

SECOND REGULAR SESSION

# SENATE BILL NO. 900

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR RUPP.

Read 1st time February 4, 2010, and ordered printed.

TERRY L. SPIELER, Secretary.

4866S.011

## AN ACT

To repeal sections 376.717, 376.718, 376.724, 376.725, 376.732, 376.733, 376.734, 376.735, 376.737, 376.738, 376.740, 376.743, and 376.758, RSMo, and to enact in lieu thereof thirteen new sections relating to the Missouri life and health insurance guaranty association act.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 376.717, 376.718, 376.724, 376.725, 376.732, 376.733, 2 376.734, 376.735, 376.737, 376.738, 376.740, 376.743, and 376.758, RSMo, are 3 repealed and thirteen new sections enacted in lieu thereof, to be known as 4 sections 376.717, 376.718, 376.724, 376.725, 376.732, 376.733, 376.734, 376.735, 5 376.737, 376.738, 376.740, 376.743, and 376.758, to read as follows:

376.717. 1. Sections 376.715 to 376.758 shall provide coverage for the 2 policies and contracts specified in subsection 2 of this section:

3 (1) To persons who, regardless of where they reside, except for 4 nonresident certificate holders under group policies or contracts, are the 5 beneficiaries, assignees or payees of the persons covered under subdivision (2) of 6 this subsection; and

7 (2) To persons who are owners of or certificate holders under such policies 8 or contracts [and], **other than structured settlement annuities**, who:

9 (a) Are residents of this state; or

10 (b) Are not residents, but only under all of the following conditions:

11 a. The insurers which issued such policies or contracts are domiciled in 12 this state;

13 b. [Such insurers never held a license or certificate of authority in the 14 states in which such persons reside;] **The persons are not eligible for**

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

15 coverage by an association in any other state due to the fact that the  
16 insurer was not licensed in such state at the time specified in such  
17 state's guaranty association law; and

18 c. [Such] The states in which the persons reside have associations  
19 similar to the association created by sections 376.715 to 376.758; and

20 d. Such persons are not eligible for coverage by such associations].

21 (3) For structured settlement annuities specified in subsection  
22 2 of this section, subdivisions (1) and (2) of subsection 1 of this section  
23 shall not apply, and sections 376.715 to 376.758 shall, except as provided  
24 in subdivisions (4) and (5) of this subsection, provide coverage to a  
25 person who is a payee under a structured settlement annuity, or  
26 beneficiary of a payee if the payee is deceased, if the payee:

27 (a) Is a resident, regardless of where the contract owner resides;  
28 or

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

31 a. (i) The contract owner of the structured settlement annuity  
32 is a resident; or

33 (ii) The contract owner of the structure settlement annuity is not  
34 a resident, but:

35 i. The insurer that issued the structured settlement annuity is  
36 domiciled in this state; and

37 ii. The state in which the contract owner resides has an  
38 association similar to the association created under sections 376.715 to  
39 376.758; and

40 b. Neither the payee or beneficiary nor the contract owner is  
41 eligible for coverage by the association of the state in which the payee  
42 or contract owner resides.

43 (4) Sections 376.715 to 376.758 shall not provide to a person who  
44 is a payee or beneficiary of a contract owner resident of this state, if  
45 the payee or beneficiary is afforded any coverage by such an  
46 association of another state.

47 (5) Sections 376.715 to 376.758 is intended to provide coverage to  
48 a person who is a resident of this state and, in special circumstances,  
49 to a nonresident. In order to avoid duplicate coverage, if a person who  
50 would otherwise receive coverage under sections 376.715 to 376.758 is  
51 provided coverage under the laws of any other state, the person shall  
52 not be provided coverage under sections 376.715 to 376.758. In

53 **determining the application of the provisions of this subdivision in**  
54 **situations where a person could be covered by such an association of**  
55 **more than one state, whether as an owner, payee, beneficiary, or**  
56 **assignee, sections 376.715 to 376.758 shall be construed in conjunction**  
57 **with the other state's laws to result in coverage by only one association.**

58         2. Sections 376.715 to 376.758 shall provide coverage to the persons  
59 specified in subsection 1 of this section for direct, nongroup life, health, annuity  
60 [and supplemental] policies or contracts, **and supplemental contracts to any**  
61 **such policies or contracts, and for** certificates under direct group policies and  
62 contracts, except as limited by the provisions of sections 376.715 to  
63 376.758. **Annuity contracts and certificates under group annuity**  
64 **contracts include allocated funding agreements, structured settlement**  
65 **annuities, and any immediate or deferred annuity contracts.**

66         3. Sections 376.715 to 376.758 shall not provide coverage for:

67         (1) Any portion of a policy or contract not guaranteed by the insurer, or  
68 under which the risk is borne by the policy or contract holder;

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

71         (3) Any portion of a policy or contract to the extent that the rate of  
72 interest on which it is based, **or the interest rate, crediting rate, or similar**  
73 **factor determined by use of an index or other external reference stated**  
74 **in the policy or contract employed in calculating returns or changes in**  
75 **value:**

76             (a) Averaged over the period of four years prior to the date on which the  
77 association becomes obligated with respect to such policy or contract, exceeds the  
78 rate of interest determined by subtracting three percentage points from Moody's  
79 Corporate Bond Yield Average averaged for that same four-year period or for such  
80 lesser period if the policy or contract was issued less than four years before the  
81 association became obligated; and

82             (b) On and after the date on which the association becomes obligated with  
83 respect to such policy or contract exceeds the rate of interest determined by  
84 subtracting three percentage points from Moody's Corporate Bond Yield Average  
85 as most recently available;

86         (4) Any **portion of a policy or contract issued to a plan or program**  
87 **of an employer, association or [similar entity] other person** to provide life,  
88 health, or annuity benefits to its employees or members to the extent that such  
89 plan or program is self-funded or uninsured, including but not limited to benefits  
90 payable by an employer, association or [similar entity] **other person** under:

- 91 (a) A "multiple employer welfare arrangement" as defined in [section 514  
92 of the Employee Retirement Income Security Act of 1974] **29 U.S.C. Section**  
93 **1144**, as amended;
- 94 (b) A minimum premium group insurance plan;
- 95 (c) A stop-loss group insurance plan; or
- 96 (d) An administrative services only contract;
- 97 (5) Any portion of a policy or contract to the extent that it provides  
98 dividends or experience rating credits, **voting rights**, or provides that any fees  
99 or allowances be paid to any person, including the policy or contract holder, in  
100 connection with the service to or administration of such policy or contract; [and]
- 101 (6) Any policy or contract issued in this state by a member insurer at a  
102 time when it was not licensed or did not have a certificate of authority to issue  
103 such policy or contract in this state;
- 104 **(7) A portion of a policy or contract to the extent that the**  
105 **assessments required by section 376.735 with respect to the policy or**  
106 **contract are preempted by federal or state law;**
- 107 **(8) An obligation that does not arise under the express written**  
108 **terms of the policy or contract issued by the insurer to the contract**  
109 **owner or policy owner, including without limitation:**
- 110 **(a) Claims based on marketing materials;**
- 111 **(b) Claims based on side letters, riders, or other documents that**  
112 **were issued by the insurer without meeting applicable policy form**  
113 **filing or approval requirements;**
- 114 **(c) Misrepresentations of or regarding policy benefits;**
- 115 **(d) Extra-contractual claims;**
- 116 **(e) A claim for penalties or consequential or incidental damages;**
- 117 **(9) A contractual agreement that establishes the member**  
118 **insurer's obligations to provide a book value accounting guaranty for**  
119 **defined contribution benefit plan participants by reference to a**  
120 **portfolio of assets that is owned by the benefit plan or its trustee,**  
121 **which in each case is not an affiliate of the member insurer;**
- 122 **(10) An unallocated annuity contract;**
- 123 **(11) A portion of a policy or contract to the extent it provides for**  
124 **interest or other changes in value to be determined by the use of an**  
125 **index or other external reference stated in the policy or contract, but**  
126 **which have not been credited to the policy or contract, or as to which**  
127 **the policy or contract owner's rights are subject to forfeiture, as of the**  
128 **date the member insurer becomes an impaired or insolvent insurer**

129 under sections 376.715 to 376.758, whichever is earlier. If a policy's or  
130 contract's interest or changes in value are credited less frequently than  
131 annually, for purposes of determining the value that have been credited  
132 and are not subject to forfeiture under this subdivision, the interest or  
133 change in value determined by using the procedures defined in the  
134 policy or contract will be credited as if the contractual date of  
135 crediting interest or changing values was the date of impairment or  
136 insolvency, whichever is earlier, and will not be subject to forfeiture;

137 (12) A policy or contract providing any hospital, medical,  
138 prescription drug or other health care benefit under Part C or Part D  
139 of Subchapter XVIII, Chapter 7 of Title 42 of the United States Code,  
140 Medicare Part C & D, or any regulations issued thereunder.

141 4. The benefits for which the association may become liable, with regard  
142 to a member insurer that was first placed under an order of  
143 rehabilitation or placed under an order of liquidation if no order of  
144 rehabilitation was previously entered prior to August 28, 2010, shall in  
145 no event exceed the lesser of:

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

148 (2) With respect to any one life, regardless of the number of policies or  
149 contracts:

150 (a) Three hundred thousand dollars in life insurance death benefits, but  
151 not more than one hundred thousand dollars in net cash surrender and net cash  
152 withdrawal values for life insurance;

153 (b) One hundred thousand dollars in health insurance benefits, including  
154 any net cash surrender and net cash withdrawal values;

155 (c) One hundred thousand dollars in the present value of annuity benefits,  
156 including net cash surrender and net cash withdrawal values.

157 Provided, however, that in no event shall the association be liable to expend more  
158 than three hundred thousand dollars in the aggregate with respect to any one life  
159 under paragraphs (a), (b), and (c) of this subdivision.

160 5. Except as otherwise provided in subdivision (2) of this  
161 subsection, the benefits for which the association may become liable  
162 with regard to a member insurer that was first placed under an order  
163 of rehabilitation or placed under an order of liquidation if no order of  
164 rehabilitation was previously entered on or after August 28, 2010, shall  
165 in no event exceed the lesser of:

166 (1) The contractual obligations for which the insurer is liable or

167 would have been liable if it were not an impaired or insolvent insurer;  
168 or

169 (2) (a) With respect to any one life, regardless of the number of  
170 policies or contracts:

171 a. Three hundred thousand dollars in life insurance death  
172 benefits, but not more than one hundred thousand dollars in net cash  
173 surrender and net cash withdrawal values for life insurance;

174 b. In health insurance benefits:

175 (i) One hundred thousand dollars of coverages other than  
176 disability insurance or basic hospital, medical, and surgical insurance  
177 or major medical insurance, or long-term care insurance, including any  
178 net cash surrender and net case withdrawal values;

179 (ii) Three hundred thousand dollars for disability insurance and  
180 three hundred thousand dollars for long-term care insurance; provided,  
181 however, that the increased maximum benefits provided herein for  
182 long-term care insurance shall apply to a member insurer that was first  
183 placed under an order of rehabilitation or placed under an order of  
184 liquidation if no order of rehabilitation was previously entered after  
185 January 1, 2009;

186 (iii) Five hundred thousand dollars for basic hospital, medical,  
187 and surgical insurance or major medical insurance;

188 c. Two hundred fifty thousand dollars in the present value of  
189 annuity benefits, including net cash surrender and net cash withdrawal  
190 values; or

191 (b) With respect to each payee of a structured settlement  
192 annuity, or beneficiary or beneficiaries of the payee if deceased, two  
193 hundred fifty thousand dollars in present value annuity benefits, in the  
194 aggregate, including net cash surrender and net cash withdrawal  
195 values, if any;

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

198 a. An aggregate of three hundred thousand dollars in benefits  
199 with respect to any one life under paragraphs (a) and (b) of this  
200 subdivision, except with respect to benefits for basic hospital, medical,  
201 and surgical insurance and major medical insurance under item (iii) of  
202 subparagraph b. of paragraph (a) of this subdivision, in which case the  
203 aggregate liability of the association shall not exceed five hundred  
204 thousand dollars with respect to any one individual; or

205           **b. With respect to one owner of multiple nongroup policies of life**  
206 **insurance, whether the policy owner is an individual, firm, corporation,**  
207 **or other person, and whether the persons insured are officers,**  
208 **managers, employees, or other persons, more than five million dollars**  
209 **in benefits, regardless of the number of policies and contracts held by**  
210 **the owner.**

211           **6. The limitations set forth in subsections 4 and 5 of this section**  
212 **are limitations on the benefits for which the association is obligated**  
213 **before taking into account either its subrogation and assignment rights**  
214 **or the extent to which such benefits could be provided out of the assets**  
215 **of the impaired or insolvent insurer attributable to covered**  
216 **policies. The costs of the association's obligations under sections**  
217 **376.715 to 376.758 may be met by the use of assets attributable to**  
218 **covered policies or reimbursed to the association under its subrogation**  
219 **and assignment rights.**

          376.718. As used in sections 376.715 to 376.758, the following terms shall  
2 mean:

3           (1) "Account", any of the [four] accounts created under section 376.720;

4           (2) ["Annuity or annuity contract", any annuity contract or group annuity  
5 certificate which is issued to and owned by an individual. This definition of  
6 "annuity or annuity contract" does not include any form of unallocated annuity  
7 contract;

8           (3)] "Association", the Missouri life and health insurance guaranty  
9 association created under section 376.720;

10           **(3) "Benefit plan", a specific employee, union, or association of**  
11 **natural persons benefit plan;**

12           (4) "Contractual obligation", any obligation under a policy or contract or  
13 certificate under a group policy or contract, or portion thereof for which coverage  
14 is provided under the provisions of section 376.717;

15           (5) "Covered policy", any policy or contract [within the scope of sections  
16 376.715 to 376.758] **or portion of a policy or contract for which coverage**  
17 **is provided** under the provisions of section 376.717;

18           (6) "Director", the director of the department of insurance, financial  
19 institutions and professional registration of this state;

20           (7) "Extra-contractual claims", **includes but is not limited to**  
21 **claims relating to bad faith in the payment of claims, punitive or**  
22 **exemplary damages, or attorneys fees and costs;**

23           (8) "Impaired insurer", a member insurer which, after August 13, 1988,

24 is not an insolvent insurer, and is [deemed by the director to be potentially  
25 unable to fulfill its contractual obligations, or is] placed under an order of  
26 rehabilitation or conservation by a court of competent jurisdiction;

27       [(8)] (9) "Insolvent insurer", a member insurer which, after August 13,  
28 1988, is placed under an order of liquidation by a court of competent jurisdiction  
29 with a finding of insolvency;

30       [(9)] (10) "Member insurer", any insurer or health services corporation  
31 licensed or which holds a certificate of authority to transact in this state any kind  
32 of insurance for which coverage is provided under section 376.717, and includes  
33 any insurer whose license or certificate of authority in this state may have been  
34 suspended, revoked, not renewed or voluntarily withdrawn, but does not include:

35       (a) A health maintenance organization;

36       (b) A fraternal benefit society;

37       (c) A mandatory state pooling plan;

38       (d) A mutual assessment company or any entity that operates on an  
39 assessment basis;

40       (e) An insurance exchange; [or]

41       (f) **An organization that issues qualified charitable gift annuities,**  
42 **as defined in section 352.500, and does not hold a certificate or license**  
43 **to transact insurance business; or**

44       (g) Any entity similar to any of the entities listed in paragraphs (a) to  
45 [(e)] (f) of this subdivision;

46       [(10)] (11) "Moody's Corporate Bond Yield Average", the monthly average  
47 corporates as published by Moody's Investors Service, Inc., or any successor  
48 thereto;

49       (12) **"Owner", "policy owner", or "contract owner", the person who**  
50 **is identified as the legal owner under the terms of the policy or**  
51 **contract or who is otherwise vested with legal title to the policy or**  
52 **contract through a valid assignment completed in accordance with the**  
53 **terms of the policy or contract and properly recorded as the owner on**  
54 **the books of the insurer. Owner, contract owner, and policy owner**  
55 **shall not include persons with a mere beneficial interest in a policy or**  
56 **contract;**

57       [(11)] (13) "Person", any individual, corporation, partnership, association  
58 or voluntary organization;

59       [(12)] (14) "Premiums", amounts received on covered policies or contracts,  
60 less premiums, considerations and deposits returned thereon, and less dividends  
61 and experience credits thereon. The term does not include any amounts received

62 for any policies or contracts or for the portions of any policies or contracts for  
63 which coverage is not provided under subsection 3 of section 376.717, except that  
64 assessable premium shall not be reduced on account of subdivision (3) of  
65 subsection 3 of section 376.717 relating to interest limitations and subdivision (2)  
66 of subsection 4 of section 376.717 relating to limitations with respect to any one  
67 life, **any one participant**, and any one contract holder. **Premiums shall not**  
68 **include:**

69 (a) **Premiums on an unallocated annuity contract; or**

70 (b) **With respect to multiple nongroup policies of life insurance**  
71 **owned by one owner, whether the policy owner is an individual, firm,**  
72 **corporation, or other person, and whether the persons insured are**  
73 **officers, managers, employees, or other persons, premiums in excess of**  
74 **five million dollars with respect to such policies or contracts,**  
75 **regardless of the number of policies or contracts held by the owner;**

76 (15) **"Principal place of business", for a person other than a**  
77 **natural person, the single state in which the natural persons who**  
78 **establish policy for the direction, control, and coordination of the**  
79 **operations of the entity as a whole primarily exercise that function,**  
80 **determined by the association in its reasonable judgment by**  
81 **considering the following factors:**

82 (a) **The state in which the primary executive and administrative**  
83 **headquarters of the entity is located;**

84 (b) **The state in which the principal office of the chief executive**  
85 **officer of the entity is located;**

86 (c) **The state in which the board of directors, or similar**  
87 **governing person or persons, of the entity conducts the majority of its**  
88 **meetings;**

89 (d) **The state in which the executive or management committee**  
90 **of the board of directors, or similar governing person or persons, of the**  
91 **entity conducts the majority of its meetings; and**

92 (e) **The state from which the management of the overall**  
93 **operations of the entity is directed;**

94 (16) **"Receivership court", the court in the insolvent or impaired**  
95 **insurer's state having jurisdiction over the conservation, rehabilitation,**  
96 **or liquidation of the insurer;**

97 [(13)] (17) **"Resident", any person who resides in this state [at the time**  
98 **a member insurer is determined to be an impaired or insolvent insurer] on the**  
99 **date of entry of a court order that determines a member insurer to be**

100 **an impaired insurer or a court order that determines a member insurer**  
 101 **to be an insolvent insurer, whichever first occurs,** and to whom a  
 102 contractual obligation is owed. A person may be a resident of only one state,  
 103 which in the case of a person other than a natural person shall be its principal  
 104 place of business. **Citizens of the United States that are either residents**  
 105 **of foreign countries or residents of the United States possessions,**  
 106 **territories, or protectorates that do not have an association similar to**  
 107 **the association created under sections 376.715 to 376.758 shall be**  
 108 **deemed residents of the state of domicile of the insurer that issued the**  
 109 **policies or contracts;**

110 (18) "Structure settlement annuity", an annuity purchased in  
 111 order to fund periodic payments for a plaintiff or other claimant in  
 112 payment for or with respect to personal injury suffered by the plaintiff  
 113 or other claimant;

114 (19) "State", a state, the District of Columbia, Puerto Rico, and a  
 115 United States possession, territory, or protectorate;

116 [(14)] (20) "Supplemental contract", any written agreement entered into  
 117 for the distribution of proceeds under a life, health, or annuity policy or  
 118 contract [proceeds];

119 [(15)] (21) "Unallocated annuity contract", any annuity contract or group  
 120 annuity certificate which is not issued to and owned by an individual, except to  
 121 the extent of any annuity benefits guaranteed to an individual by an insurer  
 122 under such contract or certificate.

376.724. 1. If a member insurer is an impaired [domestic] insurer, the  
 2 association may, in its discretion, and subject to any conditions imposed by the  
 3 association that do not impair the contractual obligations of the impaired insurer,  
 4 that are approved by the director[, and that are, except in cases of court ordered  
 5 conservation or rehabilitation, also approved by the impaired insurer]:

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

8 (2) Provide such moneys, pledges, notes, **loans**, guarantees, or other  
 9 means as are proper to effectuate subdivision (1) of this subsection and assure  
 10 payment of the contractual obligations of the impaired insurer pending action  
 11 under subdivision (1) of this subsection[; or

12 (3) Loan money to the impaired insurer].

13 2. [If a member insurer is an impaired insurer, whether domestic, foreign  
 14 or alien and the insurer is not paying claims in a timely fashion, then subject to  
 15 the preconditions specified in subsection 3 of this section, the association shall,

16 in its discretion, either:

17 (1) Take any of the actions specified in subsection 1 of this section, subject  
18 to the conditions therein; or

19 (2) Provide substitute benefits in lieu of the contractual obligations of the  
20 impaired insurer solely for: health claims; periodic annuity benefit payments;  
21 death benefits; supplemental benefits; and cash withdrawals for policy or contract  
22 owners who petition therefor under claims of emergency or hardship in  
23 accordance with standards proposed by the association and approved by the  
24 director.

25 3. The association shall be subject to the requirements of subsection 2 of  
26 this section only if:

27 (1) The laws of the impaired insurer's state of domicile provide that until  
28 all payments of or on account of the impaired insurer's contractual obligations by  
29 all guaranty associations, along with all expenses thereof and interest on all such  
30 payments and expenses, shall have been repaid to the guaranty associations or  
31 a plan of repayment by the impaired insurer shall have been approved by the  
32 guaranty associations:

33 (a) The delinquency proceedings shall not be dismissed;

34 (b) Neither the impaired insurer nor its assets shall be returned to the  
35 control of its shareholders or private management; and

36 (c) It shall not be permitted to solicit or accept new business or have any  
37 suspended or revoked license restored; and

38 (2) (a) If the impaired insurer is a domestic insurer, it has been placed  
39 under an order of rehabilitation by a court of competent jurisdiction in this state;  
40 or

41 (b) If the impaired insurer is a foreign or alien insurer:

42 a. It has been prohibited from soliciting or accepting new business in this  
43 state;

44 b. Its certificate of authority has been suspended or revoked in this state;  
45 and

46 c. A petition for rehabilitation or liquidation has been filed in a court of  
47 competent jurisdiction in its state of domicile by the commissioner of that state.

48 4. (1)] If a member insurer is an insolvent insurer, the association shall,  
49 in its discretion, either:

50 (1) (a) a. Guarantee, assume or reinsure, or cause to be guaranteed,  
51 assumed or reinsured, the policies or contracts of the insolvent insurer; or

52 [(b)] b. Assure payment of the contractual obligations of the insolvent  
53 insurer; and

54 [(c)] (b) Provide such moneys, pledges, **loans, notes**, guarantees, or  
55 other means as are reasonably necessary to discharge such duties; or

56 (2) [With respect only to life and health policies,] Provide benefits and  
57 coverages in accordance with [subsection 5 of this section.

58 5. When proceeding under subsection 2 or 4 of this section, the association  
59 shall,] **the following provisions:**

60 (a) With respect to [only] life and health insurance policies[:

61 (1) **and annuities**, assure payment of benefits for premiums identical to  
62 the premiums and benefits, except for terms of conversion and renewability, that  
63 would have been payable under the policies of the insolvent insurer, for claims  
64 incurred:

65 [(a)] a. With respect to group policies **and contracts**, not later than the  
66 earlier of the next renewal date under such policies or contracts or forty-five days,  
67 but in no event less than thirty days, after the date on which the association  
68 becomes obligated with respect to such policies **and contracts**;

69 [(b)] b. With respect to individual policies, **contracts, and annuities**,  
70 not later than the earlier of the next renewal date, if any, under such policies **or**  
71 **contracts** or one year, but in no event less than thirty days, from the date on  
72 which the association becomes obligated with respect to such policies **and**  
73 **contracts**;

74 [(2)] (b) Make diligent efforts to provide all known insureds **or**  
75 **annuitants for individual policies and contracts**, or group policyholders  
76 with respect to group policies **or contracts**, thirty days notice of the termination,  
77 **under paragraph (a) of this subdivision**, of the benefits provided; [and]

78 [(3)] (c) With respect to individual policies, make available to each  
79 known insured, **annuitant**, or owner if other than the insured **or annuitant**,  
80 and with respect to an individual formerly insured **or formerly an annuitant**  
81 under a group policy who is not eligible for replacement group coverage, make  
82 available substitute coverage on an individual basis in accordance with the  
83 provisions of [subsection 6 of this section] **paragraph (d) of this subdivision**,  
84 if the insureds **or annuitants** had a right under law or the terminated policy to  
85 convert coverage to individual coverage or to continue an individual policy in  
86 force until a specified age or for a specified time, during which the insurer had  
87 no right unilaterally to make changes in any provision of the policy or had a right  
88 only to make changes in premium by class[.];

89 [6. (1)] (d) a. In providing the substitute coverage required under  
90 [subdivision (3) of subsection 5 of this section] **paragraph (c) of this**  
91 **subdivision**, the association may offer either to reissue the terminated coverage

92 or to issue an alternative policy.

93           [(2)] **b.** Alternative or reissued policies shall be offered without requiring  
94 evidence of insurability, and shall not provide for any waiting period or exclusion  
95 that would not have applied under the terminated policy.

96           [(3)] **c.** The association may reinsure any alternative or reissued policy[.];

97           [7. (1)] **(e) a.** Alternative policies adopted by the association shall be  
98 subject to the approval of the director. The association may adopt alternative  
99 policies of various types for future issuance without regard to any particular  
100 impairment or insolvency.

101           [(2)] **b.** Alternative policies shall contain at least the minimum statutory  
102 provisions required in this state and provide benefits that shall not be  
103 unreasonable in relation to the premium charged. The association shall set the  
104 premium in accordance with a table of rates which it shall adopt. The premium  
105 shall reflect the amount of insurance to be provided and the age and class of risk  
106 of each insured, but shall not reflect any changes in the health of the insured  
107 after the original policy was last underwritten.

108           [(3)] **c.** Any alternative policy issued by the association shall provide  
109 coverage of a type similar to that of the policy issued by the impaired or insolvent  
110 insurer, as determined by the association;

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

119           **a. In lieu of the index or other external reference provided for**  
120 **in the original policy or contract, the alternative policy or contract**  
121 **provides for a fixed interest rate, payment of dividends with minimum**  
122 **guarantees, or a different method for calculating interest or changes in**  
123 **value;**

124           **b. There is no requirement for evidence of insurability, waiting**  
125 **period, or other exclusion that would not have applied under the**  
126 **replaced policy or contract; and**

127           **c. The alternative policy or contract is substantially similar to**  
128 **the replaced policy or contract in all other terms.**

376.725. 1. If the association elects to reissue terminated coverage at a

2 premium rate different from that charged under the terminated policy, the  
3 premium shall be set by the association in accordance with the amount of  
4 insurance provided and the age and class of risk of the insured, subject to  
5 approval of the director or by a court of competent jurisdiction.

6       **2. The association's obligations with respect to coverage under**  
7 **any policy of the impaired or insolvent insurer or under any reissued**  
8 **or alternative policy shall cease on the date the coverage or policy is**  
9 **replaced by another similar policy by the policy owner, the insured, or**  
10 **the association.**

11       **3. When proceeding under subdivision (2) of subsection 2 of**  
12 **section 376.724 with respect to a policy or contract carrying guaranteed**  
13 **minimum interest rates, the association shall assure the payment or**  
14 **crediting of a rate of interest consistent with subdivision (3) of**  
15 **subsection 3 of section 376.717.**

376.732. 1. If the association fails to act within a reasonable period of  
2 time when authorized to do so, the director shall have the powers and duties of  
3 the association under sections 376.715 to 376.758 with respect to [impaired or]  
4 **the insolvent insurers.**

5       2. The association may render assistance and advice to the director, upon  
6 his request, concerning rehabilitation, payment of claims, continuance of  
7 coverage, or the performance of other contractual obligations of any impaired or  
8 insolvent insurer.

9       3. The association shall have standing to appear **or intervene** before any  
10 court **or agency** in this state with jurisdiction over an impaired or insolvent  
11 insurer concerning which the association is or may become obligated under  
12 sections 376.715 to 376.758, **or with jurisdiction over any person or**  
13 **property against which the association may have rights through**  
14 **subrogation or otherwise.** Such standing shall extend to all matters germane  
15 to the powers and duties of the association, including, but not limited to,  
16 proposals for reinsuring, modifying or guaranteeing the policies or contracts of  
17 the impaired or insolvent insurer and the determination of the policies or  
18 contracts and contractual obligations. The association shall have the right to  
19 appear or intervene before a court **or agency** in another state with jurisdiction  
20 over an impaired or insolvent insurer for which the association is or may become  
21 obligated or with jurisdiction over [a third party] **any person or property**  
22 **against whom the association may have rights through subrogation [of the**  
23 **insurer's policyholders] or otherwise.**

376.733. 1. Any person receiving benefits under sections 376.715 to

2 376.758 shall be deemed to have assigned the rights under, and any causes of  
3 action **against any person for losses arising under, resulting from, or**  
4 **otherwise** relating to, the covered policy or contract to the association to the  
5 extent of the benefits received because of the provisions of sections 376.715 to  
6 376.758, whether the benefits are payments of or on account of contractual  
7 obligations, continuation of coverage or provision of substitute or alternative  
8 coverages. The association may require an assignment to it of such rights and  
9 cause of action by any payee, policy or contract owner, beneficiary, insured or  
10 annuitant as a condition precedent to the receipt of any right or benefits  
11 conferred by sections 376.715 to 376.758 upon such person.

12 2. The subrogation rights of the association under this section have the  
13 same priority against the assets of the impaired or insolvent insurer as that  
14 possessed by the person entitled to receive benefits under sections 376.715 to  
15 376.758.

16 3. In addition to subsections 1 and 2 of this section, the association shall  
17 have all common law rights of subrogation and any other equitable or legal  
18 remedy which would have been available to the impaired or insolvent insurer or  
19 [holder] **owner, beneficiary, or payee** of a policy or contract with respect to  
20 such policy or contracts, **including, without limitation in the case of a**  
21 **structured settlement annuity, any rights of the owner, beneficiary, or**  
22 **payee of the annuity, to the extent of benefits received under sections**  
23 **376.715 to 376.758, against a person, originally or by succession,**  
24 **responsible for the losses arising from the personal injury relating to**  
25 **the annuity or payment thereof, excepting any such person responsible**  
26 **solely by reason of serving as an assignee in respect of a qualified**  
27 **assignment under Section 130 of the Internal Revenue Code of 1986, as**  
28 **amended.**

376.734. 1. **In addition to any other rights and powers under**  
2 **sections 376.715 to 376.758,** the association may:

3 (1) Enter into such contracts as are necessary or proper to carry out the  
4 provisions and purposes of sections 376.715 to 376.758;

5 (2) Sue or be sued, including taking any legal actions necessary or proper  
6 for recovery of any unpaid assessments under subsections 1 and 2 of section  
7 376.735 **and to settle claims or potential claims against it;**

8 (3) Borrow money to effect the purposes of sections 376.715 to  
9 376.758. Any notes or other evidence of indebtedness of the association not in  
10 default shall be legal investments for domestic insurers and may be carried as  
11 admitted assets;

12 (4) Employ or retain such persons as are necessary to handle the financial  
13 transactions of the association, and to perform such other functions as become  
14 necessary or proper under sections 376.715 to 376.758;

15 (5) Take such legal action as may be necessary to avoid **or recover**  
16 payment of improper claims;

17 (6) Exercise, for the purposes of sections 376.715 to 376.758 and to the  
18 extent approved by the director, the powers of a domestic life or health insurer,  
19 but in no case may the association issue insurance policies or annuity contracts  
20 other than those issued to perform its obligations under sections 376.715 to  
21 376.758;

22 **(7) Request information from a person seeking coverage from the**  
23 **association in order to aid the association in determining its**  
24 **obligations under sections 376.715 to 376.758 with respect to the person,**  
25 **and the person shall promptly comply with the request;**

26 (8) Take other necessary or appropriate action to discharge its  
27 duties and obligations or to exercise its powers under sections 376.715  
28 to 376.758; and

29 (9) With respect to covered policies for which the association  
30 becomes obligated after an order of liquidation or  
31 rehabilitation, elect to succeed to the rights of the insolvent insurer  
32 arising after the order of liquidation or rehabilitation under any  
33 contract of reinsurance to which the insolvent insurer was a party, to  
34 the extent that such contract provides coverage for losses occurring  
35 after the date of the order of liquidation or rehabilitation. As a  
36 condition to making this election, the association shall pay all unpaid  
37 premiums due under the contract for coverage relating to periods  
38 before and after the date of the order of liquidation or rehabilitation.

39 2. The board of directors of the association may exercise  
40 reasonable business judgment to determine the means by which the  
41 association is to provide the benefits of sections 376.715 to 376.758 in  
42 an economical and efficient manner.

43 3. Where the association has arranged for or offered to provide  
44 the benefits of sections 376.715 to 376.758 to a covered person under a  
45 plan or arrangement that fulfills the association's obligations under  
46 sections 376.715 to 376.758, the person shall not be entitled to benefits  
47 from the association in addition to or other than those provided under  
48 the plan or arrangement.

49 [2.] 4. The association may join an organization of one or more other

50 state associations of similar purposes, to further the purposes and administer the  
51 powers and duties of the association.

52 [3. Whenever it is necessary for the association to retain the services of  
53 legal counsel, the association shall retain persons licensed to practice law in this  
54 state, and whose principal place of business is in this state or who are employed  
55 by or are partners of a professional corporation, corporation, copartnership or  
56 association having its principal place of business in this state; provided however,  
57 that if, after a good faith search, such persons cannot be found, the association  
58 may retain the legal services of such other persons as it chooses.]

376.735. 1. For the purpose of providing the funds necessary to carry out  
2 the powers and duties of the association, the board of directors shall assess the  
3 member insurers, separately for each account, at such time and for such amounts  
4 as the board finds necessary. Assessments shall be due not less than thirty days  
5 after prior written notice to the member insurers and shall accrue interest at ten  
6 percent per annum on and after the due date.

7 2. There shall be two assessments, as follows:

8 (1) Class A assessments [shall] **may** be made for the purpose of meeting  
9 administrative and legal costs and other expenses [and examinations conducted  
10 under the authority of subsections 4 and 5 of section 376.742]. Class A  
11 assessments may be made whether or not related to a particular impaired or  
12 insolvent insurer;

13 (2) Class B assessments [shall] **may** be made to the extent necessary to  
14 carry out the powers and duties of the association under [section 376.724]  
15 **sections 376.715 to 376.758** with regard to an impaired or an insolvent insurer.

16 3. The amount of any class A assessment shall be determined by the board  
17 and may be made on a pro rata or nonpro rata basis. If pro rata, the board may  
18 provide that it be credited against future class B assessments. A nonpro rata  
19 assessment shall not exceed one hundred fifty dollars per member insurer in any  
20 one calendar year. The amount of any class B assessment shall be allocated for  
21 assessment purposes among the accounts pursuant to an allocation formula which  
22 may be based on the premiums or reserves of the impaired or insolvent insurer  
23 or any other standard deemed by the board in its sole discretion as being fair and  
24 reasonable under the circumstances.

25 4. Class B assessments against member insurers for each account shall  
26 be in the proportion that the premiums received on business in this state by each  
27 assessed member insurer [or] **on** policies or contracts covered by each account for  
28 the three most recent calendar years for which information is available preceding  
29 the year in which the insurer became impaired or insolvent, as the case may be,

30 bears to such premiums received on business in this state for such calendar years  
31 by all assessed member insurers.

32           5. Assessments for funds to meet the requirements of the association with  
33 respect to an impaired or insolvent insurer shall not be made until necessary to  
34 implement the purposes of sections 376.715 to 376.758. Classification of  
35 assessments under [subsections 1 and] **subdivisions (1) and (2) of subsection**  
36 **2** of this section and computation of assessments under this [subsection] **section**  
37 shall be made with a reasonable degree of accuracy, recognizing that exact  
38 determinations may not always be possible. In no case shall a member insurer  
39 be liable under class A or class B for assessments in any account enumerated in  
40 section 376.720, for which such insurer is not licensed by the department of  
41 insurance, financial institutions and professional registration to transact  
42 business.

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

11           2. **(1) Subject to the provisions of subdivision (2) of this**  
12 **subsection,** the total of all assessments upon a member insurer for each account  
13 shall not in any one calendar year exceed two percent of such insurer's average  
14 **annual** premiums received in this state on the policies and contracts covered by  
15 the account during the three calendar years preceding the year in which the  
16 insurer became an impaired or insolvent insurer. If the maximum assessment,  
17 together with the other assets of the association in any account, does not provide  
18 in any one year in [either] **the** account an amount sufficient to carry out the  
19 responsibilities of the association, the necessary additional funds shall be  
20 assessed as soon thereafter as permitted by sections 376.715 to 376.758.

21           **(2) If two or more assessments are made in one calendar year**  
22 **with respect to insurers that become impaired or insolvent in different**  
23 **calendar years, the average annual premiums for purposes of the**  
24 **aggregate assessment percentage limitation referenced in subdivision**  
25 **(1) of this subsection shall be equal and limited to the higher of the**

26 **three-year average annual premiums for the applicable account as**  
27 **calculated under this section.**

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

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

40 5. It shall be proper for any member insurer, in determining its premium  
41 rates and policy owner dividends as to any kind of insurance within the scope of  
42 sections 376.715 to 376.758, to consider the amount reasonably necessary to meet  
43 its assessment obligations under the provisions of sections 376.715 to 376.758.

376.738. The association shall issue to each insurer paying an assessment  
2 under the provisions of sections 376.715 to 376.758, other than class A  
3 assessment, a certificate of contribution, in a form prescribed by the director, for  
4 the amount of the assessment so paid. All outstanding certificates shall be of  
5 equal dignity and priority without reference to amounts or dates of issue. A  
6 certificate of contribution [issued before September 1, 1991,] may be shown by the  
7 insurer in its financial statement as an asset in such form and for such amount,  
8 if any, and period of time as the director may approve[, provided that a certificate  
9 issued before September 1, 1991, shall not be shown as an admitted asset for a  
10 longer period of time or greater amount than that described in subdivisions (1)  
11 to (4) of subsection 2 of section 375.774, RSM].

376.740. 1. The association shall submit a plan of operation and any  
2 amendments thereto necessary or suitable to assure the fair, reasonable, and  
3 equitable administration of the association to the director. The plan of operation  
4 and any amendments thereto shall become effective upon the director's written  
5 approval or unless he has not disapproved it within thirty days.

6 2. If the association fails to submit a suitable plan of operation within one  
7 hundred twenty days following the effective date, August 13, 1988, of sections  
8 376.715 to 376.758 or if at any time thereafter the association fails to submit  
9 suitable amendments to the plan, the director shall, after notice and hearing,

10 adopt and promulgate such reasonable rules as are necessary or advisable to  
11 effectuate the provisions of sections 376.715 to 376.758. Such rules shall continue  
12 in force until modified by the director or superseded by a plan submitted by the  
13 association and approved by him.

14 3. All member insurers shall comply with the plan of operation.

15 4. The plan of operation shall, in addition to requirements enumerated in  
16 sections 376.715 to 376.758:

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

18 (2) Establish the amount and method of reimbursing members of the  
19 board of directors;

20 (3) Establish regular places and times for meetings including telephone  
21 conference calls of the board of directors;

22 (4) Establish procedures for records to be kept of all financial transactions  
23 of the association, its agents, and the board of directors;

24 (5) Establish the procedures whereby selections for the board of directors  
25 will be made and submitted to the director;

26 (6) Establish any additional procedures for assessments which may be  
27 necessary;

28 (7) Contain additional provisions necessary or proper for the execution of  
29 the powers and duties of the association;

30 **(8) Establish procedures whereby a director may be removed for**  
31 **cause, including in the case where a member insurer director becomes**  
32 **an impaired or insolvent insurer;**

33 **(9) Establish procedures for the initial handling of any appeals**  
34 **against the actions of the board, subject to the rights of appeal in**  
35 **subsection 3 of section 376.742.**

36 5. The plan of operation may provide that any or all powers and duties of  
37 the association except those pursuant to provisions of [subsection 3 of section  
38 376.733 and subsections 1 and 2 of] **subdivision (3) of subsection 1 of**  
39 **section 376.734 and** section 376.735 are delegated to a corporation, association,  
40 or other organization which performs or will perform functions similar to those  
41 of this association, or its equivalent, in two or more states. Such a corporation,  
42 association, or organization shall be reimbursed for any payments made on behalf  
43 of the association and shall be paid for its performance of any function of the  
44 association. A delegation under this subsection shall take effect only with the  
45 approval of both the board of directors and the director, and may be made only  
46 to a corporation, association, or organization which extends protection not  
47 substantially less favorable and effective than that provided by sections 376.715

48 to 376.758.

376.743. 1. The board of directors may, upon majority vote, make reports  
2 and recommendations to the director upon any matter germane to the solvency,  
3 liquidation, rehabilitation or conservation of any member insurer or germane to  
4 the solvency of any company seeking to do an insurance business in this  
5 state. Such reports and recommendations shall not be considered public  
6 documents.

7 2. The board of directors shall, upon majority vote, notify the director of  
8 any information indicating any member insurer may be an impaired or insolvent  
9 insurer.

10 [3. The board of directors may, upon majority vote, request that the  
11 director order an examination of any member insurer which the board in good  
12 faith believes may be an impaired or insolvent insurer. Within thirty days of the  
13 receipt of such request, he shall begin such examination. The examination may  
14 be conducted as a National Association of Insurance Commissioners examination  
15 or may be conducted by such persons as the director designates. The cost of such  
16 examination shall be paid by the association and the examination report shall be  
17 treated as are other examination reports. In no event shall such examination  
18 report be released to the board of directors prior to its release to the public, but  
19 this shall not preclude the director from complying with subsections 1 to 4 of  
20 section 376.742. The director shall notify the board of directors when the  
21 examination is completed. The request for an examination shall be kept on file  
22 by the director but it shall not be open to public inspection prior to the release  
23 of the examination report to the public.

24 4.] The board of directors may, upon majority vote, make  
25 recommendations to the director for the detection and prevention of insurer  
26 insolvencies.

27 [5. The board of directors shall, at the conclusion of any insurer  
28 insolvency in which the association was obligated to pay covered claims, prepare  
29 a report to the director containing such information as it may have in its  
30 possession bearing on the history and causes of such insolvency. The board shall  
31 cooperate with the boards of directors of guaranty associations in other states in  
32 preparing a report on the history and causes of insolvency of a particular insurer,  
33 and may adopt by reference any report prepared by such other associations.]

376.758. 1. Sections 376.715 to 376.758 shall not apply to any insurer  
2 which is insolvent or unable to fulfill its contractual obligations on August 13,  
3 1988.

4 2. Sections 376.715 to 376.758 shall be liberally construed to effect the

5 purpose under subsection 2 of section 376.715 which shall constitute an aid and  
6 guide to interpretation.

7 **3. The amendments to sections 376.715 to 376.758 which become**  
8 **effective on August 28, 2010, shall not apply to any member insurer that**  
9 **is an impaired or insolvent insurer prior to August 28, 2010.**

✓

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