property against which the association may have*  
36 *rights through subrogation or otherwise.*

37 (2) *Such standing shall extend to all matters germane to the powers*  
38 *and duties of the association, including, but not limited to, proposals for*  
39 *reinsuring, reissuing or guaranteeing the covered policies of the impaired*  
40 *or insolvent insurer and the determination of the covered policies or*  
41 *contracts and contractual obligations.*

42 (3) *The association shall also have the right to appear or intervene*  
43 *before a court in another state with jurisdiction over an impaired or*

1 insolvent insurer for which the association is or may become obligated or  
2 with jurisdiction over ~~a third party~~ *any person or property* against whom  
3 the association may have rights through subrogation ~~of the insurer's~~  
4 ~~policyholders or otherwise.~~

5 ~~(m)~~(n) (1) Any person receiving benefits under this act shall be  
6 deemed to have assigned the rights under, *and* any cause of action relating  
7 to, the covered policy or contract to the association to the extent of the  
8 benefits received because of this act, whether the benefits are payments of  
9 or on account of contractual obligations, continuation of coverage or  
10 provision of substitute or alternative *policies, contracts or coverages*. The  
11 association may require an assignment to it of such rights and cause of  
12 action by any *enrollee, payee, policy or contract owner policyholder,*  
13 *contract holder, beneficiary, insured or annuitant* as a condition precedent  
14 to the receipt of any right or benefits conferred by this act upon such  
15 person.

16 (2) The subrogation rights of the association under this subsection  
17 shall have the same priority against the assets of the impaired or insolvent  
18 insurer as that possessed by the person entitled to receive benefits under  
19 this act.

20 (3) In addition to paragraphs (1) and (2), the association shall have all  
21 common-law rights of subrogation and any other equitable or legal remedy  
22 ~~which~~ *that* would have been available to the impaired or insolvent insurer  
23 ~~or holder of a policy policyholder or contract holder, beneficiary, enrollee~~  
24 ~~or payee of a policy or contract~~ with respect to such policy or contracts,  
25 *including, without limitation, in the case of a structured settlement*  
26 *annuity, any rights of the owner, beneficiary or payee of the annuity, to the*  
27 *extent of benefits received pursuant to this act, against a person originally*  
28 *or by succession responsible for the losses arising from the personal*  
29 *injury relating to the annuity or payment therefor, excepting any such*  
30 *person responsible solely by reason of serving as an assignee regarding a*  
31 *qualified assignment pursuant to 26 U.S.C. § 130.*

32 (4) *If the preceding provisions of this subsection are invalid or*  
33 *ineffective with respect to any person or claim for any reason, the amount*  
34 *payable by the association with respect to the related covered obligations*  
35 *shall be reduced by the amount realized by any other person with respect*  
36 *to the person or claim that is attributable to the policies or contracts, or*  
37 *portion thereof, covered by the association.*

38 (5) *If the association has provided benefits with respect to a covered*  
39 *obligation and a person recovers amounts as to which the association has*  
40 *rights as described in the preceding paragraphs of this subsection, then*  
41 *the person shall pay to the association the portion of the recovery*  
42 *attributable to the policies or contracts, or portion thereof, covered by the*  
43 *association.*

1       ~~(n)(o)~~ The contractual obligations of the impaired or insolvent insurer  
 2 for which the association becomes, or may become, liable shall be as great  
 3 as ~~but no greater than the contractual obligations of the impaired or~~  
 4 ~~insolvent insurer would have been in the absence of an impairment or~~  
 5 ~~insolvency unless such obligations are reduced as permitted by this act~~  
 6 ~~but~~ Except for subsection (p), the association shall not provide coverage  
 7 for:

8       (1) Any portion of a policy or contract not guaranteed by the *member*  
 9 insurer, or under which the risk is borne by the ~~policy~~ *policyholder* or  
 10 contract holder;

11       (2) any policy or contract of reinsurance, unless assumption  
 12 certificates have been issued;

13       (3) any portion of a policy or contract to the extent that the rate of  
 14 interest on which it is based, or the interest rate, crediting rate or similar  
 15 factor determined by use of an index or other external reference stated in  
 16 the policy or contract employed in calculating returns or changes in value:

17       (A) Averaged over the period of four years prior to the date on which  
 18 the association becomes obligated with respect to such policy or contract,  
 19 exceeds a rate of interest determined by subtracting two percentage points  
 20 from Moody's corporate bond yield average averaged for that same four-  
 21 year period or for such lesser period if the policy or contract was issued  
 22 less than four years before the association became obligated; and

23       (B) on and after the date on which the association becomes obligated  
 24 with respect to such policy or contract, exceeds the rate of interest  
 25 determined by subtracting three percentage points from Moody's corporate  
 26 bond yield average as most recently available;

27       (4) any plan or program of an employer, association or similar entity  
 28 to provide life, health or annuity benefits to its employees or members to  
 29 the extent that such plan or program is self-funded or uninsured, including,  
 30 but not limited to, benefits payable by an employer, association or similar  
 31 entity under:

32       (A) A multiple employer welfare arrangement as defined in ~~section 3~~  
 33 ~~(40) of the employee retirement income security act of 1974 (29 U.S.C. §~~  
 34 ~~1002(40)) 29 U.S.C. § 1144;~~

35       (B) a minimum premium group insurance plan;

36       (C) a stop-loss group insurance plan; or

37       (D) an administrative services only contract;

38       (5) any portion of a policy or contract to the extent that it provides  
 39 dividends or experience rating credits, *voting rights* or provides that any  
 40 fees or allowances be paid to any person, including the ~~policy~~ *policyholder*  
 41 or contract holder, in connection with the service to or administration of  
 42 such policy or contract;

43       (6) any policy or contract issued in this state by a member insurer at a

- 1 time when it was not licensed or did not have a certificate of authority to  
 2 issue such policy or contract in this state;
- 3 (7) any unallocated annuity contract, except as provided in ~~subsection~~  
 4 ~~(b)~~ of K.S.A. 40-3003, and amendments thereto;
- 5 (8) *a portion of a policy or contract to the extent that the assessments*  
 6 *required by K.S.A. 40-3009, and amendments thereto, with respect to the*  
 7 *policy or contract are preempted by federal or state law;*
- 8 (9) *an obligation that does not arise under the express written terms*  
 9 *of the policy or contract issued by the member insurer to the enrollee,*  
 10 *certificate holder, contract holder or policyholder, including, without*  
 11 *limitation:*
- 12 (A) *Claims based on marketing materials;*
- 13 (B) *claims based on side letters, riders or other documents that were*  
 14 *issued by the member insurer without meeting applicable policy or*  
 15 *contract form filling or approval requirements;*
- 16 (C) *misrepresentations of or regarding policy or contract benefits;*
- 17 (D) *extra contractual claims; or*
- 18 (E) *a claim for penalties or consequential or incidental damages;*
- 19 (10) *a contractual agreement that establishes the member insurer's*  
 20 *obligations to provide a book value accounting guaranty for defined*  
 21 *contribution benefit plan participants by reference to a portfolio of assets*  
 22 *that is owned by the benefit plan or its trustee, and, in each case, is not an*  
 23 *affiliate of the member insurer;*
- 24 (11) *a policy or contract providing any hospital, medical, prescription*  
 25 *drug or other ~~health care~~ healthcare benefits pursuant to part C or part D*  
 26 *of subchapter XVIII, chapter 7 of title 42 of the United States code ~~(,~~*  
 27 *commonly known as medicare part C ~~&~~ and D), or subchapter xix,*  
 28 *chapter 7 of title 42 of the United States code, commonly known as*  
 29 *medicaid, or any regulations issued pursuant thereto; ~~or~~*
- 30 ~~(9)~~(12) (A) any portion of a policy or contract:
- 31 (i) To the extent it provides for interest or other changes in value to be  
 32 determined by the use of an index or other external reference stated in the  
 33 policy or contract; but which have not been credited to the policy or  
 34 contract; or
- 35 (ii) as to which the ~~policy~~ *policyholder* or ~~contract owner's~~ *holder's*  
 36 rights are subject to forfeiture, as of the date the member insurer becomes  
 37 an impaired or insolvent insurer under this act; whichever is earlier.
- 38 (B) If a policy's or contract's interest or changes in value are credited  
 39 less frequently than annually, then for purposes of determining the values  
 40 that have been credited and ~~which~~ are not subject to forfeiture under this  
 41 paragraph, the interest or change in value determined by using the  
 42 procedures defined in the policy or contract shall be credited as if the  
 43 contractual date of crediting interest or changing values was the date of

1 impairment or insolvency, whichever is earlier, and shall not be subject to  
 2 forfeiture; or

3 (13) structured settlement annuity benefits to which a payee or  
 4 beneficiary has transferred such payee's or beneficiary's rights in a  
 5 structured settlement factoring transaction, as defined in 26 U.S.C. §  
 6 5891(c)(3)(A), regardless of whether the transaction occurred before or  
 7 after such section became effective.

8 (p) The exclusion from coverage reference in subsection (o)(3) shall  
 9 not apply to any portion of a policy or contract, including a rider, that  
 10 provides long-term care or any other health insurance benefits.

11 (q) The benefits for which the association may become liable shall  
 12 in no event exceed the lesser of:

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

16 (2) with respect to any one life, regardless of the number of policies  
 17 or contracts: (A) \$300,000 in life insurance death benefits, but not more  
 18 than \$100,000 in net cash surrender and net cash withdrawal values for life  
 19 insurance;

20 (B) ~~in~~ For health insurance benefits:

21 (i) \$100,000 for coverages not defined as disability income insurance  
 22 or ~~basic hospital, medical and surgical insurance or major medical~~  
 23 ~~insurance health benefit plans~~ or long-term care insurance including any  
 24 net cash surrender and net cash withdrawal values;

25 (ii) \$300,000 for disability income insurance and \$300,000 for long-  
 26 term care insurance;

27 (iii) \$500,000 for ~~basic hospital, medical and surgical insurance or~~  
 28 ~~major medical insurance health benefit plans~~;

29 (C) \$250,000 in the present value of annuity benefits, including net  
 30 cash surrender and net cash withdrawal values;

31 (D) with respect to each payee of a structured settlement annuity (or  
 32 beneficiary or beneficiaries of the payee if deceased), \$250,000 in present  
 33 value annuity benefits, in the aggregate, including net cash surrender and  
 34 net cash withdrawal values;

35 (E) however, in no event shall the association be obligated to cover  
 36 more than:

37 (H)(i) An aggregate of \$300,000 in benefits with respect to any one  
 38 life as provided in ~~paragraphs subparagraphs~~ (A), (B), (C) and (D) of this  
 39 ~~subsection~~ except with respect to benefits for ~~basic hospital, medical and~~  
 40 ~~surgical insurance and major medical insurance health benefit plans~~ under  
 41 (q)(2)(B)(iii) of this subsection, in which case the aggregate liability of  
 42 the association shall not exceed \$500,000 with respect to any one  
 43 individual; or

1       ~~(2)~~(ii) with respect to one-owner holder of multiple nongroup policies  
 2 or contracts of life insurance, whether the ~~policy owner~~ policyholder or  
 3 contract holder is an individual, firm, corporation or other person, and  
 4 whether the persons insured are officers, managers, employees or other  
 5 persons, more than \$5,000,000 in benefits, regardless of the number of  
 6 policies and contracts held by the ~~owner~~ policyholder or contract holder;

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

15       (G) the guaranty association's limits of liability with respect to the  
 16 obligations of any impaired or insolvent insurer shall be the limits of  
 17 liability in effect under this act on the date the guaranty association  
 18 became liable for that impaired or insolvent insurer;

19       (H) *for purposes of this act, benefits provided by a long-term care*  
 20 *rider to a life insurance policy or annuity contract shall be considered the*  
 21 *same type of benefits as the base life insurance policy or annuity contract*  
 22 *to which it relates;*

23       (I) in performing its obligations to provide coverage under this  
 24 section, the association shall not be required to guarantee, assume,  
 25 reinsure, *reissue* or perform, or cause to be guaranteed, assumed,  
 26 reinsured, *reissued* or performed, the contractual obligations of the  
 27 insolvent or impaired insurer under a covered policy or contract that do not  
 28 materially affect the economic values or economic benefits of the covered  
 29 policy or contract.

30       The provisions of subsection ~~(h)~~(q) shall not apply to annuity contracts  
 31 for future economic loss procured pursuant to a judgment or settlement  
 32 agreement in a medical malpractice liability action.

33       ~~(h)~~(r) The association may:

34       (1) Enter into such contracts as are necessary or proper to carry out  
 35 the provisions and purposes of this act;

36       (2) sue or be sued, including taking any legal actions necessary or  
 37 proper to recover any unpaid assessments under K.S.A. 40-3009, and  
 38 amendments thereto, and to settle claims or potential claims against it;

39       (3) borrow money to effect the purposes of this act. Any notes or  
 40 other evidence of indebtedness of the association not in default shall be  
 41 legal investments for domestic insurers and may be carried as admitted  
 42 assets;

43       (4) employ or retain such persons as are necessary to handle the



1 financial transactions of the association, and to perform such other  
2 functions as become necessary or proper under this act;

3 (5) take such legal action as may be necessary to avoid *or recover*  
4 payment of improper claims; or

5 (6) exercise, for the purposes of this act and to the extent approved by  
6 the commissioner, the powers of a domestic life-~~or~~ *insurer*, health insurer  
7 *or health maintenance organization*, but in no case may the association  
8 issue ~~insurance~~ policies or ~~annuity~~ contracts other than those issued to  
9 perform its obligations under this act;

10 (7) *organize itself as a corporation or in other legal form permitted*  
11 *by the laws of the state;*

12 (8) *request information from a person seeking coverage from the*  
13 *association in order to aid the association in determining its obligations*  
14 *under this act with respect to the person, and such person shall promptly*  
15 *comply with the request;*

16 (9) *in accordance with the terms and conditions of the policy or*  
17 *contract, file for actuarially justified rate or premium increases for any*  
18 *policy or contract for which it provides coverage under this act; and*

19 (10) *take other necessary or appropriate action to discharge its*  
20 *duties and obligations under this act or to exercise its powers under this*  
21 *act.*

22 ~~(g)~~(s) The association may join an organization of one or more other  
23 state associations of similar purposes to further the purposes and  
24 administer the powers and duties of the association.

25 ~~(f)~~ The association shall pay any and all persons who, as a provider,  
26 may have claims as a result of a member insurer being found insolvent  
27 between March 1, 1999 and June 1, 1999.

28 (i) (1) (A) *At any time within 180 days of the date of the order of*  
29 *liquidation, the association may elect to succeed to the rights and*  
30 *obligations of the ceding member insurer that relate to policies, contracts*  
31 *or annuities covered, in whole or in part, by the association, in each case*  
32 *under any one or more reinsurance contracts entered into by the insolvent*  
33 *insurer and its reinsurers and selected by the association. Any such*  
34 *assumption shall be effective as of the date of the order of liquidation. The*  
35 *election shall be effected by the association or the national organization of*  
36 *life and health insurance guaranty associations (NOLHGA), on its behalf,*  
37 *sending written notice with return receipt requested to the affected*  
38 *reinsurers.*

39 (B) *To facilitate the earliest practicable decision about whether to*  
40 *assume any of the contracts of reinsurance, and in order to protect the*  
41 *financial position of the estate, the receiver and each reinsurer of the*  
42 *ceding member insurer shall make available upon request to the*  
43 *association or to NOLHGA on its behalf as soon as possible after*

1 commencement of formal delinquency proceedings:

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

5 (ii) notices of any defaults under the reinsurance contracts or any  
6 known event or condition that with the passage of time could become a  
7 default under the reinsurance contracts.

8 (C) The following subparagraphs shall apply to reinsurance  
9 contracts so assumed by the association:

10 (i) The association shall be responsible for all unpaid premiums due  
11 under the reinsurance contracts for periods both before and after the date  
12 of the order of liquidation and shall be responsible for the performance of  
13 all other obligations to be performed after the date of the order of  
14 liquidation, in each case relating to policies, contracts or annuities  
15 covered, in whole or in part, by the association. The association may  
16 charge policies, contracts or annuities covered in part by the association,  
17 through reasonable allocation methods, the costs for reinsurance in excess  
18 of the obligations of the association and shall provide notice and an  
19 accounting of these charges to the liquidator;

20 (ii) the association shall be entitled to any amounts payable by the  
21 reinsurer under the reinsurance contracts with respect to losses or events  
22 that occur in periods after the date of the order of liquidation and that  
23 relate to policies, contracts or annuities covered, in whole or in part, by  
24 the association, provided that, upon receipt of any such amounts, the  
25 association shall be obliged to pay to the beneficiary under the policy,  
26 contract or annuity on account of which the amounts were paid a portion  
27 of the amount equal to the lesser of:

28 (a) The amount received by the association; and

29 (b) the excess of the amount received by the association over the  
30 amount equal to the benefits paid by the association on account of the  
31 policy, contract or annuity less the retention of the insurer applicable to  
32 the loss or event.

33 (iii) Within 30 days following the association's election, the "election  
34 date," the association and each reinsurer under contracts assumed by the  
35 association shall calculate the net balance due to or from the association  
36 under each reinsurance contract as of the election date with respect to  
37 policies, contracts or annuities covered, in whole or in part, by the  
38 association. Such calculation shall give full credit to all items paid by  
39 either the member insurer or its receiver or the reinsurer prior to the  
40 election date. The reinsurer shall pay the receiver any amounts due for  
41 losses or events prior to the date of the order of liquidation, subject to any  
42 set-off for premiums unpaid for periods prior to the date, and the  
43 association or reinsurer shall pay any remaining balance due the other; in

1 each case within five days of the completion of the aforementioned  
2 calculation. Any disputes over the amounts due to either the association or  
3 the reinsurer shall be resolved by arbitration pursuant to the terms of the  
4 affected reinsurance contracts or, if the contract contains no arbitration  
5 clause, as otherwise provided by law. If the receiver has received any  
6 amounts due the association pursuant to subparagraph (C)(ii), the  
7 receiver shall remit such amounts to the association as promptly as  
8 practicable.

9 (iv) If the association or receiver, on the association's behalf, within  
10 60 days of the election date, pays the unpaid premiums due for periods  
11 both before and after the election date that relate to policies, contracts or  
12 annuities covered, in whole or in part, by the association, the reinsurer  
13 shall not be entitled to terminate the reinsurance contracts for failure to  
14 pay premiums insofar as the reinsurance contracts relate to policies,  
15 contracts or annuities covered, in whole or in part, by the association, and  
16 shall not be entitled to set off any unpaid amounts due under other  
17 contracts or unpaid amounts due from parties other than the association  
18 against amounts due the association.

19 (2) During the period from the date of the order of liquidation until  
20 the election date, or, if the election date does not occur, until 180 days  
21 after the date of the order of liquidation:

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

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

28 (B) provided that once the association has elected to assume a  
29 reinsurance contract, the parties' rights and obligations shall be governed  
30 by paragraph (1).

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

35 (4) When policies, contracts or annuities, or covered obligations with  
36 respect thereto are transferred to an assuming insurer, reinsurance on the  
37 policies, contracts or annuities may also be transferred by the association,  
38 in the case of contracts assumed under subsection (t)(1), subject to the  
39 following:

40 (A) Unless the reinsurer and the assuming insurer agree otherwise,  
41 the reinsurance contract transferred shall not cover any new policies of  
42 insurance, contracts or annuities in addition to those transferred;

43 (B) the obligations described in subsection (t)(1) shall no longer

1 apply with respect to matters arising after the effective date of the  
2 transfer; and

3 (C) notice shall be given in writing, with return receipt requested, by  
4 the transferring party to the affected reinsurer not less than 30 days prior  
5 to the effective date of the transfer.

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

15 (6) Except as otherwise provided in this subsection, nothing in this  
16 subsection shall alter or modify the terms and conditions of any  
17 reinsurance contract. Nothing in this section shall abrogate or limit any  
18 rights of any reinsurer to claim that such reinsurer is entitled to rescind a  
19 reinsurance contract. Nothing in this section shall give a policyholder,  
20 contract owner, enrollee, certificate holder or beneficiary an independent  
21 cause of action against a reinsurer that is not otherwise set forth in the  
22 reinsurance contract. Nothing in this section shall limit or affect the  
23 association's rights as a creditor of the estate against the assets of the  
24 estate. Nothing in this section shall apply to reinsurance agreements  
25 covering property or casualty risks.

26 (u) The board of directors of the association shall have discretion  
27 and may exercise reasonable business judgment to determine the means by  
28 which the association is to provide the benefits of this act in an  
29 economical and efficient manner.

30 (v) Where the association has arranged or offered to provide the  
31 benefits of this act to a covered person under a plan or arrangement that  
32 fulfills the association's obligations under this act, the person shall not be  
33 entitled to benefits from the association in addition to or other than those  
34 provided under the plan or arrangement.

35 (w) Venue in a suit against the association arising under the act shall  
36 be in Shawnee County. The association shall not be required to give an  
37 appeal bond in an appeal that relates to a cause of action arising under  
38 this act.

39 ~~(s) Regarding covered policies for which the association becomes~~  
40 ~~obligated after an entry of an order of liquidation, to the extent such~~  
41 ~~contract provides coverage for losses occurring after the date of the order~~  
42 ~~of liquidation, the association may elect to succeed to the rights of the~~  
43 ~~insolvent insurer arising after the order of liquidation under any contract of~~

1 ~~reinsurance to which the insolvent insurer was a party. As a condition to~~  
2 ~~making such election, the association must pay all unpaid premiums due~~  
3 ~~under the contract for coverage relating to periods before and after the date~~  
4 ~~on which the order of liquidation was entered.~~

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

13 (1) In lieu of the index or other external reference provided for in the  
14 original policy or contract, the alternative policy or contract provides for:

15 ~~(†)(A)~~ A fixed interest rate;

16 ~~(†)(B)~~ payment of dividends with minimum guarantees; or

17 ~~(†)(C)~~ a different method for calculating interest or changes in value.

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

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

23 Sec. 8. K.S.A. 40-3009 is hereby amended to read as follows: 40-  
24 3009. (a) For the purpose of providing the funds necessary to carry out the  
25 powers and duties of the association, the board of directors shall assess the  
26 member insurers, separately for each account, at such time and for such  
27 amounts as the board finds necessary. Assessments shall be due not less  
28 than 30 days after prior written notice to the member insurers and shall  
29 accrue interest at 15% per annum on and after the due date.

30 (b) There shall be two classes of assessments, as follows: (1) Class A  
31 assessments shall be made for the purpose of meeting administrative and  
32 legal costs and other expenses and examinations conducted under the  
33 authority of subsection (e) of K.S.A. 40-3012, and amendments thereto.  
34 Class A assessments may be made whether or not related to a particular  
35 impaired or insolvent insurer.

36 (2) Class B assessments shall be made to the extent necessary to carry  
37 out the powers and duties of the association under K.S.A. 40-3008, and  
38 amendments thereto, with regard to an impaired or an insolvent insurer.

39 (c) (1) The amount of any class A assessment shall be determined by  
40 the board and may be made on a pro rata or non-pro rata basis. If pro rata,  
41 the board may provide that it be credited against future class B  
42 assessments. ~~A non-pro rata assessment shall not exceed \$300 per member~~  
43 ~~insurer in any one calendar year.~~ The amount of any class B assessment,

1 *except for assessments related to long-term care insurance*, shall be  
2 allocated for assessment purposes among the accounts pursuant to an  
3 allocation formula—~~which~~ *that* may be based on the premiums or reserves  
4 of the impaired or insolvent insurer or any other standard deemed by the  
5 board in its sole discretion as being fair and reasonable under the  
6 circumstances.

7 (2) *The amount of the class B assessment for long-term care*  
8 *insurance written by the impaired or insolvent insurer shall be allocated*  
9 *according to a methodology included in the plan of operation and*  
10 *approved by the commissioner. The methodology shall provide for 50%*  
11 *of the assessment to be allocated to accident and health member insurers and*  
12 *50% to be allocated to life and annuity member insurers.*

13 (3) Class B assessments against member insurers for each account  
14 shall be in the proportion that the premiums received on business in this  
15 state by each assessed member insurer on policies or contracts covered by  
16 each account for the three most recent calendar years for which  
17 information is available preceding the year in which the *member* insurer  
18 became impaired or insolvent, as the case may be, bears to such premiums  
19 received on business in this state for such calendar years by all assessed  
20 member insurers.

21 ~~(3)~~(4) Assessments for funds to meet the requirements of the  
22 association with respect to an impaired or insolvent insurer shall not be  
23 made until necessary to implement the purposes of this act. Classification  
24 of assessments under subsection (b) and computation of assessments under  
25 this subsection shall be made with a reasonable degree of accuracy,  
26 recognizing that exact determinations may not always be possible.

27 (d) The association may abate or defer, in whole or in part, the  
28 assessment of a member insurer if, in the opinion of the board, payment of  
29 the assessment would endanger the ability of the member insurer to fulfill  
30 its contractual obligations. In the event an assessment against a member  
31 insurer is abated, or deferred in whole or in part, the amount by which  
32 such assessment is abated or deferred may be assessed against the other  
33 member insurers in a manner consistent with the basis for assessments set  
34 forth in this section. *Once the conditions that caused a deferral have been*  
35 *removed or rectified, the member insurer shall pay all assessments that*  
36 *were deferred pursuant to a repayment plan approved by the association.*

37 (e) (1) The total of all assessments upon a member insurer for each  
38 account shall not in any one calendar year exceed 2% of such *member*  
39 insurer's average premiums received in this state on the policies and  
40 contracts covered by the account during the three calendar years preceding  
41 the years in which the *member* insurer became an impaired or insolvent  
42 insurer.

43 (2) If two or more assessments are authorized in one calendar year

1 with respect to *member* insurers that become impaired or insolvent in  
2 different calendar years, the average annual premiums for purposes of the  
3 aggregate assessment percentage limitation referenced in this subsection  
4 shall be equal and limited to the higher of the three-year average annual  
5 premiums for the applicable account as calculated pursuant to this section.

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

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

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

24 (g) It shall be proper for any member insurer, in determining its  
25 premium rates and ~~policyowner~~ *policyholder or contract holder* dividends  
26 as to any kind of insurance or health maintenance organization business  
27 within the scope of this act, to consider the amount reasonably necessary  
28 to meet its assessment obligations under this act.

29 (h) The association shall issue to each *member* insurer paying an  
30 assessment under this act, other than a class A assessment, a certificate of  
31 contribution, in a form prescribed by the commissioner, for the amount of  
32 the assessment paid. All outstanding certificates shall be of equal dignity  
33 and priority without reference to amounts or dates of issue. A certificate of  
34 contribution may be shown by the *member* insurer in its financial  
35 statement as an asset in such form and for such amount, if any, and period  
36 of time as the commissioner may approve.

37 (i) (I) *A member insurer that wishes to protest all or part of an*  
38 *assessment shall pay, when due, the full amount of the assessment as set*  
39 *forth in the notice provided by the association. The payment shall be*  
40 *available to meet association obligations during the pendency of the*  
41 *protest or any subsequent appeal. Payment shall be accompanied by a*  
42 *written statement that the payment is made under protest and shall set*  
43 *forth a brief statement of the grounds for the protest.*

1       (2) *Within 60 days following the payment of an assessment under*  
2 *protest by a member insurer, the association shall notify the member*  
3 *insurer, in writing, of its determination with respect to the protest unless*  
4 *the association notifies the member insurer that additional time is required*  
5 *to resolve the issues raised by the protest.*

6       (3) *Within 30 days after a final decision has been made, the*  
7 *association shall notify the protesting member insurer in writing of that*  
8 *final decision. Within 60 days of receipt of notice of the final decision, the*  
9 *protesting member insurer may appeal that final action to the*  
10 *commissioner.*

11       (4) *As an alternative to rendering a final decision with respect to a*  
12 *protest based on a question regarding the assessment base, the association*  
13 *may refer protests to the commissioner for a final decision, with or without*  
14 *a recommendation from the association.*

15       (5) *If the protest or appeal on the assessment is upheld, the amount*  
16 *paid in error or excess shall be returned to the member insurer. Interest on*  
17 *a refund due a protesting member insurer shall be paid at the rate actually*  
18 *earned by the association.*

19       (j) *The association may request information of member insurers in*  
20 *order to aid in the exercise of its power under this section and member*  
21 *insurers shall promptly comply with a request.*

22       Sec. 9. K.S.A. 40-3010 is hereby amended to read as follows: 40-  
23 3010. (a) (1) The association shall submit to the commissioner a plan of  
24 operation and any amendments thereto necessary or suitable to assure the  
25 fair, reasonable and equitable administration of the association. The plan  
26 of operation and any amendments thereto shall become effective upon the  
27 commissioner's written approval or unless the commissioner has not  
28 disapproved it within 30 days.

29       (2) If the association fails to submit a suitable plan of operation  
30 within 120 days following the effective date of this act, or, if at any time  
31 thereafter the association fails to submit suitable amendments to the plan,  
32 the commissioner, after notice and hearing, shall adopt and promulgate  
33 such reasonable rules and regulations as are necessary or advisable to  
34 effectuate the provisions of this act. Such rules and regulations shall  
35 continue in force until modified by the commissioner or superseded by a  
36 plan submitted by the association and approved by the commissioner.

37       (b) All member insurers shall comply with the plan of operation.

38       (c) The plan of operation shall, in addition to requirements  
39 enumerated elsewhere in this act:

40       (1) Establish procedures for handling the assets of the association;

41       (2) establish the amount and method of reimbursing members of the  
42 board of directors under K.S.A. 40-3007, and amendments thereto;

43       (3) establish regular places and times for meetings, including



- 1 telephone conference calls, of the board of directors;
- 2 (4) establish procedures for records to be kept of all financial  
3 transactions of the association, its agents and the board of directors;
- 4 (5) establish the procedures whereby selections for the board of  
5 directors will be made and submitted to the commissioner;
- 6 (6) establish any additional procedures for assessments under K.S.A.  
7 40-3009, and amendments thereto; ~~and~~
- 8 (7) contain additional provisions necessary or proper for the  
9 execution of the powers and duties of the association;
- 10 (8) *establish procedures whereby a director may be removed for*  
11 *cause, including in the case where a member insurer director becomes an*  
12 *impaired or insolvent insurer; and*
- 13 (9) *require the board of directors to establish a policy and procedures*  
14 *for addressing conflicts of interests.*

15 (d) The plan of operation may provide that any or all powers and  
16 duties of the association, except those under ~~subsection (p)(3)~~ of K.S.A.  
17 40-3008 and 40-3009, and amendments thereto, are delegated to a  
18 corporation, association or other organization ~~which~~ *that* performs or will  
19 perform functions similar to those of this association, or its equivalent, in  
20 two or more states. Such a corporation, association or organization shall be  
21 reimbursed for any payments made on behalf of the association and shall  
22 be paid for its performance of any function of the association. A delegation  
23 under this subsection shall take effect only with the approval of both the  
24 board of directors and the commissioner, and may be made only to a  
25 corporation, association or organization ~~which~~ *that* extends protection not  
26 substantially less favorable and effective than that provided by this act.

27 Sec. 10. K.S.A. 40-3011 is hereby amended to read as follows: 40-  
28 3011. In addition to the duties and powers enumerated in this act:

29 (a) The commissioner shall:

- 30 (1) Upon request of the board of directors, provide the association  
31 with a statement of the premiums in this and any other appropriate state for  
32 each member insurer;
- 33 (2) when an impairment is declared and the amount of the impairment  
34 is determined, serve a demand upon the impaired insurer to make good the  
35 impairment within a reasonable time; notice to the impaired insurer shall  
36 constitute notice to its shareholders, if any; the failure of the *impaired*  
37 insurer to promptly comply with such demand shall not excuse the  
38 association from the performance of its powers and duties under this act;
- 39 (3) in any liquidation or rehabilitation proceeding involving a  
40 domestic insurer, be appointed as the liquidator or rehabilitator.

41 (b) The commissioner may suspend or revoke, after notice and  
42 hearing in accordance with the provisions of the Kansas administrative  
43 procedure act, the certificate of authority to transact insurance *business* in

1 this state of any member insurer ~~which~~ *that* fails to pay an assessment  
 2 when due or fails to comply with the plan of operation. As an alternative  
 3 the commissioner may levy a forfeiture on any member insurer ~~which~~ *that*  
 4 fails to pay an assessment when due. Such forfeiture shall not exceed 5%  
 5 of the unpaid assessment per month, but ~~no~~ a forfeiture shall be *not* less  
 6 than \$100 per month.

7 (c) Any *final* action of the board of directors or the association may  
 8 be appealed to the commissioner by any member insurer if such appeal is  
 9 taken within 60 days of the final action being appealed. ~~If a member~~  
 10 ~~company is appealing an assessment, the amount assessed shall be paid to~~  
 11 ~~the association and available to meet association obligations during the~~  
 12 ~~pendancy of an appeal. If the appeal on the assessment is upheld, the~~  
 13 ~~amount paid in error shall be returned to the member insurer~~ *A final action*  
 14 *or order of the commissioner shall be subject to judicial review in a court*  
 15 *of competent jurisdiction in accordance with the laws of this state that*  
 16 *apply to the actions or orders of the commissioner.*

17 (d) The liquidator, rehabilitator or conservator of any impaired  
 18 insurer may notify all interested persons of the effect of this act.

19 Sec. 11. K.S.A. 40-3012 is hereby amended to read as follows: 40-  
 20 3012. To aid in the detection and prevention of *member* insurer  
 21 impairments *or insolvencies*:

22 (a) It shall be the duty of the commissioner to:

23 (1) Notify the commissioners of all other states, territories of the  
 24 United States and the District of Columbia when the commissioner takes  
 25 any of the following actions against a member insurer:

26 (A) Revocation of license *or certificate of authority*;

27 (B) suspension of license *or certificate of authority*; or

28 (C) makes any formal order that such ~~company~~ *member insurer*  
 29 restricts its premium writing, obtain additional contributions to surplus,  
 30 withdraw from the state, reinsure all or any part of its business, or increase  
 31 capital, surplus or any other account for the security of policyholders,  
 32 *contract holders, certificate holders* or creditors.

33 Such notice shall be mailed to all commissioners within 30 days  
 34 following the action taken or the date on which such action occurs;

35 (2) report to the board of directors when the commissioner has taken  
 36 any of the actions set forth in paragraph (1) of this subsection or has  
 37 received a report from any other commissioner indicating that any such  
 38 action has been taken in another state. Such report to the board of directors  
 39 shall contain all significant details of the action taken or the report  
 40 received from another commissioner;

41 (3) report to the board of directors when the commissioner has  
 42 reasonable cause to believe from any examination, whether completed or  
 43 in process, of any member company that such ~~company~~ *member insurer*

1 may be an impaired or insolvent insurer. Such report and information shall  
2 be kept confidential by the board of directors until such time as made  
3 public by the commissioner or other lawful authority;

4 (4) furnish to the board of directors the national association of  
5 insurance commissioners' insurance regulatory information system ratios  
6 and listings of companies not included in the ratios developed by the  
7 national association of insurance commissioners, and the board may use  
8 the information contained therein in carrying out its duties and  
9 responsibilities under this section. Such report and the information  
10 contained therein shall be kept confidential by the board of directors until  
11 such time as made public by the commissioner or other lawful authority.

12 (b) The commissioner may seek the advice and recommendations of  
13 the board of directors concerning any matter affecting the commissioner's  
14 duties and responsibilities regarding the financial condition of member  
15 insurers and ~~companies~~ *health maintenance organization* seeking  
16 admission to transact ~~insurance~~ business in this state.

17 (c) The board of directors, upon majority vote, may make reports and  
18 recommendations to the commissioner upon any matter germane to the  
19 solvency, liquidation, rehabilitation or conservation of any member insurer  
20 or germane to the solvency of any ~~company~~ *insurer or health maintenance*  
21 *organization* seeking to do ~~any insurance~~ business in this state. Such  
22 reports and recommendations shall not be considered public documents.

23 (d) It shall be the duty of the board of directors, upon majority vote,  
24 to notify the commissioner of any information indicating any member  
25 insurer may be an impaired or insolvent insurer.

26 ~~(e) The board of directors, upon majority vote, may request that the~~  
27 ~~commissioner order an examination of any member insurer which the~~  
28 ~~board in good faith believes may be an impaired or insolvent insurer. The~~  
29 ~~examination may be conducted as a national association of insurance~~  
30 ~~commissioners' examination or may be conducted by such persons as the~~  
31 ~~commissioner designates. The cost of such examination shall be paid by~~  
32 ~~the association and the examination report shall be treated as are other~~  
33 ~~examination reports. In no event shall such examination report be released~~  
34 ~~to the board of directors prior to its release to the public, but this shall not~~  
35 ~~preclude the commissioner from complying with subsection (a).~~

36 ~~The commissioner shall notify the board of directors when the~~  
37 ~~examination is completed. The request for an examination shall be kept on~~  
38 ~~file by the commissioner but it shall not be open to public inspection prior~~  
39 ~~to the release of the examination report to the public.~~

40 (f) The board of directors, upon majority vote, may make  
41 recommendations to the commissioner for the detection and prevention of  
42 *member insurer insolvencies*.

43 (g) ~~The board of directors, at the conclusion of any insurer insolvency~~

1 in which the association was obligated to pay covered claims, shall prepare  
2 a report to the commissioner containing such information as it may have in  
3 its possession bearing on the history and causes of such insolvency. The  
4 board shall cooperate with the board of directors of guaranty associations  
5 in other states in preparing a report on the history and causes of insolvency  
6 of a particular insurer and may adopt, by reference, any report prepared by  
7 such other associations.

8 Sec. 12. K.S.A. 40-3013 is hereby amended to read as follows: 40-  
9 3013. (a) Nothing in this act shall be construed to reduce the liability for  
10 unpaid assessments of the insureds *or enrollees* of an impaired or insolvent  
11 insurer operating under a plan with assessment liability.

12 (b) Records shall be kept of all negotiations and meetings in which  
13 the association or its representatives are involved to discuss the activities  
14 of the association in carrying out its powers and duties under K.S.A. 40-  
15 3008, and amendments thereto. Records of such negotiations or meetings  
16 shall be made public only upon the termination of a liquidation,  
17 rehabilitation or conservation proceeding involving the impaired or  
18 insolvent insurer, upon the termination of the impairment or insolvency of  
19 the *member* insurer, or upon the order of a court of competent jurisdiction.  
20 Nothing in this subsection shall limit the duty of the association to render a  
21 report of its activities under K.S.A. 40-3014, and amendments thereto.

22 (c) For the purpose of carrying out its obligations under this act, the  
23 association shall be deemed to be a creditor of the impaired or insolvent  
24 insurer to the extent of assets attributable to covered policies reduced by  
25 any amounts to which the association is entitled as subrogee pursuant to  
26 ~~subsection (f) of~~ K.S.A. 40-3008, and amendments thereto. Assets of the  
27 impaired or insolvent insurer attributable to covered policies shall be used  
28 to continue all covered policies and pay all contractual obligations of the  
29 impaired or insolvent insurer as required by this act. Assets attributable to  
30 covered policies *or contracts*, as used in this subsection, are that  
31 proportion of the assets ~~which~~ *that* the reserves that should have been  
32 established for such policies *or contracts* bear to the reserve that should  
33 have been established for all policies *or contracts* of insurance *or health*  
34 *benefit plans* written by the impaired or insolvent insurer.

35 (d) *As a creditor of the impaired or insolvent insurer, as established*  
36 *in subsection (c) and consistent with K.S.A. 40-3635, and amendments*  
37 *thereto, the association and other similar associations shall be entitled to*  
38 *receive a disbursement of assets out of the marshaled assets, from time to*  
39 *time as the assets become available to reimburse it, as a credit against*  
40 *contractual obligations under this act. If the liquidator has not, within 120*  
41 *days of a final determination of insolvency of a member insurer by the*  
42 *receivership court, made an application to the court for the approval of a*  
43 *proposal to disburse assets out of marshaled assets to guaranty*

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

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

14 (2) No distribution to stockholders, if any, of an impaired or insolvent  
15 insurer shall be made until and unless the total amount of valid claims of  
16 the association with interest thereon for funds expended in carrying out its  
17 powers and duties under K.S.A. 40-3008, and amendments thereto, with  
18 respect to such *member* insurer have been fully recovered by the  
19 association.

20 ~~(e)(f)~~ (1) If an order for liquidation or rehabilitation of ~~an~~ *a member*  
21 insurer domiciled in this state has been entered, the receiver appointed  
22 under such order shall have a right to recover on behalf of the *member*  
23 insurer, from any affiliate that controlled it, the amount of distributions,  
24 other than stock dividends paid by the *member* insurer on its capital stock,  
25 made at any time during the five years preceding the petition for  
26 liquidation or rehabilitation subject to the limitations of ~~subsections~~  
27 ~~paragraphs (2) to through (4), inclusive.~~

28 (2) No such distribution shall be recoverable if the *member* insurer  
29 shows that when paid the distribution was lawful and reasonable, and that  
30 the *member* insurer did not know and could not reasonably have known  
31 that the distribution might adversely affect the ability of the *member*  
32 insurer to fulfill its contractual obligations.

33 (3) Any person who was an affiliate that controlled the *member*  
34 insurer at the time the distributions were paid shall be liable up to the  
35 amount of distributions such person received. Any person who was an  
36 affiliate that controlled the *member* insurer at the time the distributions  
37 were declared, shall be liable up to the amount of distributions such person  
38 would have received if such person had been paid immediately. If two or  
39 more persons are liable with respect to the same distributions, such person  
40 shall be jointly and severally liable.

41 (4) The maximum amount recoverable under this subsection shall be  
42 the amount needed in excess of all other available assets of the insolvent  
43 insurer to pay the contractual obligations of the insolvent insurer.

1 (5) If any person liable under ~~subsection~~ *paragraph* (3) is insolvent,  
2 all its affiliates that controlled it at the time the distribution was paid, shall  
3 be jointly and severally liable for any resulting deficiency in the amount  
4 recovered from the insolvent affiliate.

5 Sec. 13. K.S.A. 40-3013a is hereby amended to read as follows: 40-  
6 3013a. (a) No person, including ~~an~~ *a member* insurer, agent or affiliate of  
7 ~~an~~ *a member* insurer shall make, publish, disseminate, circulate or place  
8 before the public, or cause directly or indirectly, to be made, published,  
9 disseminated, circulated or placed before the public, in any newspaper,  
10 magazine or other publication, or in the form of a notice, circular,  
11 pamphlet, letter or poster, or over any radio station or television station, or  
12 in any other way, any advertisement, announcement or statement, written  
13 or oral, which uses the existence of the insurance guaranty association of  
14 this state for the purpose of sales, solicitation or inducement to purchase  
15 any form of insurance *or other coverage* covered by the Kansas life and  
16 health insurance guaranty association act. This section shall not apply to  
17 the Kansas life and health insurance guaranty association or any other  
18 entity ~~which~~ *that* does not sell or solicit insurance *or coverage by a health*  
19 *maintenance organization*.

20 (b) Within 180 days of the effective date of this act, the association  
21 shall prepare a summary document describing the general purposes and  
22 current limitations of this act in complying with subsection (c). This  
23 *summary* document ~~should~~ *shall* be submitted to the commissioner for  
24 approval. Sixty days after receiving such approval, no *member* insurer may  
25 deliver a policy or contract ~~described in subsection (b) of K.S.A. 40-3003,~~  
26 ~~and amendments thereto,~~ to a ~~policy or~~ *policyholder*, contract holder,  
27 *certificate holder or enrollee* unless the *summary* document is delivered to  
28 the ~~policy or~~ *policyholder*, contract holder ~~prior to or,~~ *certificate holder or*  
29 *enrollee* at the time of delivery of the policy or contract ~~except if~~  
30 ~~subsection (d) applies.~~ The *summary* document ~~should~~ *shall* also be  
31 available upon request by a *policyholder, contract holder, certificate*  
32 *holder or enrollee*. The distribution, delivery or contents or interpretation  
33 of this *summary* document shall not mean that either the policy or the  
34 contract or the *policy holder, contract holder, certificate holder or enrollee*  
35 thereof would be covered in the event of the impairment or insolvency of a  
36 member insurer. The ~~description~~ *summary* document shall be revised by  
37 the association as amendments to this act may require. Failure to receive  
38 this document does not give the *policyholder, contract holder, certificate*  
39 *holder, enrollee* or insured any greater rights than those stated in this act.

40 (c) The *summary* document prepared under subsection (b) shall  
41 contain a clear and conspicuous disclaimer on its face. The commissioner  
42 shall promulgate a rule establishing the form and content of the disclaimer.  
43 The disclaimer shall:

1 (1) State the name and address of the life and health insurance  
 2 guaranty association and insurance department;

3 (2) prominently warn the ~~policy or~~ *policyholder*, contract holder,  
 4 *certificate holder or enrollee* that the life and health insurance guaranty  
 5 association may not cover the policy *or contract* or, if coverage is  
 6 available, it will be subject to substantial limitations, exclusions and  
 7 conditioned on continued residence in the state;

8 (3) *state the types of policies or contracts for which guaranty funds*  
 9 *will provide coverage;*

10 (4) state that the *member insurer* and its agents are prohibited by law  
 11 from using the existence of the life and health insurance guaranty  
 12 association for the purpose of sales, solicitation or inducement to purchase  
 13 any form of insurance *or health maintenance organization coverage;*

14 ~~(4)(5) emphasize~~state that the ~~policy or~~ *policyholder*, contract holder,  
 15 *certificate holder or enrollee* should not rely on coverage under the life  
 16 and health insurance guaranty association when selecting an insurer; ~~and~~  
 17 *or health maintenance organization;*

18 (6) *explain rights available and procedures for filing a complaint to*  
 19 *allege a violation of any provisions of this act; and*

20 ~~(5)(7)~~ provide other information as directed by the commissioner,  
 21 *including, but not limited to, sources for information about the financial*  
 22 *condition of insurers provided that the information is not proprietary and*  
 23 *is subject to disclosure under that state's public records law.*

24 (d) ~~No insurer or agent may deliver a policy or contract described in~~  
 25 ~~subsection (b) of K.S.A. 40-3003, and amendments thereto, and excluded~~  
 26 ~~under subsection (n)(1) of K.S.A. 40-3008, and amendments thereto, from~~  
 27 ~~coverage under this act unless the insurer or agent, prior to or at the time~~  
 28 ~~of delivery, gives the policy or contract holder a separate written notice~~  
 29 ~~which clearly and conspicuously discloses that the policy or contract is not~~  
 30 ~~covered by the life and health insurance guaranty association. The~~  
 31 ~~commissioner, by rule, shall specify the form and content of the notice.~~  
 32 *A member insurer shall retain evidence of compliance with subsection (b)*  
 33 *for so long as the policy or contract for which the notice is given remains*  
 34 *in effect.*

35 Sec. 14. K.S.A. 40-3016 is hereby amended to read as follows: 40-  
 36 3016. (a) Unless a longer period has been allowed by the commissioner, a  
 37 member insurer shall at its option have the right to show a certificate of  
 38 contribution as an asset in the form approved by the commissioner  
 39 pursuant to ~~subsection (h) of~~ K.S.A. 40-3009, and amendments thereto, at  
 40 percentages of the original face amount approved by the commissioner, for  
 41 calendar years as follows:

42 (1) ~~One hundred~~100% percent for the calendar year of issuance;

43 (2) ~~eighty percent~~80% for the first calendar year after the year of

1 issuance;

2 (3) ~~sixty percent~~60% for the second calendar year after the year of  
3 issuance;

4 (4) ~~forty percent~~40% for the third calendar year after the year of  
5 issuance;

6 (5) ~~twenty percent~~20% for the fourth calendar year after the year of  
7 issuance.

8 (b) The *member* insurer may offset the amount written off by it in a  
9 calendar year under subsection (a) ~~above~~, against its premium tax liability  
10 to this state accrued with respect to business transacted in such year.

11 (c) *A member insurer that is exempt from taxes referenced in*  
12 *subsection (a) may recoup its assessments by a surcharge on its premiums*  
13 *in a sum reasonably calculated to recoup the assessments over a*  
14 *reasonable period of time, as approved by the commissioner. Amounts*  
15 *recouped shall not be considered premiums for any other purpose,*  
16 *including the computation of gross premium tax, the medical loss ratio, or*  
17 *agent commission. If a member insurer collects excess surcharges, the*  
18 *member insurer shall remit the excess amount to the association, and the*  
19 *excess amount shall be applied to reduce future assessments in the*  
20 *appropriate account.*

21 (d) Any sums acquired by refund, pursuant to ~~subsection (f) of~~ K.S.A.  
22 40-3009, and amendments thereto, from the association ~~which~~ *that* have  
23 theretofore been written off by contributing *member* insurers and offset  
24 against premium taxes as provided in subsection (b) ~~above~~, and ~~is~~ *are* not  
25 then needed for purposes of this act, shall be paid by the association to the  
26 commissioner and the commissioner shall remit such moneys to the state  
27 treasurer in accordance with the provisions of K.S.A. 75-4215, and  
28 amendments thereto. Upon receipt of each such remittance, the state  
29 treasurer shall deposit the entire amount in the state treasury to the credit  
30 of the state general fund.

31 Sec. 15. K.S.A. 40-3018 is hereby amended to read as follows: 40-  
32 3018. All proceedings in which the impaired or insolvent insurer is a party  
33 in any court in this state shall be stayed ~~60~~ 180 days from the date an order  
34 of liquidation, rehabilitation or conservation is final to permit proper legal  
35 action by the association on any matters germane to its powers or duties.  
36 As to a judgment under any decision, order, verdict or finding based on  
37 default the association may apply to have such judgment set aside by the  
38 same court that made such judgment and shall be permitted to defend  
39 against such suit on the merits.

40 Sec. 16. K.S.A. 40-3002, 40-3003, 40-3004, 40-3005, 40-3006, 40-  
41 3007, 40-3008, 40-3009, 40-3010, 40-3011, 40-3012, 40-3013, 40-3013a,  
42 40-3016 and 40-3018 are hereby repealed.

43 Sec. 17. This act shall take effect and be in force from and after its



- 1 publication in the statute book.