

SECOND REGULAR SESSION

SENATE BILL NO. 908

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WIELAND.

Read 1st time January 16, 2018, and ordered printed.

ADRIANE D. CROUSE, Secretary.

5840S.011

AN ACT

To repeal sections 375.1218, 376.715, 376.717, 376.718, 376.720, 376.722, 376.724, 376.725, 376.726, 376.733, 376.734, 376.735, 376.737, 376.738, 376.742, 376.743, 376.746, 376.747, 376.748, 376.755, 376.756, and 376.758, RSMo, and to enact in lieu thereof twenty-two new sections relating to insurance guaranty associations.

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

Section A. Sections 375.1218, 376.715, 376.717, 376.718, 376.720, 376.722, 376.724, 376.725, 376.726, 376.733, 376.734, 376.735, 376.737, 376.738, 376.742, 376.743, 376.746, 376.747, 376.748, 376.755, 376.756, and 376.758, RSMo, are repealed and twenty-two new sections enacted in lieu thereof, to be known as sections 375.1218, 376.715, 376.717, 376.718, 376.720, 376.722, 376.724, 376.725, 376.726, 376.733, 376.734, 376.735, 376.737, 376.738, 376.742, 376.743, 376.746, 376.747, 376.748, 376.755, 376.756, and 376.758, to read as follows:

375.1218. The priority of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is herein set forth. Every claim in each class shall be paid in full or adequate funds retained for such payment before the members of the next class receive any payment. No subclasses shall be established within any class. No claim by a shareholder, policyholder or other creditor shall be permitted to circumvent the priority class through the use of equitable remedies. The order of distribution of claims shall be:

(1) Class 1. The costs and expenses of administration during rehabilitation and liquidation, including but not limited to the following:

(a) The actual and necessary costs of preserving or recovering the assets

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

12 of the insurer, and costs necessary to store records required to be preserved
13 pursuant to section 375.1228;

14 (b) Compensation for all authorized services rendered in the rehabilitation
15 and liquidation;

16 (c) Any necessary filing fees;

17 (d) The fees and mileage payable to witnesses;

18 (e) Authorized reasonable attorney's fees and other professional services
19 rendered in the rehabilitation and liquidation; **and**

20 **(f) The reasonable expenses of the Missouri property and**
21 **casualty insurance guaranty association, the Missouri life and health**
22 **insurance guaranty association, and of any similar organization in any**
23 **other state including overhead, salaries, and other general**
24 **administrative expenses allocable to the receivership. These expenses**
25 **shall be subordinate to all other costs and expenses of administration**
26 **under paragraphs (a) to (e) of this subdivision. The provisions of this**
27 **paragraph shall apply to the distribution of claims from an insurer's**
28 **estate if such insurer was first placed under an order of rehabilitation**
29 **or an order of liquidation if no order of rehabilitation was entered on**
30 **or after August 28, 2018.**

31 (2) Class 2. All claims under policies including such claims of the federal
32 or any state or local government for losses incurred ("loss claims") including third
33 party claims and all claims of a guaranty association or foreign guaranty
34 association including reasonable allocated loss adjustment expenses and all
35 claims of a life and health insurance guaranty association or foreign guaranty
36 association which covers claims of life and health insurance policies, relating to
37 the handling of such claims. All claims under life insurance and annuity policies
38 and funding agreements, whether for death proceeds, annuity proceeds or
39 investment values shall be treated as loss claims. That portion of any loss,
40 indemnification for which is provided by other benefits or advantages recovered
41 by the claimant, shall not be included in this class, other than benefits or
42 advantages recovered or recoverable in discharge of familial obligation of support
43 or by way of succession at death or as proceeds of life insurance, or as gratuities.
44 No payment by an employer to his employee shall be treated as a gratuity. Early
45 distributions to guaranty associations and foreign guaranty associations may be
46 made in the manner provided in section 375.1205, provided that such guaranty
47 associations and foreign guaranty associations agree to indemnify the liquidator

48 if a shortage occurs in the insurer's estate of property necessary to settle claims
49 as provided by this section. Any early distributions shall not increase the
50 proportionate share of such guaranty associations and foreign guaranty
51 associations, of distributions of the insurer's estate. The liquidator shall have
52 authority to inquire into the reasonableness of any allocated loss adjustment
53 expenses claimed by a guaranty association or foreign guaranty association and
54 such claim shall not be allowed if it is found to be unreasonable.

55 (3) Class 3. Claims of the United States government other than those
56 claims included in class 2.

57 (4) Class 4. Reasonable compensation to employees for services performed
58 to the extent that they do not exceed two months of monetary compensation and
59 represent payment for services performed within one year before the filing of the
60 petition for liquidation or, if rehabilitation preceded liquidation, within one year
61 before the filing of the petition for rehabilitation. Principal officers and directors
62 shall not be entitled to the benefit of this priority except as otherwise approved
63 by the liquidator and the court. Such priority shall be in lieu of any other similar
64 priority which may be authorized by law as to wages or compensation of
65 employees.

66 (5) Class 5. Claims under nonassessable policies for unearned premiums
67 or other premium refunds and claims of general creditors including claims of
68 ceding and assuming companies in their capacity as such.

69 (6) Class 6. Claims of any state or local government except those under
70 class 2 of this section. Claims, including those of any governmental body for a
71 penalty or forfeiture, shall be allowed in this class only to the extent of the
72 pecuniary loss sustained from the act, transaction, or proceeding out of which the
73 penalty or forfeiture arose, with reasonable and actual costs occasioned
74 thereby. The remainder of such claims shall be postponed as class 9 claims.

75 (7) Class 7. Claims filed late or any other claims other than class 8 or 9
76 claims.

77 (8) Class 8. Surplus or contribution notes, or similar obligations, and
78 premium refunds on assessable policies. Payments to members of domestic
79 mutual insurance companies shall be limited in accordance with law.

80 (9) Class 9. The claims of shareholders or other owners in their capacity
81 as shareholders.

376.715. 1. Sections 376.715 to 376.758 shall be known and may be cited
2 as the "Missouri Life and Health Insurance Guaranty Association Act".

3 2. The purpose of sections 376.715 to 376.758 is to protect, subject to
4 certain limitations, the persons specified in subsection 1 of section 376.717
5 against failure in the performance of contractual obligations, under life [and],
6 health [insurance policies], and annuity **policies, plans, or** contracts specified
7 in subsection 2 of section 376.717, because of the impairment or insolvency of the
8 member insurer that issued the policies or contracts.

9 3. To provide this protection, an association of **member** insurers is
10 created to pay benefits and to continue coverages as limited herein, and members
11 of the association are subject to assessment to provide funds to carry out the
12 purpose of sections 376.715 to 376.758.

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, **including health care providers**
6 **rendering services covered under health insurance policies or**
7 **certificates**, of the persons covered under subdivision (2) of this subsection; and

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

10 (a) Are residents of this state; or

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

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

14 b. The persons are not eligible for coverage by an association in any other
15 state due to the fact that the insurer **or health maintenance organization**
16 was not licensed in such state at the time specified in such state's guaranty
17 association law; and

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

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

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

27 (b) Is not a resident, but only under both of the following conditions:
28 a. (i) The contract owner of the structured settlement annuity is a
29 resident; or
30 (ii) The contract owner of the structure settlement annuity is not a
31 resident, but:
32 i. The insurer that issued the structured settlement annuity is domiciled
33 in this state; and
34 ii. The state in which the contract owner resides has an association
35 similar to the association created under sections 376.715 to 376.758; and
36 b. Neither the payee or beneficiary nor the contract owner is eligible for
37 coverage by the association of the state in which the payee or contract owner
38 resides;

39 (4) Sections 376.715 to 376.758 shall not provide to a person who is a
40 payee or beneficiary of a contract owner resident of this state, if the payee or
41 beneficiary is afforded any coverage by such an association of another state;

42 (5) Sections 376.715 to 376.758 are intended to provide coverage to a
43 person who is a resident of this state and, in special circumstances, to a
44 nonresident. In order to avoid duplicate coverage, if a person who would
45 otherwise receive coverage under sections 376.715 to 376.758 is provided coverage
46 under the laws of any other state, the person shall not be provided coverage
47 under sections 376.715 to 376.758. In determining the application of the
48 provisions of this subdivision in situations where a person could be covered by
49 such an association of more than one state, whether as an owner, payee,
50 **enrollee**, beneficiary, or assignee, sections 376.715 to 376.758 shall be construed
51 in conjunction with the other state's laws to result in coverage by only one
52 association.

53 2. Sections 376.715 to 376.758 shall provide coverage to the persons
54 specified in subsection 1 of this section for **policies or contracts of direct,**
55 **nongroup life insurance, health insurance, which for purposes of sections**
56 **376.715 to 376.758 shall include health maintenance organization**
57 **subscriber contracts and certificates, [annuity policies or contracts,] or**
58 **annuities** and supplemental contracts to any such policies or contracts, and for
59 certificates under direct group policies and contracts, except as limited by the
60 provisions of sections 376.715 to 376.758. Annuity contracts and certificates
61 under group annuity contracts include allocated funding agreements, structured
62 settlement annuities, and any immediate or deferred annuity contracts.

63 3. **Except as otherwise provided in paragraph (c) of subdivision**
64 **(3) of this subsection,** sections 376.715 to 376.758 shall not provide coverage
65 for:

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

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

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

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

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

84 **(c) The exclusion from coverage referenced in this subdivision**
85 **shall not apply to any portion of a policy or contract, including a rider,**
86 **which provides long-term care or any other health insurance benefits;**

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

92 (a) A multiple employer welfare arrangement as defined in 29 U.S.C.
93 Section 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 or

99 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;

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 assessments
105 required by section 376.735 with respect to the policy or contract are preempted
106 by federal or state law;

107 (8) An obligation that does not arise under the express written terms of
108 the policy or contract issued by the **member** insurer to the **enrollee, certificate**
109 **holder, contract 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 were
112 issued by the **member** insurer without meeting applicable policy **or contract**
113 form filing or approval requirements;

114 (c) Misrepresentations of or regarding policy **or contract** 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 insurer's
118 obligations to provide a book value accounting guaranty for defined contribution
119 benefit plan participants by reference to a portfolio of assets that is owned by the
120 benefit plan or its trustee, which in each case is not an affiliate of the member
121 insurer;

122 (10) An unallocated annuity contract;

123 (11) A portion of a policy or contract to the extent it provides for interest
124 or other changes in value to be determined by the use of an index or other
125 external reference stated in the policy or contract, but which have not been
126 credited to the policy or contract, or as to which the policy or contract owner's
127 rights are subject to forfeiture, as of the date the member insurer becomes an
128 impaired or insolvent insurer under sections 376.715 to 376.758, whichever is
129 earlier. If a policy's or contract's interest or changes in value are credited less
130 frequently than annually, for purposes of determining the value that have been
131 credited and are not subject to forfeiture under this subdivision, the interest or
132 change in value determined by using the procedures defined in the policy or
133 contract will be credited as if the contractual date of crediting interest or
134 changing values was the date of impairment or insolvency, whichever is earlier,

135 and will not be subject to forfeiture;

136 (12) A policy or contract providing any hospital, medical, prescription drug
137 or other health care benefit under Part C or Part D of Subchapter XVIII, Chapter
138 7 of Title 42 of the United States Code, Medicare Parts C & D, **Subchapter XIX,**
139 **Chapter 7 of Title 42 of the United States Code,** or any regulations issued
140 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 rehabilitation or
143 under an order of liquidation if no order of rehabilitation was entered prior to
144 August 28, 2013, shall in no event exceed the lesser of:

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

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

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

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

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

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

159 5. Except as otherwise provided in subdivision (2) of this subsection, the
160 benefits for which the association may become liable with regard to a member
161 insurer that was first placed under an order of rehabilitation or under an order
162 of liquidation if no order of rehabilitation was entered on or after August 28,
163 2013, shall in no event exceed the lesser of:

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

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

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

171 b. [In] **For** health insurance benefits:

172 (i) One hundred thousand dollars of [coverage] **coverages** other than
173 disability **income** insurance [or basic hospital, medical, and surgical insurance
174 or major medical insurance], **health benefit plans**, or long-term care insurance,
175 including any net cash surrender and net cash withdrawal values;

176 (ii) Three hundred thousand dollars for disability **income** insurance and
177 three hundred thousand dollars for long-term care insurance;

178 (iii) Five hundred thousand dollars for [basic hospital, medical, and
179 surgical insurance or major medical insurance] **health benefit plans**;

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

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

186 (c) Except that, in no event shall the association be obligated to cover
187 more than:

188 a. An aggregate of three hundred thousand dollars in benefits with
189 respect to any one life under paragraphs (a) and (b) of this subdivision, except
190 with respect to benefits for [basic hospital, medical, and surgical insurance and
191 major medical insurance] **health benefit plans** under item (iii) of subparagraph
192 b. of paragraph (a) of this subdivision, in which case the aggregate liability of the
193 association shall not exceed five hundred thousand dollars with respect to any
194 one individual; or

195 b. With respect to one owner of multiple nongroup policies of life
196 insurance, whether the policy owner is an individual, firm, corporation, or other
197 person, and whether the persons insured are officers, managers, employees, or
198 other persons, more than five million dollars in benefits, regardless of the number
199 of policies and contracts held by the owner.

200 6. The limitations set forth in subsections 4 and 5 of this section are
201 limitations on the benefits for which the association is obligated before taking
202 into account either its subrogation and assignment rights or the extent to which
203 such benefits could be provided out of the assets of the impaired or insolvent
204 insurer attributable to covered policies. The costs of the association's obligations
205 under sections 376.715 to 376.758 may be met by the use of assets attributable
206 to covered policies or reimbursed to the association under its subrogation and

207 assignment rights.

208 **7. For the purposes of sections 376.715 to 376.758, benefits**
209 **provided by a long-term care rider to a life insurance policy or annuity**
210 **contract shall be considered the same type of benefits as the basic life**
211 **insurance policy or annuity contract to which it relates.**

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

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

4 (2) "Association", the Missouri life and health insurance guaranty
5 association created under section 376.720;

6 (3) "Benefit plan", a specific employee, union, or association of natural
7 persons benefit plan;

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

11 (5) "Covered **contract**" or "**covered policy**", any policy or contract or
12 portion of a policy or contract for which coverage is provided under the provisions
13 of section 376.717;

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

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

19 (8) "**Health benefit plan**", any **hospital or medical expense policy**
20 **or certificate, health maintenance organization subscriber contract, or**
21 **any other similar health contract. "Health benefit plan" does not**
22 **include:**

23 (a) **Accident only insurance;**

24 (b) **Credit insurance;**

25 (c) **Dental only insurance;**

26 (d) **Vision only insurance;**

27 (e) **Medicare supplement insurance;**

28 (f) **Benefits for long-term care, home health care, community-**
29 **based care, or any combination thereof;**

30 (g) **Disability income insurance;**

31 (h) **Coverage for on-site medical clinics; or**

32 **(i) Specified disease, hospital confinement indemnity, or limited**
33 **benefit health insurance if the types of coverage do not provide**
34 **coordination of benefits and are provided under separate policies or**
35 **certificates;**

36 **(9)** "Impaired insurer", a member insurer which, after August 13, 1988,
37 is not an insolvent insurer, and is placed under an order of rehabilitation or
38 conservation by a court of competent jurisdiction;

39 [(9)] **(10)** "Insolvent insurer", a member insurer which, after August 13,
40 1988, is placed under an order of liquidation by a court of competent jurisdiction
41 with a finding of insolvency;

42 [(10)] **(11)** "Member insurer", any insurer, **health maintenance**
43 **organization**, or health services corporation licensed or which holds a certificate
44 of authority to transact in this state any kind of insurance **or health**
45 **maintenance organization business** for which coverage is provided under
46 section 376.717, and includes any insurer **or health maintenance**
47 **organization** whose license or certificate of authority in this state may have
48 been suspended, revoked, not renewed or voluntarily withdrawn, but does not
49 include:

50 (a) [A health maintenance organization;

51 (b)] A fraternal benefit society;

52 [(c)] **(b)** A mandatory state pooling plan;

53 [(d)] **(c)** A mutual assessment company or any entity that operates on an
54 assessment basis;

55 [(e)] **(d)** An insurance exchange;

56 [(f)] **(e)** An organization that issues qualified charitable gift annuities,
57 as defined in section 352.500, and does not hold a certificate or license to transact
58 insurance business; or

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

61 [(11)] **(12)** "Moody's Corporate Bond Yield Average", the monthly average
62 corporates as published by Moody's Investors Service, Inc., or any successor
63 thereto;

64 [(12)] **(13)** "Owner", **"policyholder"**, "policy owner", or "contract owner",
65 the person who is identified as the legal owner under the terms of the policy or
66 contract or who is otherwise vested with legal title to the policy or contract
67 through a valid assignment completed in accordance with the terms of the policy

68 or contract and properly recorded as the owner on the books of the **member**
69 insurer. Owner, contract owner, **policyholder**, and policy owner shall not
70 include persons with a mere beneficial interest in a policy or contract;

71 [(13)] **(14)** "Person", any individual, corporation, partnership, association
72 or voluntary organization;

73 [(14)] **(15)** "Premiums", amounts received on covered policies or contracts,
74 less premiums, considerations and deposits returned thereon, and less dividends
75 and experience credits thereon. The term does not include any amounts received
76 for any policies or contracts or for the portions of any policies or contracts for
77 which coverage is not provided under subsection 3 of section 376.717, except that
78 assessable premium shall not be reduced on account of subdivision (3) of
79 subsection 3 of section 376.717 relating to interest limitations and subdivision (2)
80 of subsection 4 of section 376.717 relating to limitations with respect to any one
81 life, any one participant, and any one **policy or** contract holder. Premiums shall
82 not include:

83 (a) Premiums on an unallocated annuity contract; or

84 (b) With respect to multiple nongroup policies of life insurance owned by
85 one owner, whether the policy **or contract** owner is an individual, firm,
86 corporation, or other person, and whether the persons insured are officers,
87 managers, employees, or other persons, premiums in excess of five million dollars
88 with respect to such policies or contracts, regardless of the number of policies or
89 contracts held by the owner;

90 [(15)] **(16)** "Principal place of business", for a person other than a natural
91 person, the single state in which the natural persons who establish policy for the
92 direction, control, and coordination of the operations of the entity as a whole
93 primarily exercise that function, determined by the association in its reasonable
94 judgment by considering the following factors:

95 (a) The state in which the primary executive and administrative
96 headquarters of the entity is located;

97 (b) The state in which the principal office of the chief executive officer of
98 the entity is located;

99 (c) The state in which the board of directors, or similar governing person
100 or persons, of the entity conducts the majority of its meetings;

101 (d) The state in which the executive or management committee of the
102 board of directors, or similar governing person or persons, of the entity conducts
103 the majority of its meetings; and

104 (e) The state from which the management of the overall operations of the
105 entity is directed;

106 [(16)] (17) "Receivership court", the court in the insolvent or impaired
107 insurer's state having jurisdiction over the conservation, rehabilitation, or
108 liquidation of the insurer;

109 [(17)] (18) "Resident", any person who resides in this state on the date
110 of entry of a court order that determines a member insurer to be an impaired
111 insurer or a court order that determines a member insurer to be an insolvent
112 insurer, whichever first occurs, and to whom a contractual obligation is owed. A
113 person may be a resident of only one state, which in the case of a person other
114 than a natural person shall be its principal place of business. Citizens of the
115 United States that are either residents of foreign countries or residents of the
116 United States' possessions, territories, or protectorates that do not have an
117 association similar to the association created under sections 376.715 to 376.758
118 shall be deemed residents of the state of domicile of the **member** insurer that
119 issued the policies or contracts;

120 [(18)] (19) "State", a state, the District of Columbia, Puerto Rico, and a
121 United States possession, territory, or protectorate;

122 [(19)] (20) "Structure settlement annuity", an annuity purchased in order
123 to fund periodic payments for a plaintiff or other claimant in payment for or with
124 respect to personal injury suffered by the plaintiff or other claimant;

125 [(20)] (21) "Supplemental contract", any written agreement entered into
126 for the distribution of proceeds under a life, health, or annuity policy or contract;

127 [(21)] (22) "Unallocated annuity contract", any annuity contract or group
128 annuity certificate which is not issued to and owned by an individual, except to
129 the extent of any annuity benefits guaranteed to an individual by an insurer
130 under such contract or certificate.

376.720. 1. There is created a nonprofit legal entity to be known as the
2 "Missouri Life and Health Insurance Guaranty Association". All member insurers
3 shall be and remain members of the association as a condition of their authority
4 to transact insurance **or a health maintenance organization business** in
5 this state. The association shall perform its functions under the plan of operation
6 established and approved under subsections 1 to 3 of section 376.740 and shall
7 exercise its powers through a board of directors established pursuant to section
8 376.722. For purposes of administration and assessment the association shall
9 maintain three accounts:

- 10 (1) The health [insurance] account;
11 (2) The life insurance account;
12 (3) The annuity account, excluding unallocated annuity contracts.

13 2. The association shall come under the immediate supervision of the
14 director and shall be subject to the applicable provisions of the insurance laws of
15 this state. Meetings or records of the association may be opened to the public
16 upon majority vote of the board of directors of the association.

376.722. 1. The board of directors of the association shall consist of not
2 less than [five] **seven** nor more than [nine] **eleven** member insurers serving
3 terms as established in the plan of operation. The members of the board shall be
4 selected by member insurers subject to the approval of the director. Each class
5 of member insurer, as defined in section 376.718, shall be represented on the
6 board. Vacancies on the board shall be filled for the remaining period of the term
7 by a majority vote of the remaining board members, subject to the approval of the
8 director. [To select the initial board of directors, and initially organize the
9 association, the director shall give notice to all member insurers of the time and
10 place of the organizational meeting.] In determining voting rights at the
11 organizational meeting each member insurer shall be entitled to one vote in
12 person or by proxy. [If the board of directors is not selected within sixty days
13 after notice of the organizational meeting, the director may appoint the initial
14 members.]

15 2. In approving selections or in appointing members to the board, the
16 director shall consider, among other things, whether all member insurers are
17 fairly represented.

18 3. Members of the board may be reimbursed from the assets of the
19 association for expenses incurred by them as members of the board of directors
20 but members of the board shall not otherwise be compensated by the association
21 for their services.

376.724. 1. If a member insurer is an impaired insurer, the association
2 may, in its discretion, and subject to any conditions imposed by the association
3 that do not impair the contractual obligations of the impaired insurer, that are
4 approved by the director:

- 5 (1) Guarantee, assume, **reissue**, or reinsure, or cause to be guaranteed,
6 assumed, **reissued**, or reinsured, any or all of the policies or contracts of the
7 impaired insurer; or
8 (2) Provide such moneys, pledges, notes, loans, guarantees, or other means

9 as are proper to effectuate subdivision (1) of this subsection and assure payment
10 of the contractual obligations of the impaired insurer pending action under
11 subdivision (1) of this subsection.

12 2. If a member insurer is an insolvent insurer, the association shall, in its
13 discretion, either:

14 (1) (a) a. Guarantee, assume, **reissue**, or reinsure, or cause to be
15 guaranteed, assumed, **reissued**, or reinsured, the policies or contracts of the
16 insolvent insurer; or

17 b. Assure payment of the contractual obligations of the insolvent insurer;
18 and

19 (b) Provide such moneys, pledges, loans, notes, guarantees, or other means
20 as are reasonably necessary to discharge such duties; or

21 (2) Provide benefits and coverages in accordance with the following
22 provisions:

23 (a) With respect to [life and health insurance policies and annuities]
24 **policies and contracts**, assure payment of benefits [for premiums identical to
25 the premiums and benefits, except for terms of conversion and renewability,] that
26 would have been payable under the policies of the insolvent insurer, for claims
27 incurred:

28 a. With respect to group policies and contracts, not later than the earlier
29 of the next renewal date under such policies or contracts or forty-five days, but
30 in no event less than thirty days, after the date on which the association becomes
31 obligated with respect to such policies and contracts;

32 b. With respect to individual policies, contracts, and annuities, not later
33 than the earlier of the next renewal date, if any, under such policies or contracts
34 or one year, but in no event less than thirty days, from the date on which the
35 association becomes obligated with respect to such policies and contracts;

36 (b) Make diligent efforts to provide all known insureds, **enrollees**, or
37 annuitants for individual policies and contracts, or group [policyholders] **policy**
38 **or contract owners** with respect to group policies or contracts, thirty days
39 notice of the termination, under paragraph (a) of this subdivision, of the benefits
40 provided;

41 (c) With respect to individual policies **and contracts**, make available to
42 each known insured, annuitant, or owner if other than the insured, **enrollee**, or
43 annuitant, and with respect to an individual formerly **an** insured, **enrollee**, or
44 [formerly an] annuitant under a group policy **or contract** who is not eligible for

45 replacement group coverage, make available substitute coverage on an individual
46 basis in accordance with the provisions of paragraph (d) of this subdivision, if the
47 insureds, **enrollees**, or annuitants had a right under law or the terminated
48 policy, **contract, or annuity** to convert coverage to individual coverage or to
49 continue an individual policy, **contract, or annuity** in force until a specified age
50 or for a specified time, during which the insurer **or health maintenance**
51 **organization** had no right unilaterally to make changes in any provision of the
52 policy, **contract, or annuity** or had a right only to make changes in premium
53 by class;

54 (d) a. In providing the substitute coverage required under paragraph (c)
55 of this subdivision, the association may offer either to reissue the terminated
56 coverage or to issue an alternative policy **or contract at actuarially justified**
57 **rates**;

58 b. Alternative or reissued policies **or contracts** shall be offered without
59 requiring evidence of insurability, and shall not provide for any waiting period
60 or exclusion that would not have applied under the terminated policy or contract;

61 c. The association may reinsure any alternative or reissued policy **or**
62 **contract**;

63 (e) a. Alternative policies **or contracts** adopted by the association shall
64 be subject to the approval of the director. The association may adopt alternative
65 policies **or contracts** of various types for future issuance without regard to any
66 particular impairment or insolvency;

67 b. Alternative policies **or contracts** shall contain at least the minimum
68 statutory provisions required in this state and provide benefits that shall not be
69 unreasonable in relation to the premium charged. The association shall set the
70 premium in accordance with a table of rates which it shall adopt. The premium
71 shall reflect the amount of insurance to be provided and the age and class of risk
72 of each insured, but shall not reflect any changes in the health of the insured
73 after the original policy **or contract** was last underwritten;

74 c. Any alternative policy **or contract** issued by the association shall
75 provide coverage of a type similar to that of the policy **or contract** issued by the
76 impaired or insolvent insurer, as determined by the association;

77 (f) In carrying out its duties in connection with guaranteeing, assuming,
78 **reissuing**, or reinsuring policies or contracts under this subsection, the
79 association may[, subject to approval of the receivership court,] issue substitute
80 coverage for a policy or contract that provides an interest rate, crediting rate, or

81 similar factor determined by use of an index or other external reference stated in
82 the policy or contract employed in calculating returns or changes in value by
83 issuing an alternative policy or contract in accordance with the following
84 provisions:

85 a. In lieu of the index or other external reference provided for in the
86 original policy or contract, the alternative policy or contract provides for a fixed
87 interest rate, payment of dividends with minimum guarantees, or a different
88 method for calculating interest or changes in value;

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

92 c. The alternative policy or contract is substantially similar to the
93 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 **or**
3 **contract**, the premium shall be **actuarially justified and** set by the
4 association in accordance with the amount of insurance **or coverage** provided
5 and the age and class of risk of the insured, subject to **prior** approval of the
6 director [or by a court of competent jurisdiction].

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

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

376.726. 1. Nonpayment of premiums within thirty-one days after the
2 date required under the terms of any guaranteed, assumed, alternative or
3 reissued policy or contract or substitute coverage shall terminate the association's
4 obligations under such policy, **contract**, or coverage under sections 376.715 to
5 376.758 with respect to such policy, **contract**, or coverage, except with respect
6 to any claims incurred or any net cash surrender value which may be due in
7 accordance with the provisions of sections 376.715 to 376.758.

8 2. Premiums due for coverage after entry of an order of liquidation of an

9 insolvent insurer shall belong to and be payable at the direction of the
10 association, and the association shall be liable for unearned premiums due to
11 policy or contract owners arising after the entry of such order.

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 otherwise
4 relating to, the covered policy or contract to the association to the extent of the
5 benefits received because of the provisions of sections 376.715 to 376.758, whether
6 the benefits are payments of or on account of contractual obligations, continuation
7 of coverage or provision of substitute or alternative **policies, contracts, or**
8 coverages. The association may require an assignment to it of such rights and
9 cause of action by any **enrollee**, payee, policy or contract owner, beneficiary,
10 insured or annuitant as a condition precedent to the receipt of any right or
11 benefits 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 owner, beneficiary, **enrollee**, or payee of a policy or contract with respect to such
20 policy or contracts, including, without limitation in the case of a structured
21 settlement annuity, any rights of the owner, beneficiary, or payee of the annuity,
22 to the extent of benefits received under sections 376.715 to 376.758, against a
23 person, originally or by succession, responsible for the losses arising from the
24 personal injury relating to the annuity or payment thereof, excepting any such
25 person responsible solely by reason of serving as an assignee in respect of a
26 qualified assignment under Section 130 of the Internal Revenue Code of 1986, as
27 amended.

376.734. 1. In addition to any other rights and powers under sections
2 376.715 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 **member** insurers and may be
11 carried as 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 **health insurer, or health maintenance organization** but in no case may the
20 association issue [insurance] policies or [annuity] contracts other than those
21 issued to perform its obligations under sections 376.715 to 376.758;

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

26 (8) **Unless prohibited by law, in accordance with the terms and**
27 **conditions of the policy or contract, file an actuarially justified rate or**
28 **premium increase for any policy or contract for which it provides**
29 **coverage under sections 376.715 to 376.758;**

30 (9) Take other necessary or appropriate action to discharge its duties and
31 obligations or to exercise its powers under sections 376.715 to 376.758; and

32 [(9)] (10) With respect to covered policies for which the association
33 becomes obligated after an entry of an order of liquidation or rehabilitation, elect
34 to succeed to the rights of the insolvent insurer arising after the order of
35 liquidation or rehabilitation under any contract of reinsurance to which the
36 insolvent insurer was a party, to the extent that such contract provides coverage
37 for losses occurring after the date of the order of liquidation or rehabilitation. As
38 a condition to making this election, the association shall pay all unpaid premiums
39 due under the contract for coverage relating to periods before and after the date
40 of the order of liquidation or rehabilitation.

41 2. The board of directors of the association may exercise reasonable
42 business judgment to determine the means by which the association is to provide

43 the benefits of sections 376.715 to 376.758 in an economical and efficient manner.

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

49 4. The association may join an organization of one or more other state
50 associations of similar purposes, to further the purposes and administer the
51 powers and duties of the association.

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 may be made for the purpose of meeting
9 administrative and legal costs and other expenses. Class A assessments may be
10 made whether or not related to a particular impaired or insolvent insurer;

11 (2) Class B assessments may be made to the extent necessary to carry out
12 the powers and duties of the association under sections 376.715 to 376.758 with
13 regard to an impaired or an insolvent insurer.

14 3. The amount of any class A assessment shall be determined by the board
15 and may be made on a pro rata or nonpro rata basis. If pro rata, the board may
16 provide that it be credited against future class B assessments. [A nonpro rata
17 assessment shall not exceed one hundred fifty dollars per member insurer in any
18 one calendar year.]

19 4. **(1)** The amount of any class B assessment, **except for assessments**
20 **related to long-term care insurance**, shall be allocated for assessment
21 purposes [among] **between** 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 **(2)** **The amount of the class B assessment for long-term care**
26 **insurance written by the impaired or insolvent insurer shall be**
27 **allocated according to methodology included in the plan of operation**

28 **and approved by the director. The methodology shall provide for fifty**
29 **percent of the assessment to be allocated to accident and health**
30 **member insurers and fifty percent to be allocated to life and annuity**
31 **member insurers.**

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

39 **[5.] 6.** Assessments for funds to meet the requirements of the association
40 with respect to an impaired or insolvent insurer shall not be made until necessary
41 to implement the purposes of sections 376.715 to 376.758. Classification of
42 assessments under subdivisions (1) and (2) of subsection 2 of this section and
43 computation of assessments under this section shall be made with a reasonable
44 degree of accuracy, recognizing that exact determinations may not always be
45 possible. In no case shall a member insurer be liable under class A or class B for
46 assessments in any account enumerated in section 376.720, for which such
47 insurer is not licensed by the department of insurance, financial institutions and
48 professional registration to transact 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, the member
9 insurer shall pay all assessments that were deferred under a repayment plan
10 approved by the association.

11 2. (1) Subject to the provisions of subdivision (2) of this subsection, the
12 total of all assessments upon a member insurer for each account shall not in any
13 one calendar year exceed two percent of such insurer's average annual premiums
14 received in this state on the policies and contracts covered by the account during
15 the three calendar years preceding the year in which the **member** insurer

16 became an impaired or insolvent insurer. If the maximum assessment, together
17 with the other assets of the association in any account, does not provide in any
18 one year in the account an amount sufficient to carry out the responsibilities of
19 the association, the necessary additional funds shall be assessed as soon
20 thereafter as permitted by sections 376.715 to 376.758.

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

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

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

39 5. It shall be proper for any member insurer, in determining its premium
40 rates and policy owner dividends **or health benefit plan** as to any kind of
41 insurance **or health maintenance organization business** within the scope
42 of sections 376.715 to 376.758, to consider the amount reasonably necessary to
43 meet its assessment obligations under the provisions of sections 376.715 to
44 376.758.

376.738. The association shall issue to each **member** insurer paying an
2 assessment under the provisions of sections 376.715 to 376.758, other than class
3 A assessment, a certificate of contribution, in a form prescribed by the director,
4 for the amount of the assessment so paid. All outstanding certificates shall be
5 of equal dignity and priority without reference to amounts or dates of issue. A
6 certificate of contribution may be shown by the **member** insurer in its financial
7 statement as an asset in such form and for such amount, if any, and period of

8 time as the director may approve.

376.742. 1. In addition to the duties and powers enumerated elsewhere
2 in sections 376.715 to 376.758, the director shall:

3 (1) Upon request of the board of directors, provide the association with a
4 statement of the premiums in this and any other appropriate states for each
5 member insurer;

6 (2) When an impairment is declared and the amount of the impairment
7 is determined, serve a demand upon the impaired insurer to make good the
8 impairment within a reasonable time. Notice to the impaired insurer shall
9 constitute notice to its shareholders, if any. The failure of the **impaired** insurer
10 to promptly comply with such demand shall not excuse the association from the
11 performance of its powers and duties under the provisions of sections 376.715 to
12 376.758;

13 (3) In any liquidation or rehabilitation proceeding involving a domestic
14 insurer, be appointed as the liquidator or rehabilitator.

15 2. The director may suspend or revoke, after notice and hearing, the
16 certificate of authority to transact **[insurance] business** in this state of any
17 member insurer which fails to pay an assessment when due or fails to comply
18 with the plan of operation. As an alternative the director may levy a forfeiture
19 on any member insurer which fails to pay an assessment when due. Such
20 forfeiture shall not exceed five percent of the unpaid assessment per month, but
21 no forfeiture shall be less than one hundred dollars per month.

22 3. Any action of the board of directors or the association may be appealed
23 to the director by any member insurer if such appeal is taken within sixty days
24 of the action being appealed. If a member company is appealing an assessment,
25 the amount assessed shall be paid to the association and available to meet
26 association obligations during the pendency of an appeal. If the appeal on the
27 assessment is upheld, the amount paid in error or excess shall be returned to the
28 member company. Any final action or order of the director shall be subject to
29 judicial review in a court of competent jurisdiction.

30 4. The liquidator, rehabilitator, or conservator of any impaired insurer
31 may notify all interested persons of the effect of sections 376.715 to 376.758.

32 5. To aid in the detection and prevention of **member** insurer insolvencies
33 or impairments, the director shall:

34 (1) Notify the commissioners of all the other states, territories of the
35 United States and the District of Columbia when he takes any of the following

36 actions against a member insurer:

37 (a) Revocation of license;

38 (b) Suspension of license; or

39 (c) Makes any formal order that such [company] **member insurer**
40 restricts its premium writing, obtain additional contributions to surplus,
41 withdraw from the state, reinsure all or any part of its business, or increase
42 capital, surplus, or any other account for the security of [policyholders] **policy**
43 **owners, contract owners, certificate holders**, or creditors.

44 Such notice shall be mailed to all commissions within thirty days following the
45 action taken or the date on which such action occurs;

46 (2) Report to the board of directors when he has taken any of the actions
47 set forth in subdivision (1) of this subsection or has received a report from any
48 other commissioner indicating that any such action has been taken in another
49 state. Such report to the board of directors shall contain all significant details
50 of the action taken or the report received from another commissioner;

51 (3) Report to the board of directors when he has reasonable cause to
52 believe from any examination, whether completed or in process, of any member
53 company that such company may be an impaired or insolvent insurer;

54 (4) Furnish to the board of directors the NAIC Insurer Regulatory
55 Information Service (IRIS) ratios and listings of companies not included in the
56 ratios developed by the National Association of Insurance Commissioners, and the
57 board may use the information contained therein in carrying out its duties and
58 responsibilities under this section. Such report and the information contained
59 therein shall be kept confidential by the board of directors until such time as
60 made public by the director or other lawful authority.

61 6. The director may seek the advice and recommendations of the board of
62 directors concerning any matter affecting his duties and responsibilities regarding
63 the financial condition of member insurers and [companies] **health**
64 **maintenance organizations** seeking admission to transact insurance business
65 in this state.

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] **insurer or health maintenance organization**
5 seeking to do [an insurance] business in this state. Such reports and
6 recommendations shall not be considered public 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. The board of directors may, upon majority vote, make recommendations
10 to the director for the detection and prevention of **member** insurer insolvencies.

376.746. 1. Nothing in sections 376.715 to 376.758 shall be construed to
2 reduce the liability for unpaid assessments of the insureds of an impaired or
3 insolvent insurer operating under a plan with assessment liability.

4 2. Records shall be kept of all negotiations and meetings in which the
5 association or its representatives are involved to discuss the activities of the
6 association in carrying out its powers and duties under the provisions of sections
7 376.715 to 376.758. Records of such negotiations or meetings shall be made
8 public only upon the termination of a liquidation, rehabilitation, or conservation
9 proceeding involving the impaired or insolvent insurer, upon the termination of
10 the impairment or insolvency of the insurer, or upon the order of a court of
11 competent jurisdiction. Nothing in this subsection shall limit the duty of the
12 association to render a report of its activities under subsection 1 of section
13 376.750.

14 3. For the purpose of carrying out its obligations under the provisions of
15 sections 376.715 to 376.758, the association is deemed to be a creditor of the
16 impaired or insolvent insurer to the extent of assets attributable to covered
17 policies reduced by any amounts to which the association is entitled as subrogee
18 under the provisions of sections 376.715 to 376.758. Assets of the impaired or
19 insolvent insurer attributable to covered policies shall be used to continue all
20 covered policies and pay all contractual obligations of the impaired or insolvent
21 insurer as required by sections 376.715 to 376.758. Assets attributable to covered
22 policies **or contracts**, as used in this subsection, are that proportion of the
23 assets which the reserves that should have been established for such policies **or**
24 **contracts** bear to the reserves that should have been established for all policies
25 of insurance **or health benefit plans** written by the impaired or insolvent
26 insurer.

376.747. 1. Prior to the termination of any liquidation, rehabilitation, or
2 conservation proceeding, the court may take into consideration the contributions
3 of the respective parties, including the association, the shareholders, **contract**
4 **owners, certificate holders, enrollees**, and policy owners of the insolvent
5 insurer, and any other party with a bona fide interest, in making an equitable
6 distribution of the ownership rights of such insolvent insurer. In such a

7 determination consideration shall be given to the welfare of the **policy owners,**
8 **contract owners, certificate holders, enrollees, and** policyholders of the
9 continuing or successor **member** insurer.

10 2. No distribution to stockholders, if any, of an impaired or insolvent
11 insurer shall be made until and unless the total amount of valid claims of the
12 association with interest thereon for funds expended in carrying out its powers
13 and duties under the provisions of sections 376.715 to 376.758 with respect to
14 such **member** insurer have been fully recovered by the association.

376.748. 1. If an order for liquidation or rehabilitation of [an] **a member**
2 insurer domiciled in this state has been entered, the receiver appointed under
3 such order shall have a right to recover on behalf of the **member** insurer, from
4 any affiliate that controlled it, the amount of distributions, other than stock
5 dividends paid by the **member** insurer on its capital stock, made at any time
6 during the five years preceding the petition for liquidation or rehabilitation
7 subject to the limitations of subsections 2 through 4 of this section.

8 2. No such distribution shall be recoverable if the **member** insurer shows
9 that when paid the distribution was lawful and reasonable, and that the **member**
10 insurer did not know and could not reasonably have known that the distribution
11 might adversely affect the ability of the **member** insurer to fulfill its contractual
12 obligations.

13 3. Any person who was an affiliate that controlled the **member** insurer
14 at the time the distributions were paid shall be liable up to the amount of
15 distributions he received. Any person who was an affiliate that controlled the
16 **member** insurer at the time the distributions were declared shall be liable up to
17 the amount of distributions he would have received if they had been paid
18 immediately. If two or more persons are liable with respect to the same
19 distributions, they shall be jointly and severally liable.

20 4. The maximum amount recoverable under this section shall be the
21 amount needed in excess of all other available assets of the insolvent insurer to
22 pay the contractual obligations of the insolvent insurer.

23 5. If any person liable under subsection 3 of this section is insolvent, all
24 its affiliates that controlled it at the time the distribution was paid shall be
25 jointly and severally liable for any resulting deficiency in the amount recovered
26 from the insolvent affiliate.

376.755. No person, including [an] **a member** insurer, agent or affiliate
2 of an insurer shall make, publish, disseminate, circulate, or place before the

3 public, or cause directly or indirectly, to be made, published, disseminated,
4 circulated or placed before the public, in any newspaper, magazine or other
5 publication, or in the form of a notice, circular, pamphlet, letter or poster, or over
6 any radio station or television station, or in any other way, any advertisement,
7 announcement or statement, written or oral, which uses the existence of the
8 insurance guaranty association of this state for the purpose of sales, solicitation,
9 or inducement to purchase any form of insurance **or other coverage** covered by
10 sections 376.715 to 376.758. If a policy exceeds the limitations of coverage under
11 sections 376.715 to 376.758, the insurer shall prominently inscribe on an
12 endorsement to the insurance contract the limitations of coverage provided by the
13 guaranty association. This section shall not apply to the Missouri Life and
14 Health Insurance Guaranty Association or any other entity which does not sell
15 or solicit insurance **or coverage by a health maintenance organization.**

376.756. 1. [Within one hundred eighty days of August 13, 1988,] The
2 association shall prepare a summary document describing the general purposes
3 and current limitations of the act and complying with subsection 2 of this
4 section. This document should be submitted to the director for approval. Sixty
5 days after receiving such approval, no insurer may deliver a policy or contract
6 described in subsection 2 of section 376.717 to a policy [or] **owner**, contract
7 holder, **certificate holder, or enrollee** unless the document is delivered to the
8 policy or contract holder prior to or at the time of delivery of the policy or contract
9 except if subsection 3 of this section applies. The document should also be
10 available upon request by a policyholder, **contract owner, certificate holder,**
11 **or enrollee.** The distribution, delivery, or contents or interpretation of this
12 document shall not mean that either the policy or the contract or the **policy**
13 **owner, contract owner, certificate holder, or enrollee** thereof would be
14 covered in the event of the impairment or insolvency of a member insurer. The
15 description document shall be revised by the association as amendments to the
16 act may require. Failure to receive this document does not give the policyholder,
17 contract holder, certificate holder, **enrollee**, or insured any greater rights than
18 those stated in sections 376.715 to 376.758.

19 2. The document prepared under subsection 1 of this section shall contain
20 a clear and conspicuous disclaimer on its face. The director shall promulgate a
21 rule establishing the form and content of the disclaimer. The disclaimer shall:

22 (1) State the name and address of the life and health insurance guaranty
23 association and department of insurance, financial institutions and professional

24 registration;

25 (2) Prominently warn the policy [or contract holder] **owner, contract**
26 **owner, certificate holder, or enrollee** that the Missouri life and health
27 insurance guaranty association may not cover the policy **or contract** or, if
28 coverage is available, it will be subject to substantial limitations, exclusions and
29 conditioned on continued residence in the state;

30 (3) State that the **member** insurer and its agents are prohibited by law
31 from using the existence of the life and health insurance guaranty association for
32 the purpose of sales, solicitation or inducement to purchase any form of insurance
33 **or health maintenance organization coverage;**

34 (4) Emphasize that the policy [or contract holder] **owner, contract**
35 **owner, certificate holder, or enrollee** should not rely on coverage under the
36 Missouri life and health insurance guaranty association when selecting an insurer
37 **or health maintenance organization;**

38 (5) Provide other information as directed by the director.

39 3. No insurer or agent may deliver a policy or contract described in
40 subsection 2 of section 376.717 and excluded under subsection 3 of section
41 376.717 from coverage under the provisions of sections 376.715 to 376.758 unless
42 the insurer or agent, prior to or at the time of delivery, gives the policy or
43 contract holder a separate written notice which clearly and conspicuously
44 discloses that the policy or contract is not covered by the Missouri life and health
45 insurance guaranty association. The director shall by rule specify the form and
46 content of the notice.

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 effective
8 on August 28, 2010, shall not apply to any member insurer that is an impaired
9 or insolvent insurer prior to August 28, 2010.

10 4. **The amendments to sections 376.715 to 376.758 which become**
11 **effective on August 28, 2018, shall not apply to any member insurer that**
12 **is an impaired or insolvent insurer prior to August 28, 2018.**

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