SENATE BILL No. 179

AN ACT concerning the Kansas life and health insurance guaranty association act; amending K.S.A. 40-3009 and K.S.A. 2010 Supp. 40-3003, 40-3005 and 40-3008 and repealing the existing sections.

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

Section 1. K.S.A. 2010 Supp. 40-3003 is hereby amended to read as follows: 40-3003. (a) This act shall provide coverage, for the policies and contracts specified in subsection (b), for:

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

(2) persons who are owners of or certificate holders under such policies or contracts *other than structured settlement annuities*, and who:

(A) Are residents;

(B) are not residents, but only with respect to an annuity contract awarded pursuant to K.S.A. 60-3407 or 60-3409, and amendments thereto, an annuity contract for future economic loss procured pursuant to a settlement agreement in a medical malpractice liability action, as defined by K.S.A. 60-3401, and amendments thereto, or fixed-return accounts of the Kansas public employees deferred compensation plan under ~~K.S.A. 75-5521 through 75-5529a~~ *K.S.A. 2010 Supp. 74-49b08 through 74-49b14*, and amendments thereto; or

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

(i) The insurers which issued such policies or contracts are domiciled in this state;

(ii) ~~such insurers never had a license or certificate of authority in~~ the states in which such persons reside *have one or more associations similar to the association created by this act*;

(iii) ~~such states have associations similar to the association created by this act; and~~

~~(iv) such~~ *the* persons are not eligible for coverage by ~~such associations~~ *an association in any other state due to the fact that the insurer was not licensed in the state at the time specified in the state's guaranty association law*.

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

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

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

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

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

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

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

(B) the state in which the contract holder resides has an association similar to the association created by this act; and

(ii) neither the payee or beneficiary nor the contract holder is eligible for coverage by the association of the state in which the payee or contract holder resides.

(4) This act shall not provide coverage to a person who is a payee or beneficiary of a contract holder resident of this state, if the payee or beneficiary is afforded any coverage by the association of another state.

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

(b) This act shall provide coverage to the persons specified in subsection (a) for direct, nongroup life, health, ~~annuity and supplemental~~ *or an-*

nuity policies or contracts, *supplemental contracts or* unallocated annuity contracts covering individuals participating in a governmental deferred compensation plan established under section 457 of the U.S. internal revenue code pursuant to K.S.A. ~~75-5521 through 75-5529a~~ *2010 Supp. 74-49b08 through 74-49b14*, and amendments thereto, whether or not a resident, or the beneficiaries of each such individual if deceased, and for certificates under direct group policies and contracts issued by member insurers, except as limited by this act.

Sec. 2. K.S.A. 2010 Supp. 40-3005 is hereby amended to read as follows: 40-3005. As used in this act:

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

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

(c) ''commissioner'' means the commissioner of insurance of this state;

(d) ''contractual obligation'' means any obligation of a policy or contract or certificate under a group policy or contract, or portion thereof, for which coverage is provided under K.S.A. 40-3003~~,~~ and amendments thereto;

(e) ''covered policy'' means any policy or contract within the scope of this act under K.S.A. 40-3003~~,~~ and amendments thereto;

(f) ''impaired insurer'' means a member insurer which, after the effective date of this act, is not an insolvent insurer, and ~~which: (1) Is deemed by the commissioner to be potentially unable to fulfill its contractual obligations; or~~

~~(2)~~ is placed under an order of rehabilitation or conservation by a court of competent jurisdiction;

(g) ''insolvent insurer'' means a member insurer which, after the effective date of this act, is placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency;

(h) ''member insurer'' means any insurer licensed or holding a certificate of authority to transact in this state any kind of insurance for which coverage is provided under K.S.A. 40-3003, and amendments thereto, and includes any insurer whose license or certificate of authority in this state may have been suspended, revoked, nonrenewed or voluntarily withdrawn, but does not include: (1) A ~~nonprofit~~ hospital or medical service organization *regardless of whether such hospital or medical service organization is organized for profit or not-for-profit*;

(2) a health maintenance organization;

(3) a fraternal benefit society;

(4) a mandatory state pooling plan;

(5) a mutual assessment company or any entity that operates on an assessment basis; ~~or~~

(6) an insurance exchange, except a reciprocal or interinsurance exchange governed by the provisions of article 16 of chapter 40 of the Kansas Statutes Annotated, and amendments thereto; *or*

(7) any entity similar to any of the organizations listed in paragraphs (1) through (6) inclusive;

(i) ''Moody's corporate bond yield average'' means the monthly average corporates as published by Moody's investors service, inc., or any successor thereto;

(j) ''person'' means any individual, corporation, partnership, association, voluntary organization or provider;

(k) ''policyholder'' and ''contract holder'' means the person who is identified as the legal owner under the terms of the policy or contract or who is otherwise vested with legal title to the policy or contract through a valid assignment completed in accordance with the terms of the policy or contract and properly recorded as the owner on the books of the insurer. The terms ''policyholder'' and ''contract holder'' do not include persons with a mere beneficial interest in a policy or contract;

~~(j)~~ *(l)* ''provider'' means a person who is entitled to receive compensation for providing medical services to an insured covered under any health insurance contract or policy issued by a member insurer, regardless of whether the provider is obligated by statute or by agreement with the member insurer to hold any insured covered by any health insurance contract or policy harmless from liability for services;

~~(k)~~ *(m)* ''premiums'' means amounts received on covered policies or

contracts less premiums, considerations and deposits returned thereon, and less dividends and experience credits thereon. Premiums does not include any amounts received for any policies or contracts or for the portions of any policies or contracts for which coverage is not provided under subsection (b) of K.S.A. 40-3003, and amendments thereto, except that assessable premiums shall not be reduced on accounts for subsection (n)(3) of K.S.A. 40-3008, and amendments thereto, relating to interest limitations and subsection (o)(2) of K.S.A. 40-3008, and amendments thereto, relating to limitations with respect to any one life and any one contract holder. Premiums shall not include*:*

*(1) A*ny premiums on any unallocated annuity contract; *or*

(2) any premiums in excess of $5,000,000 with respect to multiple nongroup policies of life insurance owned by one policyholder, regardless of the number of policies or contracts held by the policyholder and regardless of whether:

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

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

~~(l) ''person'' means any individual, corporation, partnership, association, voluntary organization or provider;~~

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

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

~~(n) ''unallocated annuity contract'' means any annuity contract or group annuity certificate which is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under such contract or certificate; and~~

~~(o)~~ *(p)* ''supplemental contract'' means any *written* agreement entered into for the distribution of ~~policy or contract~~ proceeds *under a life, health or annuity policy or contract; and*

(q) ''unallocated annuity contract'' means any annuity contract or group annuity certificate which is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under such contract or certificate.

Sec. 3. K.S.A. 2010 Supp. 40-3008 is hereby amended to read as follows: 40-3008. (a) If a member insurer is an impaired ~~domestic~~ insurer, the association may, in its discretion and subject to any conditions imposed by the association that do not impair the contractual obligations of the impaired insurer~~,~~ *and* that are approved by the commissioner ~~and~~ that ~~are, except in cases of court-ordered conservation or rehabilitation, also approved by the impaired insurer~~:

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

(2) provide such moneys, pledges, *loans,* notes, guarantees or other means as are proper to effectuate the provisions of paragraph (1) ~~of this subsection~~ and assure payment of the contractual obligations of the impaired insurer pending action under paragraph (1).~~; or~~

~~(3) lend money to the impaired insurer~~.

~~(b) (1)If a member insurer is an impaired insurer, whether domestic, foreign or alien, and the insurer is not paying claims timely, then subject to the preconditions specified in paragraph (2) of this subsection, the association shall, in its discretion, either: (A) Take any of the actions specified in subsection (a), subject to the conditions therein; or~~

~~(B) provide substitute benefits in lieu of the contractual obligations of the impaired insurer solely for health claims, periodic annuity benefit payments, death benefits, supplemental benefits and cash withdrawals for policy or contract owners who petition therefor under claims of emergency or hardship in accordance with standards proposed by the association and approved by the commissioner.~~

~~(2) The association shall be subject to the requirements of paragraph (1) of this subsection only if: (A) The laws of the impaired insurer's state of domicile provide that: (i) The delinquency proceeding shall not be dismissed;~~

~~(ii) neither the impaired insurer nor its assets shall be returned to the control of its shareholders or private management; and~~

~~(iii) it shall not be permitted to solicit or accept new business or have any suspended or revoked license restored; and until all payments of or on account of the impaired insurer's contractual obligations by all guaranty associations, along with all expenses thereof and interest on all such payments and expenses, shall have been repaid to the guaranty associations or a plan of repayment by the impaired insurer shall have been approved by the guaranty associations; and~~

~~(B) (i) with respect to the impaired insurer who is a domestic insurer, it has been placed under an order of rehabilitation by a court of competent jurisdiction in this state; or~~

~~(ii) with respect to the impaired insurer who is a foreign or alien insurer: (aa) It has been prohibited from soliciting or accepting new business in this state;~~

~~(bb) its certificate of authority has been suspended or revoked in this state; and~~

~~(cc) a petition for rehabilitation or liquidation has been filed in a court of competent jurisdiction in its state of domicile by the commissioner of the state.~~

~~(c)~~ *(b)* If a member insurer is an insolvent insurer, the association shall, in its discretion, either: (1) (A) *(i)* Guarantee, assume or reinsure, or cause to be guaranteed, assumed or reinsured, the policies or contracts of the insolvent insurer; *or*

~~(B)~~ *(ii)* assure payment of the contractual obligations of the insolvent insurer; and

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

(2) with respect ~~only~~ to life and health ~~policies~~ *insurance policies and annuities*, provide benefits and coverages in accordance with subsection ~~(d)~~ *(c)*.

~~(d)~~ *(c)* When proceeding under ~~subsection (b)(1)(B) or (c)(2)~~ *paragraph (2) of subsection (b)*, the association shall~~, with respect only to life and health insurance policies~~: (1) Assure payment of benefits for premiums identical to the premiums and benefits, except for terms of conversion and renewability, that would have been payable under the policies *or contracts* of the insolvent insurer, for claims incurred: (A) With respect to group policies *and contracts,* not later than the earlier of the next renewal date under such policies or contracts or 45 days, but in no event less than 30 days, after the date on which the association becomes obligated with respect to such policies *and contracts*;

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

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

(3) with respect to ~~individual policies~~ *nongroup life and health insurance policies and annuities*, make available to each known insured *or annuitant*, or owner if other than the insured *or annuitant*, and with respect to an individual formerly ~~insured~~ *an insured or an annuitant* under a group policy who is not eligible for replacement group coverage, make available substitute coverage on an individual basis in accordance with the provisions of paragraph (4) ~~of this subsection~~, if the insureds *or annuitants* had a right under law or the terminated policy *or annuity* to convert coverage to individual coverage or to continue an individual policy *or annuity* in force until

a specified age or for a specified time, during which the insurer had no right unilaterally to make changes in any provision of the policy *or annuity* or had a right only to make changes in premium by class;

(4) (A) in providing the substitute coverage required under paragraph (3) ~~of this subsection~~, the association may offer either to reissue the terminated coverage or to issue an alternative policy;

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

(C) the association may reinsure any alternative or reissued policy;

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

(B) alternative policies shall contain at least the minimum statutory provisions required in this state and provide benefits that shall not be unreasonable in relation to the premiums charged. The association shall set the premiums in accordance with a table of rates which it shall adopt. The premiums shall reflect the amount of insurance to be provided and the age and class of risk of each insured, but shall not reflect any changes in the health of the insured after the original policy was last underwritten;

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

(6) if the association elects to reissue the insured's terminated coverage at a premium rate different from that charged under the terminated policy, the premium shall be set by the association in accordance with the amount of insurance provided and the age and class of risk, subject to approval ~~by the~~ *of the domiciliary insurance* commissioner and ~~by a court of competent jurisdiction;~~ *the receivership court.*

~~(7)~~ *(d)* The association's obligations with respect to coverage under any policy of the impaired or insolvent insurer or under any reissued or alternative policy shall cease on the date such coverage or policy is replaced by another similar policy by the policyholder, the insured or the association.

(e) When proceeding under ~~subsection (b)(1)(B) or (c)~~ *paragraph (2) of subsection (b)* with respect to any policy or contract carrying guaranteed minimum interest rates, the association shall assure the payment or crediting of a rate of interest consistent with subsection (n)(3).

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

(g) Premiums due after entry of an order of liquidation of an insolvent insurer shall belong to and be payable at the direction of the association, and the association shall be liable for unearned premiums due to policy or contract owners arising after the entry of such order.

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

(i) In carrying out its duties under ~~subsections (b) and (c)~~ *subsection (b)*, the association may, subject to approval by ~~the court~~ *a court in this state*: (1) Impose permanent policy or contract liens in connection with any guarantee, assumption or reinsurance agreement, if the association finds that the amounts which can be assessed under this act are less than the amounts needed to assure full and prompt performance of the association's duties under this act, or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of such permanent policy or contract liens to be in the public interest; and

(2) impose temporary moratoriums or liens on payments of cash values and policy loans, or any other right to withdraw funds held in conjunction with policies or contracts, in addition to any contractual provisions for deferral of cash or policy loan value.

(j) If the association fails to act within a reasonable period of time as provided in subsections ~~(b)(1)(B), (c) and (d) of this section~~ *(b) and (c)*,

the commissioner shall have the powers and duties of the association under this act with respect to impaired or insolvent insurers.

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

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

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

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

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

(3) The association shall also have the right to appear or intervene before a court in another state with jurisdiction over an impaired or insolvent insurer for which the association is or may become obligated or with jurisdiction over a third party against whom the association may have rights through subrogation of the insurer's policyholders.

(m) (1) Any person receiving benefits under this act shall be deemed to have assigned the rights under any cause of action relating to the covered policy or contract to the association to the extent of the benefits received because of this act, whether the benefits are payments of or on account of contractual obligations, continuation of coverage or provision of substitute or alternative coverages. The association may require an assignment to it of such rights and cause of action by any payee, policy or contract owner, beneficiary, insured or annuitant as a condition precedent to the receipt of any right or benefits conferred by this act upon such person.

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

(3) In addition to paragraphs (1) and (2), the association shall have all common-law rights of subrogation and any other equitable or legal remedy which would have been available to the impaired or insolvent insurer or holder of a policy or contract with respect to such policy or contracts.

(n) The contractual obligations of the impaired or insolvent insurer for which the association becomes, or may become, liable shall be as great as but no greater than the contractual obligations of the impaired or insolvent insurer would have been in the absence of an impairment or insolvency unless such obligations are reduced as permitted by ~~subsection (e)~~ *this act* but the association shall not provide coverage for: (1) Any portion of a policy or contract not guaranteed by the insurer, or under which the risk is borne by the policy or contract holder;

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

(3) any portion of a policy or contract to the extent that the rate of interest on which it is based, *or the interest rate, crediting rate or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value*: (A) Averaged over the period of four years prior to the date on which the association becomes obligated with respect to such policy or contract, exceeds a rate of interest determined by subtracting two percentage points from Moody's corporate bond yield average averaged for that same four-year period or for such lesser period if the policy or contract was issued less than four years before the association became obligated; and

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

(4) any plan or program of an employer, association or similar entity to provide life, health or annuity benefits to its employees or members to the extent that such plan or program is self-funded or uninsured, including but not limited, to benefits payable by an employer, association or similar entity under: (A) A multiple employer welfare arrangement as defined in section ~~514 of the employee retirement income security act of 1974, as~~

~~amended~~ *3 (40) of the employee retirement income security act of 1974 (29 U.S.C. § 1002(40))*;

(B) a minimum premium group insurance plan;

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

(D) an administrative services only contract;

(5) any portion of a policy or contract to the extent that it provides dividends or experience rating credits, or provides that any fees or allowances be paid to any person, including the policy or contract holder, in connection with the service to or administration of such policy or contract;

(6) any policy or contract issued in this state by a member insurer at a time when it was not licensed or did not have a certificate of authority to issue such policy or contract in this state;

(7) any unallocated annuity contract, except as provided in subsection (b) of K.S.A. 40-3003, and amendments thereto; ~~and~~

(8) a policy or contract providing any hospital, medical, prescription drug or other health care benefits pursuant to part C or part D of subchapter XVIII, chapter 7 of title 42 of the United States code (commonly known as medicare part C & D) or any regulations issued pursuant thereto*; or*

(9) (A) Any portion of a policy or contract:

(i) To the extent it provides for interest or other changes in value to be determined by the use of an index or other external reference stated in the policy or contract, but which have not been credited to the policy or contract; or

(ii) as to which the policy or contract owner's rights are subject to forfeiture, as of the date the member insurer becomes an impaired or insolvent insurer under this act; whichever is earlier.

(B) If a policy's or contract's interest or changes in value are credited less frequently than annually, then for purposes of determining the values that have been credited and which are not subject to forfeiture under this paragraph, the interest or change in value determined by using the procedures defined in the policy or contract shall be credited as if the contractual date of crediting interest or changing values was the date of impairment or insolvency, whichever is earlier, and shall not be subject to forfeiture.

(o) The benefits for which the association may become liable shall in no event exceed the lesser of: (1) The contractual obligations for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer; or

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

(B) ~~$100,000 in health insurance benefits, including any net cash surrender and net cash withdrawal values~~ *in health insurance benefits:*

(i) $100,000 for coverages not defined as disability insurance or basic hospital, medical and surgical insurance or major medical insurance or long-term care insurance including any net cash surrender and net cash withdrawal values;

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

(iii) $500,000 for basic hospital, medical and surgical insurance or major medical insurance; ~~or~~

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

~~(D) In no event shall the association be liable to expend more than $300,000 in the aggregate with respect to any one life as provided in paragraph (A), (B) or (C) of this subsection.~~

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

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

(1) An aggregate of $300,000 in benefits with respect to any one life as provided in paragraphs (A), (B), (C) and (D) of this subsection except with respect to benefits for basic hospital, medical and surgical insurance and major medical insurance under (o)(2)(B)(iii) of this subsection, in which

case the aggregate liability of the association shall not exceed $500,000 with respect to any one individual; or

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

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

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

(H) in performing its obligations to provide coverage under this section, the association shall not be required to guarantee, assume, reinsure or perform, or cause to be guaranteed, assumed, reinsured or performed, the contractual obligations of the insolvent or impaired insurer under a covered policy or contract that do not materially affect the economic values or economic benefits of the covered policy or contract.

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

(p) The association may: (1) Enter into such contracts as are necessary or proper to carry out the provisions and purposes of this act;

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

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

(4) employ or retain such persons as are necessary to handle the financial transactions of the association, and to perform such other functions as become necessary or proper under this act;

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

(6) exercise, for the purposes of this act and to the extent approved by the commissioner, the powers of a domestic life or health insurer, but in no case may the association issue insurance policies or annuity contracts other than those issued to perform its obligations under this act.

(q) The association may join an organization of one or more other state associations of similar purposes to further the purposes and administer the powers and duties of the association.

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

(s) Regarding covered policies for which the association becomes obligated after an entry of an order of liquidation, to the extent such contract provides coverage for losses occurring after the date of the order of liquidation, the association may elect to succeed to the rights of the insolvent insurer arising after the order of liquidation under any contract of reinsurance to which the insolvent insurer was a party. As a condition to making such election, the association must pay all unpaid premiums due under the contract for coverage relating to periods before and after the date on which the order of liquidation was entered.

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

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

(i) A fixed interest rate;

(ii) payment of dividends with minimum guarantees; or

(iii) a different method for calculating interest or changes in value.

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

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

Sec. 4. K.S.A. 40-3009 is hereby amended to read as follows: 40-3009. (a) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account, at such time and for such amounts as the board finds necessary. Assessments shall be due not less than 30 days after prior written notice to the member insurers and shall accrue interest at 15% per annum on and after the due date.

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

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

(c) (1) The amount of any class A assessment shall be determined by the board and may be made on a pro rata or non-pro rata basis. If pro rata, the board may provide that it be credited against future class B assessments. A non-pro rata assessment shall not exceed ~~$150~~ *$300* per member insurer in any one calendar year. The amount of any class B assessment shall be allocated for assessment purposes among the accounts pursuant to an allocation formula which may be based on the premiums or reserves of the impaired or insolvent insurer or any other standard deemed by the board in its sole discretion as being fair and reasonable under the circumstances.

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

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

(d) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. In the event an assessment against a member insurer is abated, or deferred in whole or in part, the amount by which such assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section.

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

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

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

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

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

(g) It shall be proper for any member insurer, in determining its premium rates and policyowner dividends as to any kind of insurance within the scope of this act, to consider the amount reasonably necessary to meet its assessment obligations under this act.

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

Sec. 5. K.S.A. 40-3009 and K.S.A. 2010 Supp. 40-3003, 40-3005 and 40-3008 are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

_____

_____

President of the Senate.

_____

Secretary of the Senate.

Passed the HOUSE _____

_____

Speaker of the House.

_____

Chief Clerk of the House.

APPROVED _____

_____

Governor.