

1 AN ACT

2 RELATING TO INSURANCE; CHANGING THE NAME OF AND AMENDING THE
3 LIFE AND HEALTH INSURANCE GUARANTY LAW; CLARIFYING WHO IS A
4 CREDITOR IN REGARD TO SPECIAL DEPOSITS; CLARIFYING THE
5 RELEASE OF DEPOSITS; CLARIFYING THE RECOVERY OF ASSETS TO
6 MEET THE PURPOSES OF THE LIFE AND HEALTH INSURANCE GUARANTY
7 ASSOCIATION ACT; ADDING DEFINITIONS; EXPANDING THE COVERAGE
8 AND LIMITATIONS ON THE PAYMENT OF CLAIMS UNDER CERTAIN
9 INSURANCE POLICIES; EXPANDING THE POWERS AND DUTIES OF THE
10 LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION; AMENDING THE
11 TYPES OF ACCOUNTS AND ASSESSMENTS UNDER THE PURVIEW OF THAT
12 ASSOCIATION; AMENDING, REPEALING AND ENACTING SECTIONS OF THE
13 NMSA 1978.

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. Section 59A-5-19 NMSA 1978 (being Laws 1984,
17 Chapter 127, Section 86, as amended) is amended to read:

18 "59A-5-19. SPECIAL DEPOSIT OR BOND.--

19 A. To qualify for and continue to hold a
20 certificate of authority to transact insurance in this state,
21 the insurer shall also make a special deposit in trust for
22 the benefit only of all its policyholders and creditors in
23 this state in applicable amount as shown in Schedule I of
24 Section 59A-5-16 NMSA 1978. The deposit shall consist of
25 assets eligible therefor under Section 59A-10-3 NMSA 1978 and

1 shall be deposited with or through the superintendent or in a
2 commercial depository located in the state of New Mexico
3 approved by the superintendent subject to rules and
4 regulations issued by the superintendent.

5 B. In lieu of such deposit, the insurer may file
6 with the state treasurer of New Mexico through the
7 superintendent a surety bond issued by a surety insurer
8 authorized to transact such insurance in this state, in penal
9 sum not less than the aggregate special deposits required by
10 this section. The bond shall be in such form as may be
11 prescribed by the attorney general of New Mexico. The bond
12 shall not be subject to cancellation except upon not less
13 than sixty days advance written notice to the superintendent
14 by the insurer or surety; and the insurer shall promptly
15 replace, not later than fifteen days prior to expiration of
16 the bond, with another like bond, any bond so canceled or
17 otherwise terminated. The bond shall expressly provide that
18 failure of the insurance company to replace a canceled or
19 terminated bond as provided in this section shall constitute
20 a breach of the condition upon which the bond is given, upon
21 which occurrence the superintendent may immediately recover
22 from the surety the penal sum of the bond to be held as a
23 special deposit in the manner described in Subsection A of
24 this section.

25 C. The special deposit, or bond in lieu thereof,

1 shall remain on deposit or on file and in force for so long
2 as there may arise in this state any claim under any policy
3 issued by the insurer covering a subject located or a service
4 to be performed in this state or a claim arising out of the
5 insurer's operations in this state.

6 D. Whenever because of volume of business being
7 transacted by the insurer, methods of doing business,
8 regulatory practices of the domiciliary state or for other
9 good cause the superintendent deems advisable for protection
10 of policyholders and creditors, the superintendent may
11 require an insurer to make and maintain a special deposit in
12 reasonable amount greater than required under Schedule I of
13 Section 59A-5-16 NMSA 1978, but no greater than one hundred
14 fifteen percent of its direct unpaid losses in New Mexico.

15 E. The special deposit shall be subject to the
16 applicable provisions of Chapter 59A, Article 10 NMSA 1978.

17 F. This section shall not apply to domestic Lloyds
18 plan automobile insurers as identified in Chapter 59A,
19 Article 38 NMSA 1978.

20 G. For purposes of this section, "creditors" shall
21 not include:

22 (1) shareholders or other owners of the
23 insurer regarding claims arising out of their capacity as
24 shareholders or other owners; or

25 (2) holders of bonds, surplus notes, capital

1 notes, contribution notes or similar obligations of the
2 insurer regarding claims arising out of their capacity as
3 holders of bonds, surplus notes, capital notes, contribution
4 notes or similar obligations of the insurer."

5 SECTION 2. Section 59A-10-9 NMSA 1978 (being Laws 1984,
6 Chapter 127, Section 169) is amended to read:

7 "59A-10-9. RELEASE OF DEPOSIT.--

8 A. All general and special deposits of an insurer
9 under the Insurance Code shall be released only as follows:

10 (1) upon extinguishment of all liabilities
11 of the insurer for the security of which the deposit is held,
12 by reinsurance contract or otherwise;

13 (2) upon the insurer ceasing to transact
14 business in this state, and all of the liabilities for which
15 the deposit was security have been satisfied or terminated,
16 or assumed by another insurer authorized to transact
17 insurance in New Mexico;

18 (3) if the insurer is subject to delinquency
19 proceedings, upon proper order of a court of competent
20 jurisdiction the insurer's deposited assets shall be released
21 to the receiver, conservator, rehabilitator or liquidator of
22 the insurer;

23 (4) upon the entry of a final order of
24 liquidation or order approving a rehabilitation plan of a
25 member insurer, and upon request of the domiciliary receiver,

1 the deposit shall be released to the domiciliary receiver or
2 to the applicable New Mexico guaranty association; or

3 (5) deposits held under Section 59A-10-6
4 NMSA 1978 shall be released in whole or in part to the
5 insurer on the insurer's request while the insurer is solvent
6 and its general or special deposit, as applicable, is
7 otherwise in amount not less than that required of the
8 insurer under the Insurance Code.

9 B. If the deposited assets are held pursuant to
10 Section 59A-5-33 NMSA 1978, the deposit shall be released
11 when the basis for such reciprocity no longer exists as to
12 the deposit.

13 C. Release of a deposit shall be made only on
14 application to and written order of the superintendent, made
15 upon proof satisfactory to the superintendent of the
16 existence of one or more of grounds for release stated in
17 Subsection A of this section. The superintendent, before
18 directing release of deposited assets, may require such
19 evidence as the superintendent deems satisfactory that the
20 release of the deposit, in whole or in part, should be made.
21 In the case of special deposits, prior to release of the
22 deposit pursuant to Paragraphs (3) and (4) of Subsection A of
23 this section, the superintendent may require written
24 assurances from the domiciliary receiver that the deposit
25 will be handled in accordance with Section 59A-5-19 NMSA 1978

1 and applicable federal law."

2 SECTION 3. A new section of the Insurers Conservation,
3 Rehabilitation and Liquidation Law is enacted to read:

4 "RECOVERY FROM AFFILIATES.--The receiver shall have a
5 right to recover from an affiliate of the insurer property of
6 the insurer transferred to or for the benefit of the
7 affiliate within the five years preceding the initial
8 petition for receivership. No transfer is recoverable under
9 this section if the affiliate shows that, when the transfer
10 was made:

11 A. the insurer was solvent;

12 B. the transfer was lawful; and

13 C. neither the insurer nor the affiliate knew or
14 should have known that the transfer, under then-applicable
15 statutory accounting standards, would:

16 (1) place the insurer in violation of
17 applicable capital or surplus requirements;

18 (2) place the insurer below the risk-based
19 capital level as defined in the Risk-Based Capital Act;

20 (3) cause the insurer's filed financial
21 statements not to present fairly the capital and surplus of
22 the insurer; or

23 (4) otherwise cause the insurer to be in a
24 hazardous financial condition."

25 SECTION 4. Section 59A-42-1 NMSA 1978 (being Laws 1984, SB 47
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1 Chapter 127, Section 750) is amended to read:

2 "59A-42-1. SHORT TITLE.-- Chapter 59A, Article 42 NMSA
3 1978 may be cited as the "Life and Health Insurance Guaranty
4 Association Act"."

5 SECTION 5. Section 59A-42-2 NMSA 1978 (being Laws 1984,
6 Chapter 127, Section 751) is amended to read:

7 "59A-42-2. PURPOSE.--The purpose of the Life and Health
8 Insurance Guaranty Association Act is to provide a mechanism
9 to facilitate continuation of coverage and the payment of
10 covered claims under certain insurance policies, to avoid
11 excessive delay in payment and avoid financial loss to
12 claimants or policyholders because of insolvency of an
13 insurer, to assist in detection and prevention of insurer
14 insolvencies and to provide an association to assess the cost
15 of such protection among insurers."

16 SECTION 6. Section 59A-42-3 NMSA 1978 (being Laws 1984,
17 Chapter 127, Section 752, as amended) is repealed and a new
18 Section 59A-42-3 NMSA 1978 is enacted to read:

19 "59A-42-3. DEFINITIONS.--As used in the Life and Health
20 Insurance Guaranty Association Act:

21 A. "account" means either of the two accounts
22 maintained pursuant to Section 59A-42-5 NMSA 1978;

23 B. "association" means the life and health
24 insurance guaranty association created pursuant to Section
25 59A-42-5 NMSA 1978;

1 C. "authorized assessment", or the term
2 "authorized" when used in the context of assessments, means
3 that a resolution by the board has been passed whereby an
4 assessment will be called immediately or in the future from
5 member insurers for a specified amount. An assessment is
6 authorized when the resolution is passed;

7 D. "benefit plan" means a specific employee, a
8 union or an association of natural persons benefit plan;

9 E. "board" means the board of directors organized
10 pursuant to Section 59A-42-6 NMSA 1978;

11 F. "called assessment", or the term "called" when
12 used in the context of assessments, means that a notice has
13 been issued by the association to member insurers requiring
14 that an authorized assessment be paid within the time frame
15 set forth within the notice. An authorized assessment
16 becomes a called assessment when notice is mailed by the
17 association to member insurers;

18 G. "contractual obligation" means an obligation
19 under a policy or contract or a certificate under a group
20 policy or contract, or portion thereof, for which coverage is
21 provided pursuant to Section 59A-42-4 NMSA 1978;

22 H. "covered policy" means a policy or contract or
23 portion of a policy or contract for which coverage is
24 provided pursuant to Section 59A-42-4 NMSA 1978;

25 I. "domiciliary state" means the state in which an SB 47

1 insurer is incorporated or organized or, as to an alien
2 insurer, the state in which at commencement of delinquency
3 proceedings the larger amount of the insurer's assets are
4 held in trust or on deposit for the benefit of its
5 policyholders and creditors in the United States;

6 J. "extra-contractual claims" includes claims
7 relating to bad faith in the payment of claims, punitive or
8 exemplary damages or attorney fees and costs;

9 K. "impaired insurer" means a member insurer that,
10 after the effective date of the Life and Health Insurance
11 Guaranty Association Act, is not an insolvent insurer and is
12 placed under an order of rehabilitation or conservation by a
13 court of competent jurisdiction;

14 L. "insolvent insurer" means a member insurer that
15 after the effective date of the Life and Health Insurance
16 Guaranty Association Act, is placed under an order of
17 liquidation by a court of competent jurisdiction with a
18 finding of insolvency;

19 M. "member insurer" means an insurer that is
20 licensed or that holds a certificate of authority to transact
21 in this state insurance for which coverage is provided
22 pursuant to Section 59A-42-4 NMSA 1978 and includes an
23 insurer whose license or certificate of authority in this
24 state may have been suspended, revoked, not renewed or
25 voluntarily withdrawn, but does not include:

1 (1) a hospital or medical service
2 organization, whether profit or nonprofit;

3 (2) a health maintenance organization;

4 (3) a fraternal benefit society;

5 (4) a mandatory state pooling plan;

6 (5) a mutual assessment company or other
7 person that operates on an assessment basis;

8 (6) an insurance exchange;

9 (7) a charitable organization that is in
10 good standing with the superintendent pursuant to Section
11 59A-1-16.1 NMSA 1978;

12 (8) any insurer that was insolvent or unable
13 to fulfill its contractual obligations as of April 9, 1975;
14 or

15 (9) an entity similar to any of the above;

16 N. "Moody's corporate bond yield average" means
17 the monthly average corporates as published by Moody's
18 investors service, incorporated, or its successor;

19 O. "owner" of a policy or contract, "policy owner"
20 and "contract owner" means the person who is identified as
21 the legal owner under the terms of the policy or contract or
22 who is otherwise vested with legal title to the policy or
23 contract through a valid assignment completed in accordance
24 with the terms of the policy or contract and properly
25 recorded as the owner on the books of the insurer. The terms

1 "owner", "policy owner" and "contract owner" do not include
2 persons with a mere beneficial interest in a policy or
3 contract;

4 P. "plan sponsor" means:

5 (1) the employer in the case of a benefit
6 plan established or maintained by a single employer;

7 (2) the employee organization in the case of
8 a benefit plan established or maintained by an employee
9 organization; or

10 (3) the association, committee, joint board
11 of trustees or other similar group of representatives of the
12 parties who establish or maintain the benefit plan in the
13 case of a benefit plan established or maintained by two or
14 more employers or jointly by one or more employers and one or
15 more employee organizations;

16 Q. "premiums" means amounts or considerations, by
17 whatever name used, received on covered policies or contracts
18 less returned premiums, considerations and deposits and less
19 dividends and experience credits. "Premiums" does not
20 include:

21 (1) amounts or considerations received for
22 policies or contracts or for the portions of policies or
23 contracts for which coverage is not provided pursuant to
24 Subsection E of Section 59A-42-4 NMSA 1978, except that
25 assessable premiums shall not be reduced on account of

1 Paragraph (3) of Subsection E of Section 59A-42-4 NMSA 1978,
2 relating to interest limitations, or Paragraph (2) of
3 Subsection F of Section 59A-42-4 NMSA 1978, relating to
4 limitations, with respect to one individual, one participant
5 or one contract owner;

6 (2) premiums in excess of five million
7 dollars (\$5,000,000) on an unallocated annuity contract not
8 issued under a governmental retirement benefit plan, or its
9 trustee, established pursuant to Section 401, 403(b) or 457
10 of the federal Internal Revenue Code of 1986; or

11 (3) with respect to multiple non-group
12 policies of life insurance owned by one owner, whether the
13 policy owner is an individual, firm, corporation or other
14 person, and whether the persons insured are officers,
15 managers, employees or other persons, premiums in excess of
16 five million dollars (\$5,000,000) with respect to these
17 policies or contracts, regardless of the number of policies
18 or contracts held by the owner;

19 R. "principal place of business" means:

20 (1) in the case of a plan sponsor or a
21 person other than a natural person, the single state in which
22 the natural person who establishes a policy for the
23 direction, control and coordination of the operations of the
24 entity as a whole primarily exercises that function, as
25 determined by the association in its reasonable judgment by

1 considering the following factors:

2 (a) the state in which the primary
3 executive and administrative headquarters of the entity is
4 located;

5 (b) the state in which the principal
6 office of the chief executive officer of the entity is
7 located;

8 (c) the state in which the board, or
9 similar governing person or persons, of the entity conducts
10 the majority of its meetings;

11 (d) the state in which the executive or
12 management committee of the board, or similar governing
13 person or persons, of the entity conducts the majority of its
14 meetings;

15 (e) the state from which the management
16 of the overall operations of the entity is directed; and

17 (f) in the case of a benefit plan
18 sponsored by affiliated companies comprising a consolidated
19 corporation, the state in which the holding company or
20 controlling affiliate has its principal place of business as
21 determined using the factors in this subsection; but

22 (g) in the case of a plan sponsor, if
23 more than fifty percent of the participants in the benefit
24 plan are employed in a single state, that state shall be
25 deemed to be the principal place of business of the plan

1 sponsor; and

2 (2) in the case of a plan sponsor of a
3 benefit plan described in Paragraph (3) of Subsection P of
4 this section, the principal place of business of the
5 association, committee, joint board of trustees or other
6 similar group of representatives of the parties that
7 establish or maintain the benefit plan that, in lieu of a
8 specific or clear designation of a principal place of
9 business, shall be deemed to be the principal place of
10 business of the employer or employee organization that has
11 the largest investment in the benefit plan in question;

12 S. "receivership court" means the court in the
13 insolvent or impaired insurer's domiciliary state having
14 jurisdiction over the conservation, rehabilitation or
15 liquidation of the insurer;

16 T. "resident" means a person to whom a contractual
17 obligation is owed and who resides in this state on the date
18 of entry of a court order that determines a member insurer to
19 be an impaired insurer or a court order that determines a
20 member insurer to be an insolvent insurer. A person may be a
21 resident of only one state, which, in the case of a person
22 other than a natural person, shall be its principal place of
23 business. Citizens of the United States that are either
24 residents of foreign countries or residents of United States
25 possessions, territories or protectorates that do not have an

1 association similar to the association created by the Life
2 and Health Insurance Guaranty Association Act shall be deemed
3 residents of the state of domicile of the insurer that issued
4 the policies or contracts;

5 U. "structured settlement annuity" means an
6 annuity purchased in order to fund periodic payments for a
7 plaintiff or other claimant in payment for or with respect to
8 personal injury suffered by the plaintiff or other claimant;

9 V. "supplemental contract" means a written
10 agreement entered into for the distribution of proceeds under
11 a life, health or annuity policy or contract; and

12 W. "unallocated annuity contract" means an annuity
13 contract or group annuity certificate that is not issued to
14 and owned by an individual, except to the extent of annuity
15 benefits guaranteed to an individual by an insurer under the
16 contract or certificate."

17 SECTION 7. Section 59A-42-4 NMSA 1978 (being Laws 1984,
18 Chapter 127, Section 753, as amended) is repealed and a new
19 Section 59A-42-4 NMSA 1978 is enacted to read:

20 "59A-42-4. COVERAGE--LIMITATIONS.--

21 A. Coverage shall be provided for the policies and
22 contracts specified in Subsection D of this section:

23 (1) to persons who, regardless of where they
24 reside, except for nonresident certificate holders under
25 group policies or contracts, are the beneficiaries, assignees

1 or payees of the persons covered pursuant to Paragraph (2) of
2 this subsection;

3 (2) to persons who are owners of or
4 certificate holders under the policies or contracts, other
5 than unallocated annuity contracts and structured settlement
6 annuities, and in each case who:

7 (a) are residents; or

8 (b) are not residents, but only under
9 the following conditions: 1) the insurer that issued the
10 policies or contracts is domiciled in this state; 2) the
11 states in which the persons reside have associations similar
12 to this state's association; and 3) the persons are not
13 eligible for coverage by an association in another state due
14 to the fact that the insurer was not licensed in that state
15 at the time specified in that state's guaranty association
16 law;

17 (3) for unallocated annuity contracts
18 specified in Subsection D of this section, to which
19 Paragraphs (1) and (2) of this subsection shall not apply,
20 and except as provided in Subsections B and C of this
21 section:

22 (a) to persons who are the owners of
23 the unallocated annuity contracts if the contracts are issued
24 to or in connection with a specific benefit plan whose plan
25 sponsor has its principal place of business in this state;

1 and

2 (b) to persons who are the owners of
3 unallocated annuity contracts issued to or in connection with
4 government lotteries if the owners are residents; and

5 (4) for structured settlement annuities
6 specified in Subsection D of this section, to which
7 Paragraphs (1) and (2) of this subsection shall not apply,
8 and except as provided in Subsections B and C of this
9 section, to a person who is a payee under a structured
10 settlement annuity, or a beneficiary of a payee if the payee
11 is deceased, if the payee:

12 (a) is a resident, regardless of where
13 the contract owner resides; or

14 (b) is not a resident, but only under
15 the following conditions: 1) the contract owner of the
16 structured settlement annuity is a resident or is not a
17 resident, but the insurer that issued the structured
18 settlement annuity is domiciled in this state and the state
19 in which the contract owner resides has an association
20 similar to this state's association; and 2) neither the
21 payee, the payee's beneficiary or the contract owner is
22 eligible for coverage by the association of the state in
23 which the payee or contract owner resides.

24 B. Coverage shall not be provided to:

25 (1) a person who is a payee or beneficiary

1 of a contract owner resident of this state, if the payee or
2 beneficiary is afforded coverage by the association of
3 another state; or

4 (2) a person covered pursuant to Paragraph
5 (3) of Subsection A of this section, if coverage is provided
6 by the association of another state to that person.

7 C. Coverage is intended to be provided to a person
8 who is a resident of this state and, in special
9 circumstances, to a nonresident. In order to avoid duplicate
10 coverage, if a person who would otherwise receive coverage
11 pursuant to the Life and Health Insurance Guaranty
12 Association Act is provided coverage under the laws of
13 another state, the person shall not be provided coverage in
14 this state. In determining the application of the provisions
15 of this subsection in situations where a person could be
16 covered by the association of more than one state, whether as
17 an owner, payee, beneficiary or assignee, the Life and Health
18 Insurance Guaranty Association Act shall be construed in
19 conjunction with other state laws to result in coverage by
20 only one association.

21 D. Coverage shall be provided to the persons
22 specified in Subsection A of this section for direct,
23 non-group life, health or annuity policies or contracts and
24 supplemental contracts to any of these, for certificates
25 under direct group policies and contracts and supplemental

1 contracts to these and for unallocated annuity contracts
2 issued by member insurers, except as limited by the Life and
3 Health Insurance Guaranty Association Act. Annuity contracts
4 and certificates under group annuity contracts include
5 guaranteed investment contracts, deposit administration
6 contracts, unallocated funding agreements, allocated funding
7 agreements, structured settlement annuities, annuities issued
8 to or in connection with government lotteries and immediate
9 or deferred annuity contracts.

10 E. Coverage shall not be provided for:

11 (1) a portion of a policy or contract not
12 guaranteed by the insurer or under which the risk is borne by
13 the policy or contract owner;

14 (2) a policy or contract of reinsurance,
15 unless assumption certificates have been issued pursuant to
16 the reinsurance policy or contract;

17 (3) a portion of a policy or contract to the
18 extent that the rate of interest on which it is based, or the
19 interest rate, crediting rate or similar factor determined by
20 use of an index or other external reference stated in the
21 policy or contract employed in calculating returns or changes
22 in value:

23 (a) averaged over the period of four
24 years prior to the date on which the member insurer becomes
25 an impaired or insolvent insurer pursuant to the Life and

1 Health Insurance Guaranty Association Act, whichever is
2 earlier, exceeds the rate of interest determined by
3 subtracting two percentage points from Moody's corporate bond
4 yield average averaged for that same four-year period or for
5 such lesser period if the policy or contract was issued less
6 than four years before the member insurer becomes an impaired
7 or insolvent insurer under the Life and Health Insurance
8 Guaranty Association Act, whichever is earlier; and

9 (b) on and after the date on which the
10 member insurer becomes an impaired or insolvent insurer
11 pursuant to the Life and Health Insurance Guaranty
12 Association Act, whichever is earlier, exceeds the rate of
13 interest determined by subtracting three percentage points
14 from Moody's corporate bond yield average as most recently
15 available;

16 (4) a portion of a policy or contract issued
17 to a plan or program of an employer, association or other
18 person to provide life, health or annuity benefits to its
19 employees, members or others, to the extent that the plan or
20 program is self-funded or uninsured, including but not
21 limited to benefits payable by an employer, association or
22 other person under:

23 (a) a multiple employer welfare
24 arrangement;

25 (b) a minimum premium group insurance

1 plan;

2 (c) a stop-loss group insurance plan;

3 or

4 (d) an administrative services only

5 contract;

6 (5) a portion of a policy or contract to the
7 extent that it provides for:

8 (a) dividends or experience rating

9 credits;

10 (b) voting rights; or

11 (c) payment of fees or allowances to a
12 person, including the policy or contract owner, in connection
13 with the service to or administration of the policy or
14 contract;

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

19 (7) an unallocated annuity contract issued
20 to or in connection with a benefit plan protected under the
21 federal pension benefit guaranty corporation, regardless of
22 whether that corporation has yet become liable to make
23 payments with respect to the benefit plan;

24 (8) a portion of an unallocated annuity
25 contract that is not issued to or in connection with a

1 specific employee, union or association of natural persons
2 benefit plan or a government lottery;

3 (9) a portion of a policy or contract to the
4 extent that the assessments required by Section 59-42-8 NMSA
5 1978 with respect to the policy or contract are preempted by
6 federal or state law;

7 (10) an obligation that does not arise under
8 the express written terms of the policy or contract issued by
9 the insurer to the contract owner or policy owner, including
10 without limitation:

11 (a) claims based on marketing
12 materials;

13 (b) claims based on side letters,
14 riders or other documents that were issued by the insurer
15 without meeting applicable policy form filing or approval
16 requirements;

17 (c) misrepresentations of or regarding
18 policy benefits;

19 (d) extra-contractual claims; or

20 (e) a claim for penalties or
21 consequential or incidental damages;

22 (11) a contractual agreement that
23 establishes the member insurer's obligations to provide a
24 book value accounting guaranty for defined contribution
25 benefit plan participants by reference to a portfolio of

1 assets that is owned by the benefit plan or its trustee,
2 which in each case is not an affiliate of the member insurer;

3 (12) a portion of a policy or contract to
4 the extent that it provides for interest or other changes in
5 value to be determined by the use of an index or other
6 external reference stated in the policy or contract, but
7 which have not been credited to the policy or contract, or as
8 to which the policy or contract owner's rights are subject to
9 forfeiture, as of the date the member insurer becomes an
10 impaired or insolvent insurer pursuant to the Life and Health
11 Insurance Guaranty Association Act, whichever is earlier. If
12 a policy or contract's interest or changes in value are
13 credited less frequently than annually, then for purposes of
14 determining the values that have been credited and that are
15 not subject to forfeiture pursuant to this paragraph, the
16 interest or change in value determined by using the
17 procedures defined in the policy or contract will be credited
18 as if the contractual date of crediting interest or changing
19 values were the date of impairment or insolvency, whichever
20 is earlier, and will not be subject to forfeiture; or

21 (13) a policy or contract providing
22 hospital, medical, prescription drug or other health care
23 benefits pursuant to Part C or Part D of Subchapter 18 of
24 Chapter 7 of Title 42 of the United States Code or
25 regulations promulgated pursuant to Part C or Part D.

1 F. The benefits that the association may become
2 obligated to cover shall in no event exceed the lesser of:

3 (1) the contractual obligations for which
4 the insurer is liable or would have been liable if it were
5 not an impaired or insolvent insurer; or

6 (2) with respect to one person's life,
7 regardless of the number of policies or contracts:

8 (a) for life insurance death benefits,
9 three hundred thousand dollars (\$300,000) but not more than
10 one hundred thousand dollars (\$100,000) in net cash surrender
11 and net cash withdrawal values;

12 (b) for health insurance benefits: 1)
13 one hundred thousand dollars (\$100,000) for coverages not
14 constituting disability insurance or basic hospital, medical
15 and surgical insurance or major medical insurance or
16 long-term care insurance, including net cash surrender and
17 net cash withdrawal values; 2) three hundred thousand dollars
18 (\$300,000) for disability insurance; 3) three hundred
19 thousand dollars (\$300,000) for long-term care insurance as
20 defined in Section 59A-23A-4 NMSA 1978; and 4) five hundred
21 thousand dollars (\$500,000) for basic hospital, medical and
22 surgical insurance or major medical insurance; or

23 (c) for annuity benefits, two hundred
24 fifty thousand dollars (\$250,000) in present value, including
25 net cash surrender and net cash withdrawal values;

1 (3) with respect to each individual
2 participating in a governmental retirement benefit plan
3 established pursuant to Section 401, 403(b) or 457 of the
4 federal Internal Revenue Code of 1986 covered by an
5 unallocated annuity contract or the beneficiaries of each
6 such individual if deceased, in the aggregate, two hundred
7 fifty thousand dollars (\$250,000) in present value annuity
8 benefits, including net cash surrender and net cash
9 withdrawal values; or

10 (4) with respect to each payee of a
11 structured settlement annuity, or beneficiary or
12 beneficiaries of the payee if the payee is deceased, two
13 hundred fifty thousand dollars (\$250,000) in present value
14 annuity benefits, in the aggregate, including net cash
15 surrender and net cash withdrawal values, if any.

16 G. In no event shall the association be obligated
17 to cover:

18 (1) more than an aggregate of three hundred
19 thousand dollars (\$300,000) in benefits with respect to one
20 person's life pursuant to Paragraphs (2), (3) and (4) of
21 Subsection F of this section, except with respect to benefits
22 for basic hospital, medical and surgical insurance and major
23 medical insurance pursuant to Subparagraph (b) of Paragraph
24 (2) of Subsection F of this section, in which case the
25 aggregate liability of the association shall not exceed five

1 hundred thousand dollars (\$500,000) with respect to one
2 person's life; or

3 (2) with respect to one owner of multiple
4 non-group policies of life insurance, whether the policy
5 owner is an individual, firm, corporation or other person,
6 and whether the persons insured are officers, managers,
7 employees or other persons, more than five million dollars
8 (\$5,000,000) in benefits, regardless of the number of
9 policies and contracts held by the owner.

10 H. With respect to either one contract owner
11 provided coverage pursuant to Subparagraph (b) of Paragraph
12 (3) of Subsection A of this section or one plan sponsor whose
13 plans own directly or in trust one or more unallocated
14 annuity contracts not included in Paragraph (3) of Subsection
15 F of this section, the benefits the association may become
16 obligated to cover shall not exceed five million dollars
17 (\$5,000,000) irrespective of the number of contracts with
18 respect to the contract owner or plan sponsor. However, in
19 the case where one or more unallocated annuity contracts are
20 covered contracts pursuant to the Life and Health Insurance
21 Guaranty Association Act and are owned by a trust or other
22 entity for the benefit of two or more plan sponsors, coverage
23 shall be afforded by the association if the largest interest
24 in the trust or entity owning the contract or contracts is
25 held by a plan sponsor whose principal place of business is

1 in this state. In no event shall the association be
2 obligated to cover more than five million dollars
3 (\$5,000,000) in benefits with respect to all of these
4 unallocated contracts.

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

15 J. In performing its obligations to provide
16 coverage pursuant to Sections 59A-42-4 and 59A-42-7 NMSA
17 1978, the association shall not be required to guarantee,
18 assume, reinsure or perform, or cause to be guaranteed,
19 assumed, reinsured or performed, the contractual obligations
20 of the insolvent or impaired insurer under a covered policy
21 or contract that do not materially affect the economic values
22 or economic benefits of the covered policy or contract."

23 SECTION 8. Section 59A-42-5 NMSA 1978 (being Laws 1984,
24 Chapter 127, Section 754) is amended to read:

25 "59A-42-5. ORGANIZATION OF ASSOCIATION--

1 PARTICIPATION.--

2 A. All insurers shall organize and remain members
3 of the association as a condition of their authority to
4 transact insurance business covered by Section 59A-42-4 NMSA
5 1978. The association may take any appropriate form of legal
6 entity available under the laws of this state and approved by
7 the superintendent. The association shall perform its
8 functions under the plan of operation established and
9 approved pursuant to Section 59A-42-9 NMSA 1978 and shall
10 exercise its powers through the board. For purposes of
11 assessment and administration, the association shall maintain
12 two accounts:

13 (1) the life insurance and annuity account,
14 which includes the following subaccounts:

15 (a) a life insurance account;

16 (b) an annuity account, which includes
17 annuity contracts owned by a governmental retirement benefit
18 plan, or its trustee, established pursuant to Section 401,
19 403(b) or 457 of the federal Internal Revenue Code of 1986,
20 but otherwise excludes unallocated annuities; and

21 (c) an unallocated annuity account,
22 which excludes contracts owned by a governmental retirement
23 benefit plan, or its trustee, established pursuant to Section
24 401, 403(b) or 457 of the federal Internal Revenue Code of
25 1986; and

1 (2) the health insurance account.

2 B. The association shall be supervised by the
3 superintendent and shall be subject to the applicable
4 provisions of the insurance laws of New Mexico. Meetings or
5 records of the association may be opened to the public upon
6 majority vote of the board of the association."

7 SECTION 9. Section 59A-42-6 NMSA 1978 (being Laws 1984,
8 Chapter 127, Section 755, as amended) is amended to read:

9 "59A-42-6. BOARD OF DIRECTORS.--

10 A. The board of directors of the association shall
11 consist of not less than five nor more than nine member
12 insurers serving terms as established in the plan of
13 operation. The insurer members of the board shall be
14 selected by member insurers subject to the approval of the
15 superintendent. In addition, two persons who are public
16 representatives shall be appointed by the superintendent to
17 the board. A public representative shall not be an officer,
18 director or employee of an insurance company or a person
19 engaged in the business of insurance. Vacancies on the board
20 shall be filled for the remaining period of the term by a
21 majority vote of the remaining board members for member
22 insurers, subject to approval of the superintendent, and by
23 the superintendent for public representatives.

24 B. In approving insurer member selections, the
25 superintendent shall consider among other things whether all

1 member insurers are fairly represented.

2 C. Members of the board may be reimbursed from the
3 assets of the association for reasonable and necessary
4 expenses incurred by them as members of the board, but the
5 amount of that reimbursement shall not exceed the guidelines
6 provided by the approved plan of operation."

7 SECTION 10. Section 59A-42-7 NMSA 1978 (being Laws
8 1984, Chapter 127, Section 756) is repealed and a new Section
9 59A-42-7 NMSA 1978 is enacted to read:

10 "59A-42-7. POWERS AND DUTIES OF THE ASSOCIATION.--

11 A. If a member insurer is an impaired insurer, the
12 association may, in its discretion, and subject to conditions
13 imposed by the association that do not impair the contractual
14 obligations of the impaired insurer and that are approved by
15 the superintendent:

16 (1) guarantee, assume or reinsure, or cause
17 to be guaranteed, assumed or reinsured, any or all of the
18 policies or contracts of the impaired insurer; and

19 (2) provide such money, pledges, loans,
20 notes, guarantees or other means as are proper to effectuate
21 Paragraph (1) of this subsection and assure payment of the
22 contractual obligations of the impaired insurer pending
23 action pursuant to Paragraph (1) of this subsection.

24 B. If a member insurer is an insolvent insurer,
25 the association shall, in its discretion, either:

1 (1) guarantee, assume or reinsure, or cause
2 to be guaranteed, assumed or reinsured, the policies or
3 contracts of the insolvent insurer, or assure payment of the
4 contractual obligations of the insolvent insurer, and provide
5 money, pledges, loans, notes, guarantees or other means
6 reasonably necessary to discharge the association's duties;
7 or

8 (2) provide benefits and coverages in
9 accordance with the following provisions:

10 (a) with respect to life and health
11 insurance policies and annuities, assure payment of benefits
12 for premiums identical to the premiums and benefits, except
13 for terms of conversion and renewability, that would have
14 been payable under the policies or contracts of the insolvent
15 insurer, for claims incurred: 1) with respect to group
16 policies and contracts, not later than the earlier of the
17 next renewal date under those policies or contracts or
18 forty-five days, but in no event less than thirty days, from
19 the date on which the association becomes obligated with
20 respect to the policies and contracts; and 2) with respect to
21 non-group policies, contracts and annuities, not later than
22 the earlier of the next renewal date, if any, under the
23 policies or contracts or one year, but in no event less than
24 thirty days, from the date on which the association becomes
25 obligated with respect to the policies or contracts;

1 (b) make diligent efforts to provide
2 all known insureds or annuitants, for non-group policies and
3 contracts, or group policy owners with respect to group
4 policies and contracts, thirty days' notice of the
5 termination, pursuant to Subparagraph (a) of this paragraph,
6 of the benefits provided;

7 (c) with respect to non-group life and
8 health insurance policies and annuities covered by the
9 association, and with respect to an individual formerly
10 insured or formerly an annuitant under a group policy who is
11 not eligible for replacement group coverage, make available
12 to each known insured or annuitant, or owner if other than
13 the insured or annuitant, substitute coverage on an
14 individual basis in accordance with the provisions of
15 Subparagraph (d) of this paragraph if the insureds or
16 annuitants had a right under law or the terminated policy or
17 annuity to convert coverage to individual coverage or to
18 continue an individual policy or annuity in force until a
19 specified age or for a specified time, during which the
20 insurer had no right unilaterally to make changes in any
21 provision of the policy or annuity or had a right only to
22 make changes in premium by class;

23 (d) in providing the substitute
24 coverage required pursuant to Subparagraph (c) of this
25 paragraph, the association may offer either to reissue the

1 terminated coverage or to issue an alternative policy.
2 Alternative or reissued policies shall be offered without
3 requiring evidence of insurability and shall not provide for
4 a waiting period or exclusion that would not have applied
5 under the terminated policy. The association may reinsure an
6 alternative or reissued policy;

7 (e) alternative policies adopted by the
8 association shall be subject to the approval of the
9 domiciliary insurance superintendent and the receivership
10 court. The association may adopt alternative policies of
11 various types for future issuance without regard to a
12 particular impairment or insolvency. Alternative policies
13 shall contain at least the minimum statutory provisions
14 required in this state and provide benefits that shall not be
15 unreasonable in relation to the premium charged. The
16 association shall set the premium in accordance with a table
17 of rates that it shall adopt. The premium shall reflect the
18 amount of insurance to be provided and the age and class of
19 risk of each insured but shall not reflect changes in the
20 health of the insured after the original policy was last
21 underwritten. An alternative policy issued by the
22 association shall provide coverage of a type similar to that
23 of the policy issued by the impaired or insolvent insurer, as
24 determined by the association;

25 (f) if the association elects to

1 reissue terminated coverage at a premium rate different from
2 that charged under the terminated policy, the premium shall
3 be set by the association in accordance with the amount of
4 insurance provided and the age and class of risk, subject to
5 the approval of the domiciliary insurance superintendent and
6 the receivership court;

7 (g) the association's obligations with
8 respect to coverage under a policy of the impaired or
9 insolvent insurer or under a reissued or alternative policy
10 shall cease on the date the coverage or policy is replaced by
11 another similar policy by the policy owner, the insured or
12 the association; and

13 (h) when proceeding under this
14 subsection with respect to a policy or contract carrying
15 guaranteed minimum interest rates, the association shall
16 assure the payment or crediting of a rate of interest
17 consistent with Paragraph (3) of Subsection E of Section
18 59A-42-4 NMSA 1978.

19 C. Nonpayment of premiums within thirty-one days
20 after the date required under the terms of a guaranteed,
21 assumed, alternative or reissued policy or contract or
22 substitute coverage shall terminate the association's
23 obligations under the policy or coverage pursuant to the Life
24 and Health Insurance Guaranty Association Act with respect to
25 the policy or coverage, except with respect to claims

1 incurred or net cash surrender value that may be due in
2 accordance with the provisions of that act.

3 D. Premiums due for coverage after entry of an
4 order of liquidation of an insolvent insurer shall belong to
5 and be payable at the direction of the association. If the
6 liquidator of an insolvent insurer requests, the association
7 shall provide a report to the liquidator regarding such
8 premium collected by the association. The association shall
9 be liable for unearned premiums due to policy or contract
10 owners arising after the entry of the order.

11 E. The protection provided by the Life and Health
12 Insurance Guaranty Association Act shall not apply where
13 guaranty protection is provided to residents of this state by
14 the laws of the domiciliary state or jurisdiction of the
15 impaired or insolvent insurer other than this state.

16 F. In carrying out its duties pursuant to
17 Subsection B of this section, the association may:

18 (1) subject to approval by a court in this
19 state, impose permanent policy or contract liens in
20 connection with a guaranty, assumption or reinsurance
21 agreement if the association finds that the amounts that can
22 be assessed are less than the amounts needed to assure full
23 and prompt performance of the association's duties, or if it
24 finds that the economic or financial conditions as they
25 affect member insurers are sufficiently adverse to render the

1 imposition of such permanent policy or contract liens to be
2 in the public interest; or

3 (2) subject to approval by a court in this
4 state, impose temporary moratoriums or liens on payments of
5 cash values and policy loans, or another right to withdraw
6 funds held in conjunction with policies or contracts, in
7 addition to contractual provisions for deferral of cash or
8 policy loan value. In addition, in the event of a temporary
9 moratorium or moratorium charge imposed by the receivership
10 court on payment of cash values or policy loans, or on
11 another right to withdraw funds held in conjunction with
12 policies or contracts, out of the assets of the impaired or
13 insolvent insurer, the association may defer the payment of
14 cash values, policy loans or other rights by the association
15 for the period of the moratorium or moratorium charge imposed
16 by the receivership court, except for claims covered by the
17 association to be paid in accordance with a hardship
18 procedure established by the liquidator or rehabilitator and
19 approved by the receivership court.

20 G. A deposit in this state, held pursuant to law
21 or required by the superintendent for the benefit of
22 creditors, including policy owners, not turned over to the
23 domiciliary liquidator upon the entry of a final order of
24 liquidation or order approving a rehabilitation plan of an
25 insurer domiciled in this state or in a reciprocal state,

1 pursuant to Chapter 59A, Article 10 NMSA 1978, shall be
2 promptly paid to the association. The association is
3 entitled to retain a portion of an amount paid to it equal to
4 the percentage determined by dividing the aggregate amount of
5 policy owners' claims related to that insolvency for which
6 the association has provided statutory benefits by the
7 aggregate amount of all policy owners' claims in this state
8 related to that insolvency and shall remit to the domiciliary
9 receiver the amount so paid to the association less the
10 amount retained pursuant to this subsection. An amount paid
11 to the association and retained by it shall be treated as a
12 distribution of estate assets pursuant to the Insurers
13 Conservation, Rehabilitation and Liquidation Law or similar
14 provision of the state of domicile of the impaired or
15 insolvent insurer.

16 H. If the association fails to act within a
17 reasonable period of time with respect to an insolvent
18 insurer, as provided in Subsection B of this section, the
19 superintendent shall have the powers and duties of the
20 association with respect to the insolvent insurer.

21 I. The association may render assistance and
22 advice to the superintendent, upon the superintendent's
23 request, concerning rehabilitation, payment of claims,
24 continuance of coverage or the performance of other
25 contractual obligations of an impaired or insolvent insurer.

1 J. The association shall have standing to appear
2 or intervene before a court or agency in this state with
3 jurisdiction over an impaired or insolvent insurer concerning
4 which the association is or may become obligated pursuant to
5 the Life and Health Insurance Guaranty Association Act or
6 with jurisdiction over a person or property against which the
7 association may have rights through subrogation or otherwise.
8 Standing shall extend to all matters germane to the powers
9 and duties of the association, including proposals for
10 reinsuring, modifying or guaranteeing the policies or
11 contracts of the impaired or insolvent insurer and the
12 determination of the policies or contracts and contractual
13 obligations. The association shall also have the right to
14 appear or intervene before a court or agency in another state
15 with jurisdiction over an impaired or insolvent insurer for
16 which the association is or may become obligated or with
17 jurisdiction over a person or property against whom the
18 association may have rights through subrogation or otherwise.

19 K. The association shall have subrogation rights
20 under the Life and Health Insurance Guaranty Association Act
21 as follows:

22 (1) a person receiving benefits pursuant to
23 the Life and Health Insurance Guaranty Association Act shall
24 be deemed to have assigned the rights under, and any causes
25 of action against any person for losses arising pursuant to,

1 resulting from or otherwise relating to, the covered policy
2 or contract to the association to the extent of the benefits
3 received, whether the benefits are payments of or on account
4 of contractual obligations, continuation of coverage or
5 provision of substitute or alternative coverages. The
6 association may require an assignment to it of those rights
7 and causes of action by a payee, policy or contract owner,
8 beneficiary, insured or annuitant as a condition precedent to
9 the receipt of a right or benefit conferred upon the person;

10 (2) the subrogation rights of the
11 association pursuant to this subsection shall have the same
12 priority against the assets of the impaired or insolvent
13 insurer as that possessed by the person entitled to receive
14 benefits;

15 (3) in addition to Paragraphs (1) and (2) of
16 this subsection, the association shall have all common law
17 rights of subrogation and any other equitable or legal remedy
18 that would have been available to the impaired or insolvent
19 insurer or owner, beneficiary or payee of a policy or
20 contract with respect to the policy or contracts;

21 (4) if Paragraph (1), (2) or (3) of this
22 subsection is invalid or ineffective with respect to a person
23 or claim for any reason, the amount payable by the
24 association with respect to the related covered obligations
25 shall be reduced by the amount realized by another person

1 with respect to the person or claim that is attributable to
2 the policies, or to the portion of the policies, covered by
3 the association; and

4 (5) if the association has provided benefits
5 with respect to a covered obligation and a person recovers
6 amounts as to which the association has rights as described
7 in this subsection, the person shall pay to the association
8 the portion of the recovery attributable to the policies, or
9 to the portion of the policies, covered by the association.

10 L. In addition to its other rights and powers, the
11 association may:

12 (1) enter into contracts that are necessary
13 or proper to carry out the provisions and purposes of the
14 Life and Health Insurance Guaranty Association Act;

15 (2) sue or be sued, including taking legal
16 actions necessary or proper to recover unpaid assessments
17 pursuant to Section 59A-42-8 NMSA 1978 and to settle claims
18 or potential claims against it;

19 (3) borrow money to effect the purposes of
20 the Life and Health Insurance Guaranty Association Act.

21 Notes or other evidence of indebtedness of the association
22 not in default shall be legal investments for domestic
23 insurers and may be carried as admitted assets;

24 (4) employ or retain those persons necessary
25 or appropriate to handle the financial transactions of the

1 association and to perform other functions as become
2 necessary or proper;

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

6 (6) exercise, to the extent approved by the
7 superintendent, the powers of a domestic life or health
8 insurer, but in no case may the association issue insurance
9 policies or annuity contracts other than those issued to
10 perform its obligations pursuant to the Life and Health
11 Insurance Guaranty Association Act;

12 (7) organize itself as a corporation or in
13 other legal form permitted by the laws of this state;

14 (8) request information from a person
15 seeking coverage from the association in order to aid the
16 association in determining its obligations with respect to
17 that person, and that person shall promptly comply with the
18 request; and

19 (9) take other necessary or appropriate
20 action to discharge its duties and obligations or to exercise
21 its powers.

22 M. The association may join an organization of one
23 or more other state associations with similar purposes to
24 further the purposes and administer the powers and duties of
25 the association.

1 N. The association may succeed to the rights and
2 obligations of an insolvent insurer as follows:

3 (1) at any time within one hundred eighty
4 days of the date of the order of liquidation, the association
5 may elect to succeed to the rights and obligations of the
6 ceding member insurer that relate to policies or annuities
7 covered, in whole or in part, by the association, in each
8 case under one or more reinsurance contracts entered into by
9 the insolvent insurer and its reinsurers and selected by the
10 association. The assumption shall be effective as of the
11 date of the order of liquidation. The election shall be
12 effected by the association or the national organization of
13 life and health insurance guaranty associations on its behalf
14 sending written notice, return receipt requested, to the
15 affected reinsurers;

16 (2) to facilitate the earliest practicable
17 decision about whether to assume any of the contracts of
18 reinsurance, and in order to protect the financial position
19 of the estate, the receiver and each reinsurer of the ceding
20 member insurer shall make available, upon request, to the
21 association or to the national organization of life and
22 health insurance guaranty associations on its behalf, as soon
23 as possible after commencement of formal delinquency
24 proceedings:

25 (a) copies of in-force contracts of

1 reinsurance and all related files and records relevant to the
2 determination of whether those contracts should be assumed;
3 and

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

8 (3) the following shall apply to reinsurance
9 contracts assumed by the association:

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

23 (b) the association shall be entitled
24 to amounts payable by the reinsurer under the reinsurance
25 contracts with respect to losses or events that occur in

1 periods after the date of the order of liquidation and that
2 relate to policies or annuities covered, in whole or in part,
3 by the association, provided that, upon receipt of those
4 amounts, the association shall be obliged to pay to the
5 beneficiary under the policy or annuity on account of which
6 the amounts were paid a portion of the amount equal to the
7 lesser of: 1) the amount received by the association; and 2)
8 the excess of the amount received by the association over the
9 amount equal to the benefits paid by the association on
10 account of the policy or annuity less the retention of the
11 insurer applicable to the loss or event;

12 (c) within thirty days following the
13 association's election, the association and each reinsurer
14 under contracts assumed by the association shall calculate
15 the net balance due to or from the association under each
16 reinsurance contract as of the date of election with respect
17 to policies or annuities covered, in whole or in part, by the
18 association, which calculation shall give full credit to all
19 items paid by either the insurer or its receiver or the
20 reinsurer prior to the election date. The reinsurer shall
21 pay the receiver amounts due for losses or events prior to
22 the date of the order of liquidation, subject to a setoff for
23 premiums unpaid for periods prior to that date, and the
24 association or reinsurer shall pay any remaining balance due
25 the other, in each case within five days of the completion of

1 the calculation described in this subparagraph. A dispute
2 over the amounts due to either the association or the
3 reinsurer shall be resolved by arbitration pursuant to the
4 terms of the affected reinsurance contracts or, if the
5 contract contains no arbitration clause, as otherwise
6 provided by law. If the receiver has received amounts due
7 the association pursuant to Subparagraph (b) of this
8 paragraph, the receiver shall remit those amounts to the
9 association as promptly as practicable; and

10 (d) if the association or receiver, on
11 the association's behalf, within sixty days of the election
12 described in Subparagraph (c) of this paragraph, pays the
13 unpaid premiums due for periods both before and after the
14 date of election that relate to policies or annuities
15 covered, in whole or in part, by the association, the
16 reinsurer shall not be entitled to terminate the reinsurance
17 contracts for failure to pay premiums insofar as the
18 reinsurance contracts relate to policies or annuities
19 covered, in whole or in part, by the association, and the
20 reinsurer shall not be entitled to set off unpaid amounts due
21 under other contracts, or unpaid amounts due from parties
22 other than the association, against amounts due the
23 association;

24 (4) during the period from the date of the
25 order of liquidation, until the election date or, if the

1 election does not occur, until one hundred eighty days after
2 the date of the order of liquidation, neither the association
3 nor the reinsurer shall have rights or obligations pursuant
4 to reinsurance contracts that the association has the right
5 to assume pursuant to Paragraphs (1), (2) and (3) of this
6 subsection, whether for periods prior to or after the date of
7 the order of liquidation, and the reinsurer, the receiver and
8 the association shall, to the extent practicable, provide
9 each other data and records reasonably requested; provided
10 that once the association has elected to assume a reinsurance
11 contract, the parties' rights and obligations shall be
12 governed by Paragraphs (1), (2) and (3) of this subsection;

13 (5) if the association does not elect to
14 assume a reinsurance contract by the election date pursuant
15 to Paragraphs (1), (2) and (3) of this subsection, the
16 association shall have no rights or obligations, in each case
17 for periods both before and after the date of the order of
18 liquidation, with respect to the reinsurance contract;

19 (6) when policies or annuities, or covered
20 obligations with respect to those policies or annuities, are
21 transferred to an assuming insurer, reinsurance on the
22 policies or annuities may also be transferred by the
23 association, in the case of contracts assumed pursuant to
24 Paragraphs (1), (2) and (3) of this subsection, subject to
25 the following:

1 (a) unless the reinsurer and the
2 assuming insurer agree otherwise, the reinsurance contract
3 transferred shall not cover new policies of insurance or
4 annuities in addition to those transferred;

5 (b) the obligations described in
6 Paragraphs (1), (2) and (3) of this subsection shall no
7 longer apply with respect to matters arising after the
8 effective date of the transfer; and

9 (c) notice shall be given in writing,
10 return receipt requested, by the transferring party to the
11 affected reinsurer not less than thirty days prior to the
12 effective date of the transfer;

13 (7) the provisions of this subsection shall
14 supersede the provisions of a law or of an affected
15 reinsurance contract that provides for or requires a payment
16 of reinsurance proceeds, on account of losses or events that
17 occur in periods after the date of the order of liquidation,
18 to the receiver of the insolvent insurer or another person.
19 The receiver shall remain entitled to amounts payable by the
20 reinsurer under the reinsurance contracts with respect to
21 losses or events that occur in periods prior to the date of
22 the order of liquidation, subject to applicable setoff
23 provisions; and

24 (8) except as otherwise provided in this
25 subsection, the provisions of this subsection shall not:

1 (a) alter or modify the terms and
2 conditions of a reinsurance contract;

3 (b) abrogate or limit the rights of a
4 reinsurer to claim that it is entitled to rescind a
5 reinsurance contract;

6 (c) give a policyholder or beneficiary
7 an independent cause of action against a reinsurer that is
8 not otherwise set forth in the reinsurance contract;

9 (d) limit or affect the association's
10 rights as a creditor of the estate against the assets of the
11 estate; or

12 (e) apply to reinsurance contracts
13 covering property or casualty risks.

14 O. The board may exercise reasonable business
15 judgment to determine the means by which the association is
16 to provide the benefits of the Life and Health Insurance
17 Guaranty Association Act in an economical and efficient
18 manner.

19 P. Where the association has arranged or offered
20 to provide benefits to a covered person under a plan or
21 arrangement that fulfills the association's obligations, the
22 person shall not be entitled to benefits from the association
23 in addition to or other than those provided under the plan or
24 arrangement.

25 Q. Venue in a suit against the association arising SB 47
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1 pursuant to the Life and Health Insurance Guaranty
2 Association Act shall be in Santa Fe county. The association
3 shall not be required to give an appeal bond in an appeal
4 that relates to a cause of action arising pursuant to the
5 Life and Health Insurance Guaranty Association Act.

6 R. In carrying out its duties in connection with
7 guaranteeing, assuming or reinsuring policies or contracts
8 pursuant to Subsection A or B of this section, the
9 association may, subject to approval of the receivership
10 court, issue substitute coverage for a policy or contract
11 that provides an interest rate, crediting rate or similar
12 factor determined by use of an index or other external
13 reference stated in the policy or contract employed in
14 calculating returns or changes in value by issuing an
15 alternative policy or contract in accordance with the
16 following provisions:

17 (1) in lieu of the index or other external
18 reference provided for in the original policy or contract,
19 the alternative policy or contract provides for a fixed
20 interest rate, payment of dividends with minimum guarantees
21 or a different method for calculating interest or changes in
22 value;

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

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

4 SECTION 11. Section 59A-42-8 NMSA 1978 (being Laws
5 1984, Chapter 127, Section 757) is repealed and a new Section
6 59A-42-8 NMSA 1978 is enacted to read:

7 "59A-42-8. ASSESSMENTS.--

8 A. For the purpose of providing the funds
9 necessary to carry out the powers and duties of the
10 association, the board shall assess the member insurers,
11 separately for each account, at a time and for amounts as the
12 board finds necessary. Assessments shall be due not less
13 than thirty days after prior written notice to the member
14 insurers and shall accrue interest at six percent a year on
15 and after the due date.

16 B. There shall be two classes of assessments as
17 follows:

18 (1) class A assessments shall be authorized
19 and called for the purpose of meeting administrative and
20 legal costs and other expenses. Class A assessments may be
21 authorized and called whether or not related to a particular
22 impaired or insolvent insurer; and

23 (2) class B assessments shall be authorized
24 and called to the extent necessary to carry out the powers
25 and duties of the association with regard to an impaired or

1 an insolvent insurer.

2 C. The amount of a class A assessment shall be
3 determined by the board and may be authorized and called on a
4 pro rata or non-pro rata basis. If the class A assessment is
5 authorized and called on a pro rata basis, the board may
6 provide that it be credited against future class B
7 assessments. The total of all non-pro rata assessments shall
8 not exceed three hundred dollars (\$300) per member insurer in
9 one calendar year. The amount of a class B assessment shall
10 be allocated for assessment purposes among the accounts
11 pursuant to an allocation formula that may be based on the
12 premiums or reserves of the impaired or insolvent insurer or
13 another standard deemed by the board in its sole discretion
14 as being fair and reasonable under the circumstances.

15 D. Class B assessments against member insurers for
16 each account and subaccount shall be in the proportion that
17 the premiums received on business in this state by each
18 assessed member insurer on policies or contracts covered by
19 each account for the three most recent calendar years for
20 which information is available preceding the year in which
21 the insurer became insolvent or, in the case of an assessment
22 with respect to an impaired insurer, the three most recent
23 calendar years for which information is available preceding
24 the year in which the insurer became impaired, bears to
25 premiums received on business in this state for those

1 calendar years by all assessed member insurers.

2 E. Assessments for funds to meet the requirements
3 of the association with respect to an impaired or insolvent
4 insurer shall not be authorized or called until necessary to
5 implement the purposes of the Life and Health Insurance
6 Guaranty Association Act. Classification of assessments
7 pursuant to Subsection B of this section and computation of
8 assessments pursuant to Subsections C and D of this section
9 shall be made with a reasonable degree of accuracy,
10 recognizing that exact determinations may not always be
11 possible. The association shall notify each member insurer
12 of its anticipated pro rata share of an authorized assessment
13 not yet called within one hundred eighty days after the
14 assessment is authorized.

15 F. The association may abate or defer, in whole or
16 in part, the assessment of a member insurer if, in the
17 opinion of the board, payment of the assessment would
18 endanger the ability of the member insurer to fulfill its
19 contractual obligations. In the event an assessment against
20 a member insurer is abated, or deferred in whole or in part,
21 the amount by which the assessment is abated or deferred may
22 be assessed against the other member insurers in a manner
23 consistent with the basis for assessments set forth in this
24 section. Once the conditions that caused a deferral have
25 been removed or rectified, the member insurer shall pay all

1 assessments that were deferred pursuant to a repayment plan
2 approved by the association.

3 G. Subject to the provisions of Subsection H of
4 this section, the total of all assessments authorized by the
5 association with respect to a member insurer for each
6 subaccount of the life insurance and annuity account and for
7 the health insurance account shall not in one calendar year
8 exceed two percent of that member insurer's average annual
9 premiums received in this state on the policies and contracts
10 covered by the subaccount or account during the three
11 calendar years preceding the year in which the insurer became
12 an impaired or insolvent insurer.

13 H. If two or more assessments are authorized in
14 one calendar year with respect to insurers that become
15 impaired or insolvent in different calendar years, the
16 average annual premiums for purposes of the aggregate
17 assessment percentage limitation referenced in Subsection G
18 of this section shall be equal and limited to the higher of
19 the three-year average annual premiums for the applicable
20 subaccount or account as calculated pursuant to this section.

21 I. If the maximum assessment, together with the
22 other assets of the association in an account, does not
23 provide in one year in either account an amount sufficient to
24 carry out the responsibilities of the association, the
25 necessary additional funds shall be assessed as soon

1 thereafter as permitted by the Life and Health Insurance
2 Guaranty Association Act.

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

8 K. If the maximum assessment for a subaccount of
9 the life and annuity account in one year does not provide an
10 amount sufficient to carry out the responsibilities of the
11 association, then pursuant to Subsection D of this section,
12 the board shall access the other subaccounts of the life
13 insurance and annuity account for the necessary additional
14 amount, subject to the maximum stated in Subsections G, H and
15 I of this section.

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

1 the association and for a future losses claim.

2 M. It shall be proper for a member insurer, in
3 determining its premium rates and policyowner dividends as to
4 any kind of insurance within the scope of the Life and Health
5 Insurance Guaranty Association Act, to consider the amount
6 reasonably necessary to meet its assessment obligations under
7 that act.

8 N. The association shall issue to each insurer
9 paying an assessment, other than a class A assessment, a
10 certificate of contribution, in a form prescribed by the
11 superintendent, for the amount of the assessment paid. All
12 outstanding certificates shall be of equal dignity and
13 priority without reference to amounts or dates of issue. A
14 certificate of contribution may be shown by the insurer in
15 its financial statement as an asset in that form and for that
16 amount, if any, and period of time as the superintendent may
17 approve.

18 O. A protest to an assessment shall occur as
19 follows:

20 (1) a member insurer that wishes to protest
21 all or part of an assessment shall pay when due the full
22 amount of the assessment as set forth in the notice provided
23 by the association. The payment shall be available to meet
24 association obligations during the pendency of the protest or
25 a subsequent appeal. Payment shall be accompanied by a

1 statement in writing that the payment is made under protest
2 and setting forth a brief statement of the grounds for the
3 protest;

4 (2) within sixty days following the payment
5 of an assessment under protest by a member insurer, the
6 association shall notify the member insurer in writing of its
7 determination with respect to the protest unless the
8 association notifies the member insurer that additional time
9 is required to resolve the issues raised by the protest;

10 (3) within thirty days after a final
11 decision has been made, the association shall notify the
12 protesting member insurer in writing of that final decision.
13 Within sixty days of receipt of notice of the final decision,
14 the protesting member insurer may appeal that final action to
15 the superintendent;

16 (4) in the alternative to rendering a final
17 decision with respect to a protest based on a question
18 regarding the assessment base, the association may refer
19 protests to the superintendent for a final decision, with or
20 without a recommendation from the association; and

21 (5) if the protest or appeal on the
22 assessment is upheld, the amount paid in error or excess
23 shall be returned to the member company. Interest on a
24 refund due a protesting member shall be paid at the rate
25 actually earned by the association.

1 P. The association may request information of
2 member insurers in order to aid in the exercise of its power
3 pursuant to this section, and member insurers shall promptly
4 comply with a request."

5 SECTION 12. Section 59A-42-9 NMSA 1978 (being Laws
6 1984, Chapter 127, Section 758) is amended to read:

7 "59A-42-9. PLAN OF OPERATION.--

8 A. The association shall submit to the
9 superintendent a plan of operation or amendments to the plan
10 necessary or suitable to assure the fair, reasonable and
11 equitable administration of the association. The plan of
12 operation or amendments to the plan shall become effective
13 upon approval in writing by the superintendent or on the
14 thirty-first day after submission to the superintendent if it
15 has not been disapproved within that time.

16 B. If the association fails to submit suitable
17 amendments to the plan, the superintendent shall, after
18 notice and hearing, promulgate reasonable rules necessary or
19 advisable to effectuate the provisions of the Life and Health
20 Insurance Guaranty Association Act. The rules shall continue
21 in force until modified by the superintendent or superseded
22 by amendments submitted by the association and approved by
23 the superintendent.

24 C. All member insurers shall comply with the plan
25 of operation.

1 D. The plan of operation shall include:

2 (1) procedures for handling the assets of
3 the association;

4 (2) the amount and method of reimbursement
5 for members of the board;

6 (3) the regular places and times for
7 meetings, including telephone conference calls of the board;

8 (4) procedures for records to be kept of all
9 financial transactions of the association, its agents and the
10 board;

11 (5) procedures for selecting members of the
12 board and submitting those selections for approval to the
13 superintendent;

14 (6) additional procedures for assessments;

15 (7) additional provisions necessary or
16 proper for the execution of the powers and duties of the
17 association;

18 (8) procedures to remove a director for
19 cause, including the case where a member insurer director
20 becomes an impaired or insolvent insurer; and

21 (9) policies and procedures for addressing
22 conflicts of interest.

23 E. The plan of operation may provide that the
24 powers and duties of the association, except those provided
25 in Paragraph (3) of Subsection L of Section 59A-42-7 NMSA

1 1978 and in Section 59A-42-8 NMSA 1978, may be delegated to a
2 corporation, association or other organization that performs
3 or will perform functions similar to those of the
4 association, or its equivalent, in two or more states. That
5 corporation, association or organization shall be reimbursed
6 as a servicing facility would be reimbursed and shall be paid
7 for its performance of other functions of the association. A
8 delegation pursuant to this subsection shall take effect only
9 with the approval of both the board and the superintendent,
10 and may be made only to a corporation, association or
11 organization that extends protection not substantially less
12 favorable and effective than that provided by the Life and
13 Health Insurance Guaranty Association Act."

14 SECTION 13. Section 59A-42-10 NMSA 1978 (being Laws
15 1984, Chapter 127, Section 759) is amended to read:

16 "59A-42-10. DUTIES AND POWERS OF THE SUPERINTENDENT.--

17 A. The superintendent shall:

18 (1) notify the association of the existence
19 of an insolvent insurer not later than three days after the
20 superintendent receives notice of the determination of the
21 insolvency;

22 (2) upon request of the board, provide the
23 association with a statement of the premiums in this or
24 another state of each member insurer; and

25 (3) when an impairment is declared and the

1 amount of the impairment is determined, serve a demand upon
2 the impaired insurer to make good the impairment within a
3 reasonable time. Notice to the impaired insurer shall
4 constitute notice to its shareholders, if any. The failure
5 of the insurer to promptly comply with the demand shall not
6 excuse the association from the performance of its powers and
7 duties pursuant to the Life and Health Insurance Guaranty
8 Association Act.

9 B. The superintendent may:

10 (1) suspend or revoke, after notice and
11 hearing, the certificate of authority to transact insurance
12 in this state of a member insurer that fails to pay an
13 assessment when due or that fails to comply with the plan of
14 operation. As an alternative, the superintendent may levy a
15 fine on a member insurer that fails to pay an assessment when
16 due. The fine shall not exceed five percent of the unpaid
17 assessment a month, except that no fine shall be less than
18 one hundred dollars (\$100) a month; and

19 (2) revoke the designation of a servicing
20 facility if the superintendent finds that claims are being
21 handled unsatisfactorily."

22 SECTION 14. Section 59A-42-11 NMSA 1978 (being Laws
23 1984, Chapter 127, Section 760) is amended to read:

24 "59A-42-11. PREVENTION OF INSOLVENCIES.--To aid in the
25 detection and prevention of insurance insolvencies:

1 A. the superintendent shall:

2 (1) notify the superintendents in other
3 states, within thirty days following the action taken or the
4 date the action occurs, when the superintendent takes any of
5 the following actions against a member insurer:

6 (a) revokes a license;

7 (b) suspends a license; or

8 (c) makes a formal order that the
9 company restrict its premium writing, obtain additional
10 contributions to surplus, withdraw from the state, reinsure
11 all or a part of its business or increase capital, surplus or
12 another account for the security of policy owners or
13 creditors;

14 (2) report to the board when the
15 superintendent has taken an action set forth in Paragraph (1)
16 of this subsection or has received a report from another
17 superintendent indicating that an action has been taken in
18 another state. The report to the board shall contain all
19 significant details of the action taken or of the report
20 received from another superintendent;

21 (3) report to the board when the
22 superintendent has reasonable cause to believe from an
23 examination, whether completed or in process, of a member
24 insurer that the insurer may be an impaired or insolvent
25 insurer; and

1 (4) furnish to the board the national
2 association of insurance commissioners' insurance regulatory
3 information system ratios and listings of companies not
4 included in the ratios developed by the national association
5 of insurance commissioners. The board may use that
6 information in carrying out its duties and responsibilities
7 pursuant to this section. The report shall be kept
8 confidential by the board until it is made public by the
9 superintendent or other lawful authority;

10 B. the superintendent may seek the advice and
11 recommendations of the board concerning a matter affecting
12 the duties and responsibilities of the superintendent
13 regarding the financial condition of member insurers and
14 companies seeking admission to transact insurance business in
15 this state; and

16 C. the board may, upon majority vote:

17 (1) notify the superintendent of information
18 indicating that a member insurer may be an impaired or
19 insolvent insurer;

20 (2) make reports and recommendations to the
21 superintendent upon any matter germane to the solvency,
22 liquidation, rehabilitation or conservation of a member
23 insurer or germane to the solvency of a company seeking to do
24 insurance business in this state. The reports and
25 recommendations are not public documents; and

1 (3) make recommendations to the
2 superintendent for the detection and prevention of insurers'
3 insolvencies."

4 SECTION 15. Section 59A-42-12 NMSA 1978 (being Laws
5 1984, Chapter 127, Section 761, as amended) is amended to
6 read:

7 "59A-42-12. APPEALS.--

8 A. A member insurer may appeal to the
9 superintendent from an action of the board by filing with the
10 superintendent a notice of appeal within thirty days after
11 that action.

12 B. A final order of the superintendent on appeal
13 is subject to judicial review by an action in the district
14 court pursuant to the provisions of Section 39-3-1.1 NMSA
15 1978."

16 SECTION 16. Section 59A-42-13 NMSA 1978 (being Laws
17 1984, Chapter 127, Section 762) is amended to read:

18 "59A-42-13. MISCELLANEOUS PROVISIONS.--

19 A. The Life and Health Insurance Guaranty
20 Association Act shall not be construed to reduce the
21 liability for unpaid assessments of the insureds of an
22 impaired or insolvent insurer operating under a plan with
23 assessment liability.

24 B. Records shall be kept of all meetings of the
25 board to discuss the activities of the association in

1 carrying out its powers and duties. Records of the meetings
2 with respect to an impaired or insolvent insurer shall be
3 made public only upon the termination of a liquidation,
4 rehabilitation or conservation proceeding involving the
5 impaired or insolvent insurer, upon the termination of the
6 insolvency of the insurer or upon the order of a court of
7 competent jurisdiction. Nothing in this subsection limits
8 the duty of the association to render the reports required by
9 Section 59A-42-14 NMSA 1978.

10 C. For the purpose of carrying out its
11 obligations, the association shall be deemed to be a creditor
12 of the impaired or insolvent insurer to the extent of assets
13 attributable to covered policies reduced by amounts to which
14 the association is entitled as a subrogee pursuant to
15 Subsection K of Section 59A-42-7 NMSA 1978. Assets of the
16 impaired or insolvent insurer attributable to covered
17 policies shall be used to continue all covered policies and
18 pay all contractual obligations of the impaired or insolvent
19 insurer. Assets attributable to covered policies, as used in
20 this subsection, are that proportion of the assets that the
21 reserves that should have been established for those policies
22 bear to the reserves that should have been established for
23 all policies of insurance written by the impaired or
24 insolvent insurer.

25 D. As a creditor of the impaired or insolvent

1 insurer and consistent with the Insurers Conservation,
2 Rehabilitation and Liquidation Law, the association and other
3 similar associations shall be entitled to receive a
4 disbursement of assets out of the marshaled assets, from time
5 to time as the assets become available to reimburse it, as a
6 credit against contractual obligations pursuant to the Life
7 and Health Insurance Guaranty Association Act. If the
8 liquidator has not, within one hundred twenty days of a final
9 determination of insolvency of an insurer by the receivership
10 court, made an application to the court for the approval of a
11 proposal to disburse assets out of marshaled assets to
12 guaranty associations having obligations because of the
13 insolvency, the association shall be entitled to make
14 application to the receivership court for approval of its own
15 proposal to disburse these assets.

16 E. Prior to the termination of a liquidation,
17 rehabilitation or conservation proceeding, the court may take
18 into consideration the contributions of the respective
19 parties, including the association, the shareholders and
20 policy owners of the insolvent insurer and any other party
21 with a bona fide interest, in making an equitable
22 distribution of the ownership rights of the insolvent
23 insurer. In such a determination, consideration shall be
24 given to the welfare of the policy owners of the continuing
25 or successor insurer.

1 F. No distribution to stockholders, if any, of an
2 impaired or insolvent insurer shall be made until and unless
3 the total amount of valid claims of the association with
4 interest thereon for funds expended in carrying out its
5 powers and duties with respect to the insurer has been fully
6 recovered by the association."

7 SECTION 17. Section 59A-42-14 NMSA 1978 (being Laws
8 1984, Chapter 127, Section 763) is amended to read:

9 "59A-42-14. EXAMINATION OF ASSOCIATION--ANNUAL
10 REPORT.--The association is subject to examination and
11 regulation by the superintendent. The board shall submit to
12 the superintendent, not later than May 1 each year, a
13 financial report for the preceding calendar year in form
14 approved by the superintendent and a report of its activities
15 during the preceding calendar year. Upon the request of a
16 member insurer, the association shall provide the member
17 insurer with a copy of the report."

18 SECTION 18. Section 59A-42-15 NMSA 1978 (being Laws
19 1984, Chapter 127, Section 764) is amended to read:

20 "59A-42-15. IMMUNITY.--There shall be no liability on
21 the part of, and no cause of action shall arise against, a
22 member insurer or its agents or employees, the association or
23 its agents or employees, members of the board or the
24 superintendent or the superintendent's representatives for an
25 act or omission by them in the performance of their powers

1 and duties pursuant to the Life and Health Insurance Guaranty
2 Association Act. This immunity shall extend to the
3 participation in an organization of one or more other state
4 associations with similar purposes and to that organization
5 and its agents or employees."

6 SECTION 19. Section 59A-42-16 NMSA 1978 (being Laws
7 1984, Chapter 127, Section 765) is amended to read:

8 "59A-42-16. STAY OF PROCEEDINGS--REOPENING DEFAULT
9 JUDGMENTS.--A proceeding in which an insolvent insurer is a
10 party in a court in this state shall be stayed one hundred
11 eighty days from the date an order of liquidation,
12 rehabilitation or conservation is final to permit proper
13 legal action by the association on matters germane to its
14 powers or duties. As to a judgment under a decision, order,
15 verdict or finding based on default, the association may
16 apply to have the judgment set aside by the same court that
17 made the judgment and shall be permitted to defend against
18 the suit on the merits."

19 SECTION 20. A new section of the Life and Health
20 Insurance Guaranty Association Act is enacted to read:

21 "PROHIBITED ADVERTISEMENT--NOTICE TO POLICY OWNERS.--

22 A. No person, including an insurer, agent or
23 affiliate of an insurer, shall make, publish, disseminate,
24 circulate or place before the public, or cause directly or
25 indirectly to be made, published, disseminated, circulated or

1 placed before the public, in a newspaper, magazine or other
2 publication, or in the form of a notice, circular, pamphlet,
3 letter or poster, or over a radio station or television
4 station, or in any other way, an advertisement, announcement
5 or statement, written or oral, that uses the existence of the
6 association for the purpose of sales, solicitation or
7 inducement to purchase insurance covered by the Life and
8 Health Insurance Guaranty Association Act. However, this
9 subsection shall not apply to the association or any other
10 entity that does not sell or solicit insurance.

11 B. Within one hundred eighty days of the effective
12 date of this 2012 act, the association shall prepare a
13 summary document describing the general purposes and current
14 limitations of that act and complying with Subsection C of
15 this section. The document shall be submitted to the
16 superintendent for approval. At the expiration of the
17 sixtieth day after the date on which the superintendent
18 approves the document, an insurer shall not deliver a policy
19 or contract to a policy or contract owner unless the summary
20 document is delivered to the policy or contract owner at the
21 time of delivery of the policy or contract. The document
22 shall also be available upon request by a policy owner. The
23 distribution, delivery or contents or interpretation of this
24 document does not guarantee that either the policy or the
25 contract or the owner of the policy or contract is covered in

1 the event of the impairment or insolvency of a member
2 insurer. The description document shall be revised by the
3 association as amendments to the Life and Health Insurance
4 Guaranty Association Act may require. Failure to receive
5 this document does not give the policy owner, contract owner,
6 certificate holder or insured greater rights than those
7 stated in the Life and Health Insurance Guaranty Association
8 Act.

9 C. The document prepared pursuant to Subsection B
10 of this section shall contain a clear and conspicuous
11 disclaimer on its face. The superintendent shall establish
12 the form and content of the disclaimer. The disclaimer
13 shall:

14 (1) state the name and address of the
15 association and insurance department;

16 (2) prominently warn the policy or contract
17 owner that the association may not cover the policy or, if
18 coverage is available, that it will be subject to substantial
19 limitations and exclusions and conditioned on continued
20 residence in this state;

21 (3) state the types of policies for which
22 guaranty funds will provide coverage;

23 (4) state that the insurer and its agents
24 are prohibited by law from using the existence of the
25 association for the purpose of sales, solicitation or

1 inducement to purchase any form of insurance;

2 (5) state that the policy or contract owner
3 should not rely on coverage pursuant to the Life and Health
4 Insurance Guaranty Association Act when selecting an insurer;

5 (6) explain rights available and procedures
6 for filing a complaint to allege a violation of the
7 provisions of the Life and Health Insurance Guaranty
8 Association Act; and

9 (7) provide other information as directed by
10 the superintendent, including sources for information about
11 the financial condition of insurers, provided that the
12 information is not proprietary and is subject to disclosure
13 pursuant to the Inspection of Public Records Act.

14 D. A member insurer shall retain evidence of
15 compliance with Subsection B of this section for as long as
16 the policy or contract for which the notice is given remains
17 in effect."

18 SECTION 21. TEMPORARY PROVISION--CONTINUATION OF
19 ACCOUNTS, ASSOCIATION, BOARD, PLAN OF OPERATION AND
20 ACTIVITIES.--

21 A. The accounts maintained pursuant to the Life
22 and Health Insurance Guaranty Law and in effect on
23 July 1, 2012 shall continue in full force as the accounts
24 maintained pursuant to the Life and Health Insurance Guaranty
25 Association Act, modified as necessary to comply with that

1 act.

2 B. The life insurance guaranty association
3 existing pursuant to the Life and Health Insurance Guaranty
4 Law on July 1, 2012 is the life and health insurance guaranty
5 association organized pursuant to the Life and Health
6 Insurance Guaranty Association Act, subject to the provisions
7 of that act.

8 C. The insurer members of the board of directors
9 of the life insurance guaranty association serving pursuant
10 to the Life and Health Insurance Guaranty Law on July 1, 2012
11 shall serve as the insurer members of the board of directors
12 of the life and health insurance guaranty association
13 pursuant to the provisions of the Life and Health Insurance
14 Guaranty Association Act.

15 D. The plan of operation in effect pursuant to the
16 Life and Health Insurance Guaranty Law on July 1, 2012 shall
17 serve as the plan of operation required pursuant to the Life
18 and Health Insurance Guaranty Association Act, modified as
19 necessary to comply with that act.

20 E. An action, including an assessment, or an
21 obligation of the life insurance guaranty association, board
22 of directors of the life insurance guaranty association or
23 superintendent of insurance initiated or created but not
24 completed pursuant to the Life and Health Insurance Guaranty
25 Law prior to July 1, 2012, shall continue until completed

1 pursuant to the provisions of the Life and Health Insurance
2 Guaranty Law.

3 SECTION 22. APPLICABILITY.--The provisions of Section 7
4 of this act apply only to coverage that the life and health
5 insurance guaranty association provides in connection with
6 any member insurer that is placed under an order of
7 liquidation with a finding of insolvency after July 1, 2012.

8 SECTION 23. EFFECTIVE DATE.--The effective date of the
9 provisions of this act is July 1, 2012. _____

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