

HOUSE No. 4505

The Commonwealth of Massachusetts

In the Year Two Thousand Fourteen

An Act relative to the Massachusetts life and health insurance guaranty association law.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 146B of chapter 175 of the General Laws, as appearing in the 2012
2 Official Edition, is hereby amended by striking out subsection (2) and inserting in place thereof
3 the following subsection:-

4 (2) As used in this section the following words shall, unless the context otherwise
5 requires, have the following meanings:—

6 “Account”, any of the 3 accounts created under subsection (6).

7 “Association”, the Massachusetts Life and Health Insurance Guaranty Association
8 created under subsection (6).

9 “Basic hospital expense insurance”, coverage for services rendered while confined in a
10 hospital.

11 “Basic medical-surgical expense insurance”, coverage for in-hospital or surgical health
12 services rendered by a physician or other covered health care provider.

13 “Benefit plan”, a specific employee, union or association of natural persons benefit plan.

14 “Contractual obligation”, any obligation under a policy or contract or portion thereof for
15 which coverage is provided under subsection (4).

16 “Covered policy or contract”, any policy, contract or group certificate within the scope of
17 this section as provided in subsection (4).

18 “Disability income insurance”, coverage providing weekly or monthly benefits to replace
19 income that is lost due to disability arising from accident and/or sickness, including business

20 expense insurance and business buy-out insurance policies that condition receipt of benefits upon
21 the disability of the insured.

22 “Impaired insurer”, a member insurer which, is not an insolvent insurer, and (a) is
23 deemed by the commissioner to be potentially unable to meet its obligations, or (b) is placed
24 under an order of rehabilitation or conservation by a court of competent jurisdiction.

25 “Insolvent insurer”, a member insurer which is placed under an order of liquidation by a
26 court of competent jurisdiction with a finding of insolvency.

27 “Long-term care insurance”, coverage as described in section 1 of chapter 176U.

28 “Major medical expense insurance”, coverage for inpatient and outpatient health care
29 services.

30 “Member insurer”, any insurer licensed or which holds a certificate of authority to
31 transact in the commonwealth any kind of insurance for which coverage is provided under
32 subsection (4) and any insurer whose license or certificate of authority to transact in the
33 commonwealth such insurance may have been suspended, revoked, not renewed, or voluntarily
34 withdrawn after the effective date of this section, other than a (a) fraternal benefit society, (b)
35 mutual protective association, (c) mutual assessment company or other entity that operates on an
36 assessment basis, (d) medical service corporation, (e) hospital service corporation, (f) health
37 maintenance organization, (g) dental service corporation, (h) optometric service corporation, (i)
38 mandatory state pooling plan, (j) insurance exchange, or (k) any other entity similar to any of the
39 above.

40 “NAIC”, the National Association of Insurance Commissioners or its successor
41 organization.

42 “Owner” of a policy or contract and “policy owner” and “contract owner”, the person
43 who is identified as the legal owner under the terms of the policy or contract or who is otherwise
44 vested with legal title to the policy or contract through a valid assignment completed in
45 accordance with the terms of the policy or contract and properly recorded as the owner on the
46 books of the insurer. The terms owner, contract owner and policy owner do not include persons
47 with a mere beneficial interest in a policy or contract.

48 “Person”, any individual, corporation, limited liability company, partnership, association,
49 governmental body or entity.

50 “Premiums”, amounts received on covered policies or contracts, less premiums,
51 considerations and deposits returned thereon, and less dividends and experience credits thereon.
52 Premiums shall not include any amount received for any policies or contracts or for the portions
53 of any policies or contracts for which coverage is not provided under paragraph (B) of subsection
54 (4), except that assessable premiums shall not be reduced on account of clause (d) of

55 subparagraph (2) of said paragraph (B) of said subsection (4) relating to interest limitations and
56 subparagraph (3) of said paragraph (B) of said subsection (4) relating to limitations with respect
57 to 1 individual and 1 contract owner. Premiums shall not include, with respect to multiple non-
58 group policies of life insurance owned by 1 owner, whether the policy owner is an individual,
59 firm, corporation or other person, and whether the persons insured are officers, managers,
60 employees or other persons, premiums in excess of \$5,000,000 with respect to these policies or
61 contracts, regardless of the number of policies or contracts held by the owner.

62 “Principal place of business”, a plan sponsor or a person other than a natural person is the
63 single state in which the natural persons who establish policy for the direction, control and
64 coordination of the operations of the entity as a whole primarily exercise that function,
65 determined by the association in its reasonable judgment by considering the following factors:
66 (a) the state in which the primary executive and administrative headquarters of the entity is
67 located; (b) the state in which the principal office of the chief executive officer of the entity is
68 located; (c) the state in which the board of directors (or similar governing person or persons) of
69 the entity conducts the majority of its meetings; (d) the state in which the executive or
70 management committee of the board of directors (or similar governing person or persons) of the
71 entity conducts the majority of its meetings; (e) the state from which management of the overall
72 operations of the entity is directed; and (f) in the case of a benefit plan sponsored by affiliated
73 companies comprising a consolidated corporation, the state in which the holding company or
74 controlling affiliate has its principal place of business as determined using the above factors;
75 provided, however, that in the case of a plan sponsor, if more than 50 per cent of the participants
76 in the benefit plan are employed in a single state, that state shall be deemed to be the principal
77 place of business of the plan sponsor. In the case of a benefit plan established or maintained by 2
78 or more employers or jointly by 1 or more employers and 1 or more employee organizations, the
79 principal place of business of a plan sponsor of such a benefit plan shall be deemed to be the
80 principal place of business of the association, committee, joint board of trustees or other similar
81 group of representatives of the parties who establish or maintain the benefit plan that, in lieu of a
82 specific or clear designation of a principal place of business, shall be deemed to be the principal
83 place of business of the employer or employer organization that has the largest investment in the
84 benefit plan in question.

85 “Published monthly average”, the monthly average of the composite yield on seasoned
86 corporate bonds as: (a) published by Moody’s Investors Service, Inc., or any successor thereto,
87 or (b) established by regulation promulgated by the commissioner setting forth a substantially
88 similar average in the event that such monthly average is no longer so published.

89 “Receivership court”, the court in the insolvent or impaired insurer’s state having
90 jurisdiction over the conservation, rehabilitation or liquidation of the insurer.

91 “Resident”, any person who resides in the commonwealth at the time a member insurer is
92 determined to be an impaired or insolvent insurer and to whom a contractual obligation is owed.

93 A person may be a resident of only one state, which in the case of a person, other than a natural
94 person, shall be its principal place of business. Citizens of the United States that are either (i)
95 residents of foreign countries, or (ii) residents of United States possessions, territories or
96 protectorates that do not have an association similar to the association created by this section,
97 shall be deemed residents of the state of domicile of the insurer that issued the policies or
98 contracts.

99 “Structured settlement annuity”, an annuity purchased in order to fund periodic payments
100 for a plaintiff or other claimant in payment for or with respect to personal injury suffered by the
101 plaintiff or other claimant.

102 “Supplemental contract”, any agreement entered into for the distribution of policy or
103 contract.

104 SECTION 2. Paragraph (A) of subsection (4) of said section 146B of said chapter 175 as
105 so appearing, is hereby amended by striking out subparagraph (2), and inserting in place thereof
106 the following 4 subparagraphs:-

107 (2) To persons who are owners of or certificate holders under such policies or contracts,
108 other than structured settlement annuities, and in each case who (a) are residents, or (b) are not
109 residents, but only under all of the following conditions: (i) the insurers which issued such
110 policies or contracts are domiciled in the commonwealth, (ii) the states in which the persons
111 reside have a life and health insurance guaranty association, and (iii) such persons are not
112 eligible for coverage by such guaranty association due to the fact that the insurer was not
113 licensed in the state at the time specified in the state’s guaranty association law.

114 (3) For structured settlement annuities, subparagraphs (1) and (2) of this paragraph shall
115 not apply, and this section shall, except as provided in subparagraphs (4) and (5) of said
116 paragraph (A), provide coverage to a person who is a payee under a structured settlement annuity
117 or beneficiary of a payee if the payee is deceased, provided that the payee is a resident regardless
118 of where the contract owner resides, or, if the payee is not a resident, that the following
119 conditions are met: (i) that the contract owner of the structured settlement is a resident or, if the
120 contract owner of the structured settlement is not a resident, that the insurer that issued the
121 structured settlement annuity is domiciled in the commonwealth and further, that the states in
122 which the persons reside have a life and health insurance guaranty association; and (ii) neither
123 the payee or beneficiary, nor the contract owner is eligible for coverage by the association of the
124 state in which the payee or contract owner resides.

125 (4) This section shall not provide coverage to a person who is a payee or beneficiary of a
126 contract owner resident of this commonwealth, if the payee or beneficiary is afforded any
127 coverage by the association of another state.

128 (5) This section is intended to provide coverage to a person who is a resident of this
129 commonwealth and, in special circumstances to a non-resident. In order to avoid duplicate
130 coverage, if a person who would otherwise receive coverage under this section is provided
131 coverage under the laws of any other state, the person shall not be provided coverage under this
132 section. In determining the application of the provisions of this paragraph in situations where a
133 person could be covered by the association of more than 1 state, whether as an owner or payee,
134 beneficiary or assignee, this section shall be construed in conjunction with other state laws to
135 result in coverage by only 1 association.

136 SECTION 3. Said section 146B of said chapter 175, as so appearing, is hereby further
137 amended by inserting after the word “based”, in line 94, the following words:- or the interest
138 rate, crediting rate or similar factor determined by use of an index or other external reference
139 stated in the policy or contract employed in calculating returns or changes in value.

140 SECTION 4. Said section 146B of said chapter 175, as so appearing, is hereby further
141 amended by striking out, in line 117, the word “and”.

142 SECTION 5. Said section 146B of said chapter 175, as so appearing, is hereby further
143 amended by striking out, in line 120, the word “commonwealth.” and inserting in place thereof
144 the following word:- “commonwealth;”.

145 SECTION 6. Subparagraph (2) of paragraph (B) of said subsection (4) of said section
146 146B of said chapter 175, as so appearing, is hereby amended by adding the following clauses:-

147 (h) any policy or contract and any portion of a policy or contract to the extent that the
148 assessments required by subsection (9) with respect to the policy or contract are pre-empted by
149 federal or state law;

150 (i) any obligation that does not arise under the express written terms of the policy or
151 contract issued to the contract owner or policy owner, including without limitation: (i) claims
152 based on marketing materials; (ii) claims based on side letters, riders or other documents that
153 were issued by the insurer without meeting applicable policy form filing or approval
154 requirements; (iii) misrepresentation of or regarding policy benefits; (iv) extra-contractual
155 claims, such as claims relating to bad faith in the payment of claims, punitive or exemplary
156 damages or attorneys fees and costs; or (v) a claim for penalties or consequential or incidental
157 damages;

158 (j) any portion of a policy or contract to the extent it provides for interest or other
159 changes in value to be determined by the use of an index or other external reference stated in the
160 policy or contract but which have not been credited to the policy or contract, or as to which the
161 policy or contract owner’s rights are subject to forfeiture, as of the date the member insurer
162 becomes an impaired or insolvent insurer under this section, whichever is earlier. If a policy’s or
163 contract’s interest or changes in value are credited less frequently than annually, then for the

164 purposes of determining the values that have been credited and are not subject to forfeiture under
165 this clause, the interest or change in value determined by using the procedures defined in the
166 policy or contract will be credited as if the contractual date of crediting interest or changing
167 values was the date of impairment or insolvency, whichever is earlier, and will not be subject to
168 forfeiture; and

169 (k) a policy or contract providing any hospital, medical, prescription drug or other health
170 care benefits pursuant to Part C or Part D of Subchapter XVIII, Chapter 7 of Title 42 of the
171 United States Code, commonly known as Medicare Part C and D, or any regulation issued
172 pursuant thereto.

173 SECTION 7. Said section 146B of said chapter 175, as so appearing, is hereby further
174 amended by inserting after the word “life”, in line 125, the following words:- regardless of the
175 number of policies or contracts.

176 SECTION 8. Said section 146B of said chapter 175, as so appearing, is hereby further
177 amended by striking out, in lines 128 to 135, inclusive, the words “(ii) one hundred thousand
178 dollars in health insurance benefits, including any net cash surrender and net cash withdrawal
179 values; (iii) one hundred thousand dollars in the present value of annuity benefits, including net
180 cash surrender and net cash withdrawal values; but in no event shall the association’s liability
181 exceed three hundred thousand dollars in the aggregate for all life insurance, health insurance
182 and annuity benefits, including net cash surrender and net cash withdrawal values” and inserting
183 in place thereof the following words:- (ii) in health insurance benefits: (I) \$100,000 for
184 coverage not defined as disability income insurance or basic hospital expense insurance, basic
185 medical-surgical insurance, major medical expense insurance or long term care insurance,
186 including any cash surrender and net cash withdrawal values, (II) \$300,000 for disability income
187 insurance, and \$300,000 for long term care insurance, (III) \$500,000 for basic hospital expense
188 insurance, basic medical-surgical expense insurance or major medical expense insurance; (iii)
189 \$250,000 in the present value of annuity benefits, including net cash surrender and net cash
190 withdrawal values.

191 SECTION 9. Subparagraph (3) of paragraph (B) of said subsection (4) of said section
192 146B of said chapter 175, as so appearing, is hereby amended by adding the following clause:-

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

196 SECTION 10. Said paragraph (B) of said subsection (4) of said section 146B of said
197 chapter 175, as so appearing, is hereby amended by adding the following subparagraphs:-

198 (4) However, in no event shall the association be obligated to cover more than (i)
199 an aggregate of \$300,000 in benefits with respect to any 1 life under clauses (b) and (c) of

200 subparagraph (3), except with respect to benefits for basic hospital expense insurance, basic
201 medical-surgical insurance or major medical expense insurance under item (III) of subclause (ii)
202 of clause (b) of said subparagraph (3), in which case the aggregate liability of the association
203 shall not exceed \$500,000 with respect to any 1 individual, or (ii) with respect to 1 owner of
204 multiple non-group policies of life insurance, whether the policy owner is an individual, firm,
205 corporation or other person, and whether the persons insured are officers, managers, employees
206 or other persons, more than \$5,000,000 in benefits, regardless of the number of policies and
207 contracts held by the owner.

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

214 SECTION 11. Subsection (4) of said section 146B of said chapter 175, as so appearing,
215 is hereby amended by adding the following paragraph:-

216 (D) In performing its obligations to provide coverage under subsection (8), the
217 association shall not be required to guarantee, assume, reinsure, or perform, or cause to be
218 guaranteed, assumed, or reinsured, or performed, the contractual obligations of the impaired or
219 insolvent insurer under a covered policy or contract that do not materially affect the economic
220 values or economic benefits of the covered policy or contract.

221 SECTION 12. Said section 146B of said chapter 175, as so appearing, is hereby
222 amended by striking out subsection (5) and inserting in place thereof the following subsection:-

223 (5) This section shall be construed to effect the purpose under subsection (3).

224 SECTION 13. Subsection (8) of said section 146B of said chapter 175 as so appearing, is
225 hereby amended by striking out paragraph (A) and inserting in place thereof the following
226 paragraph:-

227 (A) If a member is an impaired insurer, the association may, in its discretion, and subject
228 to any conditions imposed by the association that do not impair the contractual obligations of the
229 impaired insurer and that are approved by the commissioner:

230 (1) guarantee, assume or reinsure or cause to be guaranteed, assumed or reinsured, any or
231 all of the policies or contracts of the impaired insurer; or

232 (2) provide such monies, pledges, loans, guarantees or other means as are proper to
233 effectuate subparagraph (1) of paragraph (A) of subsection (8) and assure payment of the

234 contractual obligations of the impaired insurer pending action under said subparagraph (1) of
235 said paragraph (A) of said subsection (8).

236 SECTION 14. Said subsection (8) of said section 146B of said chapter 175, as so
237 appearing, is here by further amended by striking out paragraph (B).

238 SECTION 15. Said section 146B of said chapter 175, as so appearing, is hereby further
239 amended by striking out, in line 226, the letter “(C)” and inserting in place thereof the following
240 letter:- (B)

241 SECTION 16. Said section 146B of said chapter 175, as so appearing, is hereby further
242 amended by striking out, in line 236, the letter “(D)” and inserting in place thereof the following
243 letter:- (C)

244 SECTION 17. Subparagraph (1) of paragraph (D) of subsection (8) of said section 146B
245 of said chapter 175 , as so appearing, is hereby amended by striking out the introductory
246 paragraph and inserting in place thereof the following paragraph:- (C)(1) When proceeding
247 under paragraph (A) of subsection (8) or subparagraph (2) of paragraph (B) of subsection (8), the
248 association shall, with respect to life and health insurance policies and annuities:

249 SECTION 18. Section 146B of said chapter 175 , as so appearing, is hereby amended
250 by striking out, in lines 258 to 271, inclusive, the words “(ii) make diligent efforts to provide all
251 known insureds, or owners, if other than the insureds, and group policyholders with respect to
252 group policies, thirty days notice of the termination of the benefits provided; and (iii) with
253 respect to individual policies, make available to each known insured, or owner if other than the
254 insured, and with respect to an individual formerly insured under a group policy who is not
255 eligible for replacement group coverage, make available substitute coverage on an individual
256 basis in accordance with the provisions of clause (2) of paragraph (D), if such insured or owner
257 had a right under law or under the terminated policy to convert coverage to individual coverage
258 or to continue an individual policy in force until a specified age or for a specified time, during
259 which the insurer had no right unilaterally to make changes in any provision of the policy or had
260 a right only to make changes in premium by class” and inserting in place thereof the following
261 words:- (ii) make diligent efforts to provide all known insureds, annuitants, or owners, if other
262 than the insureds or annuitants, and group policyholders with respect to group policies, 30 days’
263 notice of the termination of the benefits provided; and (iii) with respect to individual policies,
264 make available to each known insured, annuitant or owner if other than the insured or annuitant,
265 and with respect to an individual formerly insured under a group policy who is not eligible for
266 replacement group coverage, make available substitute coverage on an individual basis in
267 accordance with the provisions of subparagraph (2) of paragraph (C), if such insured or owner
268 had a right under law or under the terminated policy to convert coverage to individual coverage
269 or to continue an individual policy in force until a specified age or for a specified time, during

270 which the insurer had no right unilaterally to make changes in any provision of the policy or had
271 a right only to make changes in premium by class.

272 SECTION 19. Said section 146B of said chapter 175, as so appearing, is hereby further
273 amended by striking out, in line 272, the letter “(D)” and inserting in place thereof the following
274 letter:- (C).

275 SECTION 20. Said section 146B of said chapter 175, as so appearing is hereby further
276 amended by inserting after the word “association”, in lines 303 and 304, the following:-

277 (6) When proceeding under subparagraph (2) of paragraph (C) of subsection (8) with
278 respect to a policy or contract carrying minimum guaranteed interest rates, the association shall
279 assure the payment or crediting of a rate of interest consistent with clause (d) of subparagraph (2)
280 of paragraph (B) of subsection (4).

281 SECTION 21. Said section 146B of said chapter 175, as so appearing, is hereby further
282 amended by striking out, in line 305, the letter “(E)” and inserting in place thereof the following
283 letter:- (D).

284 SECTION 22. Said section 146B of said chapter 175, as so appearing, is hereby further
285 amended by striking out, in line 312, the letter “(F)” and inserting in place thereof the following
286 letter:- (E).

287 SECTION 23. Said section 146B of said chapter 175, as so appearing is hereby further
288 amended by striking out, in line 316 and 317, the words “(G) In carrying out its duties under
289 paragraphs (B) and (C) of this subsection” and inserting in place thereof the following words:-
290 (F) In carrying out its duties under paragraph (B) of this subsection.

291 SECTION 24. Said section 146B of said chapter 175, as so appearing, is hereby amended
292 by inserting after the word “value”, in line 329, the following words:- ; provided, however, that
293 in the event of a temporary moratorium charge imposed by the receivership court on payment of
294 cash values or policy loans, or any other right to withdraw funds held in conjunction with
295 policies or contracts, out of assets of the impaired or insolvent insurer, the association may defer
296 the payment of such values, policy loans or other rights by the association for a period of the
297 moratorium or moratorium charge imposed by the receivership court, except for claims covered
298 by the association to be paid in accordance with a hardship procedure established by the
299 liquidator or rehabilitator and approved by the receivership court.

300 SECTION 25. Said section 146B of said chapter 175, as so appearing, is hereby further
301 amended by striking out, in lines 330 and 331, the words “(H) If the association fails to act
302 within a reasonable period of time as provided in paragraphs (B), (C), and (D)” and inserting in
303 place thereof the following words:- (G) If the association fails to act within a reasonable period
304 of time as provided in paragraphs (B) and (C).

305 SECTION 26. Said section 146B of said chapter 175, as so appearing, is hereby
306 amended by striking out, in line 334, the letter “(I)” and inserting in place thereof the following
307 letter:- (H).

308 SECTION 27. Subsection (8) of said section 146B of said chapter 175 , as so appearing,
309 is hereby amended by striking out paragraph (J) and inserting in place thereof the following
310 paragraph:-

311 (I). The association, shall have standing to appear or intervene before any court or agency
312 in the commonwealth with jurisdiction over an impaired or insolvent insurer concerning which
313 the association is or may become obligated under this section or with jurisdiction over any
314 person or property against whom the association may have rights through subrogation or
315 otherwise. Such standing shall extend to all matters germane to the powers and duties of the
316 association, including, but not limited to, proposals for reinsuring, modifying or guaranteeing the
317 covered policies or contracts of the impaired or insolvent insurer and the determination of the
318 covered policies or contracts and contractual obligations. The association shall also have the
319 right to appear or intervene before a court or agency in any other state with jurisdiction over an
320 impaired or insolvent insurer for which the association is or may become obligated or with
321 jurisdiction over any person or property against whom the association may have rights through
322 subrogation of the insurer’s policyholders.

323 SECTION 28. Said subsection (8) of said section 146B of said chapter 175, as so
324 appearing, is hereby further amended by striking out, in line 352, the letter “(K)” and inserting in
325 place thereof the following letter:- (J).

326 SECTION 29. Said subsection (8) of said section 146B of said chapter 175, is hereby
327 further amended by adding after the word “contracts”, in lines 371 and 372, the following:-

328 (4) If the preceding provisions of this paragraph are invalid or ineffective with respect to
329 any person or claim for any reason, the amount payable by the association with respect to the
330 related coverage obligations shall be reduced by the amount realized by any other person with
331 respect to the person or claim that is attributable to the policies, or portion thereof, covered by the
332 association.

333 (5) If the association has provided benefits with respect to a covered obligation and a
334 person recovers amounts as to which the association has rights as described in the preceding
335 paragraphs of this subsection, the person shall pay to the association the portion of the recovery
336 attributable to the policies, or portion thereof, covered by the association.

337 SECTION 30. Said section 146B of said chapter 175, as so appearing, is hereby
338 further amended by striking out, in lines 373 to 376, inclusive, the words “(L) The association
339 may: (i) enter into such contracts as are necessary or proper to carry out the provisions and
340 purposes of this section; (ii) sue or be sued, including taking any legal actions necessary or

341 proper for recovery of any unpaid assessments under subsection (9)” and inserting in place
342 thereof the following words:-

343 (K) In addition to the rights and powers elsewhere in this section, the association may:
344 (i) enter into such contracts as are necessary or proper to carry out the provisions and purposes of
345 this section; (ii) sue or be sued, including taking any legal actions necessary or proper for
346 recovery of any unpaid assessments under subsection (9) and to settle claims or potential claims
347 against it.

348 SECTION 31. Subsection (8) of said section 146B of said chapter 175, as so appearing, is
349 hereby amended by adding the following 4 paragraphs:-

350 (L) (1) (a) At any time within 180 days of the date of the order of liquidation, the
351 association may elect to succeed to the rights and obligations of the ceding member insurer that
352 relate to policies or annuities covered, in whole or in part, by the association, in each case under
353 one or more reinsurance contracts entered into by the insolvent insurer and its reinsurers and
354 selected by the association. Any such assumption shall be effective as of the date of the order of
355 liquidation. The election shall be effected by the association or the National Organization of Life
356 and Health Insurance Guaranty Associations hereinafter referred to as NOLHGA on its behalf
357 sending written notice, return receipt requested, to the affected reinsurers.

358 (b) To facilitate the earliest practicable decision about whether to assume any of the
359 contracts of reinsurance, and in order to protect the financial position of the estate, the receiver
360 and each reinsurer of the ceding member insurer shall upon request make available to the
361 association or NOLHGA on its behalf as soon as possible after commencement of formal
362 delinquency proceedings: (i) copies of in-force contracts of reinsurance and all related files and
363 records relevant to the determination of whether such contracts should be assumed, and (ii)
364 notices of any defaults under the reinsurance contracts or any known event or condition which
365 with the passage of time could become a default under the reinsurance contracts.

366 (c) The following subclauses shall apply to reinsurance contracts so assumed by the
367 association:

368 (i) The association shall be responsible for all unpaid premiums due under the
369 reinsurance contracts for periods both before and after the date of the order of liquidation and
370 shall be responsible for the performance of all other obligations to be performed after the date of
371 the order of liquidation, in each case which relate to policies or annuities covered, in whole or in
372 part, by the association. The association may charge policies or annuities covered in part by the
373 association, through reasonable allocation methods, the cost for reinsurance in excess of the
374 obligations of the association and shall provide notice and an accounting of these charges to the
375 liquidator;

376 (ii) The association shall be entitled to any amounts payable by the reinsurer under the
377 reinsurance contracts with respect to losses or events that occur in periods after the date of the
378 order of liquidation and that relate to policies or annuities covered, in whole or in part, by the
379 association, provided that, upon the receipt of any such amounts, the association shall be
380 obligated to pay to the beneficiary under the policy or annuity on account of which the amounts
381 were paid a portion of the amount equal to the lesser of: (I) the amount received by the
382 association; and (II) the excess of the amount received by the association over the amount equal
383 to the benefits paid by the association on account of the policy or annuity less the retention of the
384 insurer applicable to the loss or event;

385 (iii) Within 30 days following the association's election, hereinafter referred to as the
386 "election date", the association and each reinsurer under contracts assumed by the association
387 shall calculate the net balance due to or from the association under each reinsurance contract as
388 of the election date with respect to policies or annuities covered, in whole or in part, by the
389 association, which calculation shall give full credit to all items paid by either the insurer or its
390 receiver or the reinsurer prior to the election date. The reinsurer shall pay the receiver any
391 amounts due for losses or events prior to the date of the order of liquidation, subject to any set-
392 off for premiums unpaid for periods prior to the date, and the association or reinsurer shall pay
393 any remaining balance due the other, in each case within 5 days of the completion of the
394 aforementioned calculation. Any dispute over the amounts due to either the association or the
395 reinsurer shall be resolved by arbitration pursuant to the terms of the affected reinsurance
396 contracts or, if the contract contains no arbitration clause, as otherwise provided by law. If the
397 receiver has received any amounts due the association pursuant to subclause (ii) of clause (c),
398 the receiver shall remit the same to the association as promptly as practicable; and

399 (iv) If the association, or the receiver, on the association's behalf within 60 days of the
400 election date, pays the unpaid premiums due for periods both before and after the election date
401 that relate to policies or annuities covered, in whole or in part, by the association, the reinsurer
402 shall not be entitled to terminate the reinsurance contracts for failure to pay premium insofar as
403 the reinsurance contracts relate to policies or annuities covered, in whole or in part, by the
404 association, and shall not be entitled to set off any unpaid amounts due under other contracts, or
405 unpaid amounts due from parties other than the association, against amounts due the association.

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

408 (a) (i) Neither the association nor the reinsurer shall have any rights or obligations under
409 reinsurance contracts that the association has the right to assume under subparagraph (1) of
410 paragraph (L) of subsection (8), whether for periods prior to or after the date of the order of
411 liquidation; and

412 (ii) The reinsurer, the receiver and the association shall, to the extent practicable, provide
413 each other data and records reasonably requested.

414 (b) Provided that once the association has elected to assume a reinsurance contract, the
415 parties' rights and obligations shall be governed by subparagraph (1) of paragraph (L).

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

420 (4) When policies or annuities, or covered obligations with respect thereto, are transferred
421 to an assuming insurer, reinsurance on the policies or annuities may also be transferred by the
422 association, in the case of contracts assumed under subparagraph (1) of paragraph (L), subject to
423 the following:

424 (a) Unless the reinsurer and the assuming reinsurer agree otherwise, the reinsurance
425 contract transferred shall not cover any new policies of insurance or annuities in addition to those
426 transferred;

427 (b) The obligations described in subparagraph (1) of paragraph (L) shall no longer apply
428 with respect to matters arising after the effective date of the transfer; and

429 (c) Notice shall be given in writing, return receipt requested, by the transferring party to
430 the affected reinsurer not less than 30 days prior to the effective date of the transfer.

431 (5) The provisions of this paragraph shall supersede the provisions of any law or of any
432 affected reinsurance contract that provides for or requires any payment of reinsurance proceeds,
433 on account of losses or events that occur in periods after the date of the order of liquidation, to
434 the receiver of the insolvent insurer or any other person. The receiver shall remain entitled to
435 any amounts payable by the reinsurer under the reinsurance contracts with respect to losses or
436 events that occur in periods prior to the date of the order of liquidation, subject to applicable
437 setoff provisions.

438 (6) Except as otherwise provided in this paragraph, nothing in this paragraph shall alter or
439 modify the terms and conditions of any reinsurance contract. Nothing in this paragraph shall
440 abrogate or limit any rights of any reinsurer to claim that it is entitled to rescind a reinsurance
441 contract. Nothing in this paragraph shall give a policyholder or beneficiary an independent cause
442 of action against a reinsurer that is not otherwise set forth in the reinsurance contract. Nothing in
443 this paragraph shall limit or affect the association's rights as a creditor of the estate against the
444 assets of the estate. Nothing in this paragraph shall apply to reinsurance agreements covering
445 property or casualty risks.

446 (M) In carrying out its duties in connection with guaranteeing, assuming or reinsuring
447 policies or contracts pursuant to paragraph (A) or (B) the association may, subject to approval of
448 the receivership court, issue substitute coverage for a policy or contract that provides an interest
449 rate, crediting rate or similar factor determined by use of an index or other external reference
450 stated in the policy or contract employed in calculating returns or changes in value by issuing an
451 alternative policy or contract in accordance with the following:

452 (1) In lieu of the index or other external reference provided for in the original policy or
453 contract the alternative policy or contract provides for: (i) a fixed interest rate; (ii) payment of
454 dividends with minimum guarantees; or (iii) a different method for calculating interest or
455 changes in value;

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

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

460 (N) The board of directors of the association shall have discretion and may exercise
461 reasonable business judgment to determine the means by which the association is to provide the
462 benefits of this section in an economical and efficient manner.

463 (O) Where the association has arranged or offered to provide the benefits of this section
464 to a covered person under a plan or arrangement that fulfills the association's obligations under
465 this section, the person shall not be entitled to benefits from the association in addition to or
466 other than those provided under the plan or arrangement.

467 SECTION 32. Said section 146B of said chapter 175, as so appearing, is hereby further
468 amended by striking out, in lines 402 and 403, the words "and examinations conducted under the
469 authority of paragraph (E) of subsection (12)".

470 SECTION 33. Said section 146B of said chapter 175 , as so appearing, is hereby further
471 amended by striking out, in lines 407 and 408, the words "(A), (B) or (C)" and inserting in place
472 thereof the following words:- (A) or (B).

473 SECTION 34. Said section 146B of said chapter 175, as so appearing, is hereby further
474 amended by striking out, in lines 409 to 414, inclusive, the words "The amount of any Class A
475 assessment shall be determined by the board of directors and may be made on a pro rata or non-
476 pro rata basis. If made on a pro rata basis, the board of directors may provide that it be credited
477 against future Class B assessments. If it is made on a non-pro rata basis, such assessment shall
478 not exceed one hundred and fifty dollars per member insurer in any one calendar year." and
479 inserting in place thereof the following words:- The amount of any Class A assessment shall be
480 determined by the board of directors and may be made on a pro rata or non-pro rata basis or any

481 combination thereof. If made on a pro rata basis, the board of directors may provide that it be
482 credited against future Class B assessments.

483 SECTION 35. Subsection (9) of said section 146B of said chapter 175, as so appearing,
484 is hereby further amended by striking out paragraph (E) and inserting in place thereof the
485 following paragraph:-

486 (E) (1) The total of all assessments upon a member insurer for each account shall not in
487 any one calendar year exceed 2 per cent of such insurer's average premiums received in the
488 commonwealth on the policies covered by the account during the 3 calendar years preceding the
489 year in which the insurer became an impaired or insolvent insurer. If the maximum assessment,
490 together with the other assets of the association in any account, does not provide in any 1 year in
491 any account an amount sufficient to carry out the responsibilities of the association, the
492 necessary additional funds shall be assessed as soon thereafter as permitted by this section.

493 The board of directors may provide a method of allocating funds among claims, whether
494 relating to one or more impaired or insolvent insurers, when the maximum assessment will be
495 insufficient to cover anticipated claims.

496 (2) If the maximum assessment for the life or annuity account in any 1 year does not
497 provide an amount sufficient to carry out the responsibilities of the association, then pursuant to
498 subparagraph (2) of paragraph (C), the board of directors shall assess the other account for the
499 necessary additional amount, subject to the maximum stated in subparagraph (1) of paragraph
500 (E).

501 SECTION 36. Said section 146B of said chapter 175, as so appearing, is hereby further
502 amended by striking out, in line 504, the letter "(K)" and inserting in place thereof the following
503 letter:- (J).

504 SECTION 37. Subsection (12) of said section 146B of said chapter 175, as so
505 appearing, is hereby further amended by striking out paragraphs (E), (F) and (G) and inserting in
506 place thereof the following paragraph:- (E) The board of directors may, upon majority vote,
507 make recommendations to the commissioner for the detection and prevention of insurer
508 insolvencies.

509 SECTION 38. Subsection (14) of said section 146B of said chapter 175, as so appearing,
510 is hereby amended by striking out paragraph (B) and inserting in place thereof the following
511 paragraph:-

512 (B) Records shall be kept of all meetings of the board of directors to discuss the activities
513 of the association in carrying out its powers and duties under subsection (8). The records of the
514 association with respect to an impaired or insolvent insurer shall not be disclosed prior to the
515 termination of a liquidation, rehabilitation or conservation proceeding involving the impaired or

516 insolvent insurer, except (i) upon the termination of the impairment of insolvency of the insurer,
517 or (ii) upon the order of a court of competent jurisdiction. Nothing in this subsection shall limit
518 the duty of the association to render a report of its activities under subsection (15)

519 SECTION 39. Said section 146B of said chapter 175, as so appearing, is hereby further
520 amended by striking out, in line 667, the letter “(K)” and inserting in place thereof the following
521 letter:- (J).

522 SECTION 40. Said section 146B of said chapter 175, as so appearing, is hereby further
523 amended by striking out, in line 711, the words “paragraph (3)” and inserting in place thereof the
524 following words:- subparagraph (3).

525 SECTION 41. Subsection (14) of said section 146B of said chapter 175, as so
526 appearing, is hereby amended by adding the following paragraph:-

527 (F) As a creditor of the impaired or insolvent insurer as established in paragraph (C) of
528 this subsection and consistent with section 180C, the association and other similar associations
529 shall be entitled to receive a disbursement of assets out of the marshaled assets, from time to time
530 as the assets become available to reimburse it, as a credit against contractual obligations under
531 this section. If the liquidator has not, within 120 days of a final determination of insolvency of
532 an insurer by the receivership court, made an application to the court for the approval of a
533 proposal to disburse assets out of marshaled assets to guaranty associations having obligations
534 because of the insolvency, then the association shall be entitled to make application to the
535 receivership court for approval of its own proposal to disburse assets.

536 SECTION 42. Said section 146B of said chapter 175, as so appearing, is hereby further
537 amended by striking out, in line 732, the letter “(L)” and inserting in place thereof the following
538 letter:- (K).

539 SECTION 43. Subsection (18) of said section 146B of said chapter 175, as so
540 appearing, is hereby amended by striking out the first sentence and inserting in place thereof the
541 following sentence:- All proceedings in which the insolvent insurer is a party in any court in the
542 commonwealth shall be stayed 180 days from the date an order of rehabilitation, conservation or
543 liquidation is final to permit proper legal action by the association on any matters germane to its
544 powers or duties.

545 SECTION 44. Subsection (20) of said section 146B of said chapter 175, as so
546 appearing, is hereby amended by adding the following sentence:- Amendments to this section
547 shall not apply to any insurer which was placed under an order of liquidation with a finding of
548 insolvency prior to the effective date of these amendments.