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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2020

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A N A C T

RELATING TO INSURANCE

Introduced By: Representatives Kennedy, Azzinaro, Johnston, Casey, and Solomon

Date Introduced: February 26, 2020

Referred To: House Corporations

(Dept. of Business Regulation)

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 27-34.3-2, 27-34.3-3, 27-34.3-5, 27-34.3-6, 27-34.3-7, 27-34.3-8
2 and 27-34.3-9 of the General Laws in Chapter 27-34.3 entitled "Rhode Island Life and Health
3 Insurance Guaranty Association Act" are hereby amended to read as follows:

4 **27-34.3-2. Purpose.**

5 (a) The purpose of this chapter is to protect, subject to certain limitations, the persons
6 specified in § 27-34.3-3(a) against failure in the performance of contractual obligations, under ~~life~~
7 ~~and health insurance policies~~ and annuity policies, plans, or contracts specified in § 27-34.3-3(b),
8 because of the impairment or insolvency of the member insurer that issued the policies, plans, or
9 contracts.

10 (b) To provide this protection, an association of member insurers is created to pay benefits
11 and to continue coverages as limited in this chapter, and members of the association are subject to
12 assessment to provide funds to carry out the purpose of this chapter.

13 (c) In accordance with this purpose, in determining the coverage limits to be applied in §
14 27-34.3-3 in cases in which there were different statutory limits at the time the insurer was declared
15 impaired and the time the insurer was declared insolvent, the statute with the higher limits shall be
16 applied to the claim.

17 **27-34.3-3. Coverage and limitations.**

18 (a) This chapter shall provide coverage for the policies and contracts specified in subsection
19 (b) of this section:

1 (1) To persons who, regardless of where they reside (except for nonresident certificate
2 holders under group policies or contracts), are the beneficiaries, assignees or payees, [including](#)
3 [health care providers rendering services covered under health insurance policies or certificates](#), of
4 the persons covered under subsection (2); and

5 (2) To persons who are owners of or certificate holders [or enrollees](#) under the policies or
6 contracts (other than unallocated annuity contracts, and structured settlement annuities) and in each
7 case who:

8 (i) Are residents; or

9 (ii) Are not residents, but only under all of the following conditions:

10 (A) The [member](#) insurer that issued the policies or contracts is domiciled in this state;

11 (B) The states in which the persons reside have associations similar to the association
12 created by this chapter; and

13 (C) The persons are not eligible for coverage by an association in any other state due to the
14 fact that the insurer [or the health maintenance organization](#) was not licensed in the state at the time
15 specified in the state's guaranty association law.

16 (3) For unallocated annuity contracts set forth in subsection (b) of this section, paragraphs
17 (1) and (2) of this subsection shall not apply, and this chapter shall (except as provided in
18 paragraphs (5) and (a)(6) of this subsection) provide coverage to:

19 (i) Persons who are owners of the unallocated annuity contracts if the contracts are issued
20 to or in connection with a specific benefit plan whose plan sponsor has its principal place of
21 business in this state; and

22 (ii) Persons who are owners of unallocated annuity contracts issued to or in connection
23 with government lotteries if the owners are residents.

24 (4) For structured settlement annuities specified in subsection (b)(1), paragraphs (1) and
25 (2) of this subsection shall not apply, and this chapter shall (except as provided in paragraphs (5)
26 and (6) of this subsection) provide coverage to a person who is a payee under a structured settlement
27 annuity (or beneficiary of a payee if the payee is deceased), if the payee:

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

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

30 (A)(I) The contract owner of the structured settlement annuity is a resident; or

31 (II) The contract owner of the structured settlement annuity is not a resident but the insurer
32 that issued the structured settlement annuity is domiciled in this state; and

33 The state in which the contract owner resides has an association similar to the association
34 created by this chapter; and

1 (B) Neither the payee or beneficiary, nor the contract owner is eligible for coverage by the
2 association of the state in which the payee or contract owner resides.

3 (5) This chapter shall not provide coverage to:

4 (i) A person who is a payee or beneficiary of a contract owner resident of this state, if the
5 payee or beneficiary is afforded any coverage by the association of another state; or

6 (ii) A person covered under paragraph (3) of this subsection, if any coverage is provided
7 by the association of another state to the person; or

8 (iii) A person who acquires rights to receive payments through a structured settlement
9 factoring transaction as defined in 26 U.S.C. 5891(c)(3)(A), regardless of whether the transaction
10 occurred before or after such section became effective.

11 (6) This chapter is intended to provide coverage to a person who is a resident of this state
12 and, in special circumstances, to a nonresident. In order to avoid duplicate coverage, if a person
13 who would otherwise receive coverage under this chapter is provided coverage under the laws of
14 any other state, the person shall not be provided coverage under this chapter. In determining the
15 application of the provisions of this paragraph in situations where a person could be covered by the
16 association of more than one state, whether as an owner, payee, enrollee, beneficiary, or assignee,
17 this chapter shall be construed in conjunction with other state laws to result in coverage by only
18 one association.

19 (b)(1) This chapter shall provide coverage to the persons specified in subsection (a) of this
20 section for policies or contracts of direct, non-group life insurance, health insurance (which for the
21 purposes of this chapter includes health maintenance organization subscriber contracts and
22 certificates), ~~or annuity policies or contracts~~ annuities and supplemental policies or contracts to any
23 of these, for certificates under direct group policies and contracts, and for unallocated annuity
24 contracts issued by member insurers, except as limited by this chapter. Annuity contracts and
25 certificates under group annuity contracts include, but are not limited to, guaranteed investment
26 contracts, deposit administration contracts, unallocated funding agreements, allocated funding
27 agreements, structured settlement annuities, annuities issued to or in connection with government
28 lotteries and any immediate or deferred annuity contracts.

29 (2) Except as otherwise provided in subsection (3) of this section, this ~~This~~ chapter shall
30 not provide coverage for:

31 (i) A portion of a policy or contract not guaranteed by the member insurer, or under which
32 the risk is borne by the policy or contract owner;

33 (ii) A policy or contract of reinsurance, unless assumption certificates have been issued
34 pursuant to the reinsurance policy or contract;

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

5 (A) Averaged over the period of four (4) years prior to the date on which the member
6 insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier, exceeds
7 the rate of interest determined by subtracting two (2) percentage points from Moody's corporate
8 bond yield average averaged for that same four-year (4) period or for such lesser period if the policy
9 or contract was issued less than four (4) years before the member insurer becomes an impaired or
10 insolvent insurer under this chapter, whichever is earlier; and

11 (B) On and after the date on which the member insurer becomes an impaired or insolvent
12 insurer under this chapter, whichever is earlier, exceeds the rate of interest determined by
13 subtracting three (3) percentage points from Moody's corporate bond yield average as most recently
14 available;

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

19 (A) A multiple employer welfare arrangement as defined in 29 U.S.C. § 1144;

20 (B) A minimum premium group insurance plan;

21 (C) A stop-loss group insurance plan; or

22 (D) An administrative services only contract;

23 (v) A portion of a policy or contract to the extent that it provides for:

24 (A) Dividends or experience rating credits;

25 (B) Voting rights; or

26 (C) Payment of any fees or allowances to any person, including the policy or contract
27 owner, in connection with the service to or administration of the policy or contract.

28 (vi) A policy or contract issued in this state by a member insurer at a time when it was not
29 licensed or did not have a certificate of authority to issue the policy or contract in this state;

30 (vii) An unallocated annuity contract issued to or in connection with a benefit plan
31 protected under the federal pension benefit guaranty corporation, regardless of whether the federal
32 pension benefit guaranty corporation has yet become liable to make any payments with respect to
33 the benefit plan;

34 (viii) A portion of unallocated annuity contract that is not issued to or in connection with a

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

2 (ix) A portion of a policy or contract to the extent that the assessments required by § 27-

3 34.3-9 with respect to the policy or contract are preempted by federal or state law; and

4 (x) An obligation that does not arise under the express written terms of the policy or

5 contract issued by the [member](#) insurer to the [enrollee, certificate holder](#), contract owner or policy

6 owner, including, without limitation:

7 (A) Claims based on marketing materials;

8 (B) Claims based on side letters, riders or other documents that were issued by the [member](#)

9 insurer without meeting applicable policy [or contract](#) form filing or approval requirements;

10 (C) Misrepresentations of or regarding policy [or contract](#) benefits;

11 (D) Extracontractual claims; or

12 (E) A claim for penalties or consequential or incidental damages;

13 (xi) A contractual agreement that establishes the member insurer's obligations to provide a

14 book value accounting guaranty for defined contribution benefit plan participants by reference to a

15 portfolio of assets that is owned by the benefit plan or its trustee, which in each case is not an

16 affiliate of the member insurer;

17 (xii) A portion of a policy or contract to the extent it provides for interest or other changes

18 in value to be determined by the use of an index or other external reference stated in the policy or

19 contract, but which have not been credited to the policy or contract, or as to which the policy or

20 contract owner's rights are subject to forfeiture, as of the date the member insurer becomes an

21 impaired or insolvent insurer under this chapter, whichever is earlier. If a policy's or contract's

22 interest or changes in value are credited less frequently than annually, then, for purposes of

23 determining the values that have been credited and are not subject to forfeiture under this paragraph,

24 the interest or change in value determined by using the procedures defined in the policy or contract

25 will be credited as if the contractual date of crediting interest or changing values was the date of

26 impairment or insolvency, whichever is earlier, and will not be subject to forfeiture;

27 (xiii) Any transaction or combination of transactions between a protected cell and the

28 general account or another protected cell of a protected cell company organized under chapter 64

29 of this title; ~~or~~

30 (xiv) A policy or contract providing any hospital, medical, prescription drug or other health

31 care benefits pursuant to Part C or Part D of subchapter XVIII, chapter 7 of title 42 of the United

32 States Code (commonly known as Medicare part C & D), [or Subchapter XIX, Chapter 7 of Title](#)

33 [42 of the United States Code \(commonly known as Medicaid\)](#), or any regulations issued pursuant

34 thereto; [or](#)

1 (xvii) Structured settlement annuity benefits to which a payee (or beneficiary) has
2 transferred his or her rights in a structured settlement factoring transaction as defined in 26 U.S.C.
3 5891(c)(3)(A), regardless of whether the transaction occurred before or after such section became
4 effective.

5 (3) The exclusion from coverage referenced in subsection (2)(iii) of this section shall not
6 apply to any portion of a policy or contract, including a rider, that provides a long-term care or any
7 other health insurance benefits.

8 (c) The benefits that the association may become obligated to cover shall in no event exceed
9 the lesser of:

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

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

13 (A) Three hundred thousand dollars (\$300,000) in life insurance death benefits, but not
14 more than one hundred thousand dollars (\$100,000) in net cash surrender and net cash withdrawal
15 values for life insurance;

16 (B) ~~For~~ For health insurance benefits:

17 (I) One hundred thousand dollars (\$100,000) for coverages not considered as disability
18 income insurance or ~~basic hospital, medical and surgical insurance or major medical insurance~~
19 health benefit plans or long-term care insurance, including any net cash surrender and net cash
20 withdrawal values;

21 (II) Three hundred thousand dollars (\$300,000) for disability income insurance and three
22 hundred thousand dollars (\$300,000) for long-term care insurance;

23 (III) Five hundred thousand dollars (\$500,000) for health benefit plans ~~basic hospital,~~
24 ~~medical and surgical insurance~~; or

25 (C) Two hundred fifty thousand dollars (\$250,000) in the present value of annuity benefits,
26 including net cash surrender and net cash withdrawal values;

27 (ii) With respect to each individual participating in a governmental retirement plan
28 established under § 401, 403(b) or 457 of the U.S. Internal Revenue Code, 26 U.S.C. § 401, 403(b)
29 or 457, covered by an unallocated annuity contract or the beneficiaries of each such individual if
30 deceased, in the aggregate, two hundred fifty thousand dollars (\$250,000) in present value annuity
31 benefits, including net cash surrender and net cash withdrawal values;

32 (iii) With respect to each payee of a structured settlement annuity or beneficiary or
33 beneficiaries, of the payee if deceased, two hundred fifty thousand dollars (\$250,000) in present
34 value annuity benefits, in the aggregate, including net cash surrender and net cash withdrawal

1 values if any;

2 (iv) However in no event shall the association be obligated to cover more than: (A) an
3 aggregate of three hundred thousand dollars (\$300,000) in benefits with respect to any one life
4 under this paragraph and paragraphs (i), (ii) and (iii) of this subdivision except with respect to
5 benefits for [health benefit plans](#) ~~basic hospital, medical and surgical insurance and major medical~~
6 ~~insurance~~ under subparagraph 2(i)(B) of this subsection, in which case the aggregate liability of the
7 association shall not exceed five hundred thousand dollars (\$500,000) with respect to any one
8 individual; or (B) with respect to one owner of multiple non-group policies of life insurance,
9 whether the policy [or contract](#) owner is an individual, firm, corporation or other person, and whether
10 the persons insured are officers, managers, employees or other persons, more than five million
11 dollars (\$5,000,000) in benefits, regardless of the number of policies and contracts held by the
12 owner;

13 (v) With respect to either: (A) one contract owner provided coverage under subsection
14 (a)(3)(i); or (B) one plan sponsor whose plans own directly or in trust any one or more unallocated
15 annuity contracts not included in paragraph (ii) of this subdivision, five million dollars (\$5,000,000)
16 in benefits, irrespective of the number of contracts with respect to the contract owner or plan
17 sponsor. Provided, however, in the case where one or more unallocated annuity contracts that are
18 covered contracts under this chapter and are owned by a trust or other entity for the benefit of two
19 (2) or more plan sponsors, coverage shall be afforded by the association if the largest interest in the
20 trust or entity owning the contract or contracts is held by a plan sponsor whose principal place of
21 business is in this state and in no event shall the association be obligated to cover more than five
22 million dollars (\$5,000,000) in benefits with respect to all such unallocated contracts;

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

29 [\(vii\) For purposes of this chapter, benefits provided by a long-term care rider to a life](#)
30 [insurance policy or annuity contract shall be considered the same type of benefits as the base life](#)
31 [insurance policy or annuity contract to which it relates.](#)

32 (d) In performing its obligations to provide coverage under § 27-34.3-8, the association
33 shall not be required to guarantee, assume, reinsure, [reissue](#) or perform, or cause to be guaranteed,
34 assumed, reinsured, [reissued](#) or performed, contractual obligations of the insolvent or impaired

1 insurer under a covered policy or contract that do not materially affect the economic values or
2 economic benefits of the covered policy or contract.

3 **27-34.3-5. Definitions.**

4 As used in this chapter:

5 (1) "Account" means either of the two accounts created under § 27-34.3-6.

6 (2) "Association" means the Rhode Island life and health insurance guaranty association
7 created under § 27-34.3-6.

8 (3) "Authorized assessment" or the term "authorized" when used in the context of
9 assessments means a resolution by the board of directors has been passed whereby an assessment
10 will be called immediately or in the future from member insurers for a specified amount. An
11 assessment is authorized when the resolution is passed.

12 (4) "Benefit plan" means a specific employee, union or association of natural persons
13 benefit plan.

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

18 (6) "Commissioner" means ~~the commissioner of insurance within the department of~~
19 ~~business regulation of this state~~ [the definition prescribed by § 42-14-5.](#)

20 (7) "Contractual obligation" means any obligation under a policy or contract or certificate
21 under a group policy or contract, or portion of a group policy or contract for which coverage is
22 provided under § 27-34.3-3.

23 (8) "Covered [contract or covered](#) policy" means any policy or contract or portion of a policy
24 or contract for which coverage is provided under § 27-34.3-3.

25 (9) "Extra-contractual claims" means claims not arising directly out of contract provisions,
26 including, for example, claims relating to bad faith in the payment of claims, punitive or exemplary
27 damages or attorneys' fees and costs.

28 [\(10\) "Health benefit plan" means any hospital or medical expense policy or certificate, or](#)
29 [health maintenance organization subscriber contract or any other similar health contract. "Health](#)
30 [benefit plan" does not include:](#)

31 [\(i\) Accident only insurance;](#)

32 [\(ii\) Credit insurance;](#)

33 [\(iii\) Dental only insurance;](#)

34 [\(iv\) Vision only insurance;](#)

- 1 (v) Medicare Supplement insurance;
2 (vi) Benefits for long-term care, home health care, community-based care, or any
3 combination thereof;
4 (vii) Disability income insurance;
5 (viii) Coverage for on-side medical clinics; or
6 (ix) Specified disease, hospital confinement indemnity, or limited benefit health insurance
7 if the types of coverage do not provide coordination of benefits and are provided under separate
8 policies or certificates.

9 ~~(10)~~(11) "Impaired insurer" means a member insurer which is not an insolvent insurer, and
10 (i) Is placed under an order of rehabilitation or conservation by a court of competent
11 jurisdiction.

12 ~~(11)~~(12) "Insolvent insurer" means a member insurer which after January 1, 1996, is placed
13 under an order of liquidation by a court of competent jurisdiction with a finding of insolvency.

14 ~~(12)~~(13) "Member insurer" means any insurer or health maintenance organization licensed
15 or which holds a certificate of authority to transact in this state any kind of insurance or health
16 maintenance organization business for which coverage is provided under § 27-34.3-3, and includes
17 any insurer or health maintenance organization whose license or certificate of authority in this state
18 may have been suspended, revoked, not renewed or voluntarily withdrawn, but does not include:

- 19 (i) A hospital or medical service organization, whether profit or nonprofit; or
20 (ii) ~~A health maintenance organization; or~~
21 (iii) A fraternal benefit society; or
22 (iv) A mandatory state pooling plan; or
23 (v) A mutual assessment company or other person that operates on an assessment basis; or
24 (vi) An insurance exchange; or
25 (vii) An organization that has a certificate or license limited to the issuance of charitable
26 gift annuities; or
27 (viii) An entity similar to any of the above.

28 ~~(13)~~(14) "Moody's corporate bond yield average" means the monthly average corporates
29 as published by Moody's investors service, inc., or any successor to it.

30 ~~(14)~~(15) "Owner" of a policy or contract, "policyholder", ~~and~~ "policy owner" ~~and~~ or
31 "contract owner" means the person who is identified as the legal owner under the terms of the policy
32 or contract or who is otherwise vested with legal title to the policy or contract through a valid
33 assignment completed in accordance with the terms of the policy or contract and properly recorded
34 as the owner on the books of the member insurer. The terms owner, contract owner, policyholder

1 and policy owner do not include persons with a mere beneficial interest in a policy or contract.

2 ~~(15)~~(16) "Person" means any individual, corporation, limited liability company,
3 partnership, association, governmental body or entity or voluntary organization.

4 ~~(16)~~(17) "Plan sponsor" means:

5 (i) The employer in case of a benefit plan established or maintained by a single employer;

6 (ii) The employee organization in the case of a benefit plan established or maintained by
7 an employee organization; or

8 (iii) In the case of a benefit plan established or maintained by two (2) or more employers
9 or jointly by one or more employers and one or more employee organizations, the association,
10 committee, joint board of trustees, or other similar group of representatives of the parties who
11 establish or maintain the benefit plan.

12 ~~(17)~~(18) "Premiums" means amounts or considerations (by whatever name called) received
13 on covered policies or contracts less returned premiums, considerations and deposits, and less
14 dividends and experience credits. "Premiums" does not include any amounts or consideration
15 received for any policies or contracts or for the portions of policies or contracts for which coverage
16 is not provided under § 27-34.3-3(b) except that assessable premium shall not be reduced on
17 account of § 27-34.3-3(b)(2)(iii) relating to interest limitations and § 27-34.3-3(c)(2) relating to
18 limitations with respect to one individual, one participant and one owner. "Premiums" shall not
19 include:

20 (i) Premiums in excess of five million dollars (\$5,000,000) on an unallocated annuity
21 contract not issued under a governmental retirement benefit plan (or its trustee) established under
22 § 401, 403(b) or 457 of the United States Internal Revenue Code, 26 U.S.C. § 401, 403(b) or 457.

23 (ii) With respect to multiple nongroup policies of life insurance owned by one owner,
24 whether the policy or contract owner is an individual, firm, corporation or other person, and whether
25 the persons insured are officers, managers, employees or other persons, premiums in excess of five
26 million dollars (\$5,000,000) with respect to these policies or contracts, regardless of the number of
27 policies or contracts held by the owner.

28 ~~(18)~~(19)(i) "Principal place of business" of a plan sponsor or a person other than a natural
29 person means the single state in which the natural persons who establish policy for the direction,
30 control and coordination of the operations of the entity as a whole primarily exercise that function,
31 determined by the association in its reasonable judgment by considering the following factors:

32 (A) The state in which the primary executive and administrative headquarters of the entity
33 is located;

34 (B) The state in which the principal office of the chief executive officer of the entity is

1 located;

2 (C) The state in which the board of directors (or similar governing person or persons) of
3 the entity conducts the majority of its meetings;

4 (D) The state in which the executive or management committee of the board of directors
5 (or a similar governing person or persons) of the entity, conducts the majority of its meetings;

6 (E) The state from which the management of the overall operations of the entity is directed;
7 and

8 (F) In the case of a benefit plan sponsored by affiliated companies comprising a
9 consolidated corporation, the state in which the holding company or controlling affiliate has its
10 principal place of business as determined using the above factors. However, in the case of a plan
11 sponsor, if more than fifty percent (50%) of the participants in the benefit plan are employed in a
12 single state, that state shall be deemed to be the principal place of business of the plan sponsor.

13 (ii) The principal place of business of a plan sponsor of a benefit plan described in
14 subsection ~~(16)~~(17)(iii) of this section shall be deemed to be the principal place of business of the
15 association, committee, joint board of trustees or other similar group of representatives of the
16 parties who establish or maintain the benefit plan that, in lieu of a specific or clear designation of
17 a principal place of business, shall be deemed to be the principal place of business of the employer
18 or employee organization that has the largest investment in the benefit plan in question.

19 ~~(19)~~(20) "Receivership court" means the court in the insolvent or impaired insurer's state
20 having jurisdiction over the conservation, rehabilitation or liquidation of the member insurer.

21 ~~(20)~~(21) "Resident" means a person to whom a contractual obligation is owed and who
22 resides in this state on the date of entry of court order that determines a member insurer to be an
23 impaired insurer or a court order that determines a member insured to be an insolvent insurer,
24 whichever occurs first. A person may be a resident of only one state, which in the case of a person
25 other than a natural person shall be its principal place of business. Citizens of the United States that
26 are either: (i) residents of foreign countries; or (ii) residents of United States possessions, territories
27 or protectorates that do not have an association similar to the association created by this chapter,
28 shall be deemed residents of the state of domicile of the member insurer that issued the policies or
29 contracts.

30 ~~(21)~~(22) "Structured settlement annuity" means an annuity purchased in order to fund
31 periodic payments for a claimant in payment for or with respect to personal injuries suffered by the
32 claimant.

33 ~~(22)~~(23) "State" means a state, the District of Columbia, Puerto Rico, or a United States
34 possession, territory or protectorate.

1 ~~(23)~~(24) "Supplemental contract" means a written agreement entered into for the
2 distribution of proceeds under a life, health or annuity policy or contract.

3 ~~(24)~~(25) "Unallocated annuity contract" means any annuity contract or group annuity
4 certificate which is not issued to and owned by an individual, except to the extent of any annuity
5 benefits guaranteed to an individual by an insurer under the contract or certificate.

6 **27-34.3-6. Creation of the association.**

7 (a) There is created a nonprofit legal entity to be known as the Rhode Island life and health
8 insurance guaranty association. All member insurers shall be and remain members of the
9 association as a condition of their authority to transact insurance or health management
10 organization business in this state. The association shall perform its functions under the plan of
11 operation established and approved under § 27-34.3-10, or as previously established and approved
12 under § 27-34.1-11 [Repealed] and shall exercise its powers through a board of directors established
13 under § 27-34.3-7 or as previously established under § 27-34.1-8 [Repealed] For purposes of
14 administration and assessment, the association shall maintain two (2) accounts:

15 (1) The life insurance and annuity account which includes the following subaccounts:

16 (i) Life insurance account;

17 (ii) Annuity account; which shall include annuity contracts owned by a governmental
18 retirement plan (or its trustee) established under section 401, 403(b) or 457 of the United States
19 Internal Revenue Code, 26 U.S.C. § 401, 403(b) or 457, but shall otherwise exclude unallocated
20 annuities; and

21 (iii) Unallocated annuity account which shall exclude contracts owned by a governmental
22 retirement benefit plan (or its trustee) established under § 401, 403(b) or 457 of the United States
23 Internal Revenue Code, 26 U.S.C. § 401, 403(b) or 457.

24 (2) The health ~~insurance~~ account.

25 (b) The association shall come under the immediate supervision of the commissioner and
26 shall be subject to the applicable provisions of the insurance laws of this state. Meetings or records
27 of the association may be open to the public upon majority vote of the board of directors. The
28 commissioner or his or her designee shall have full and complete access to all documents received
29 by, created by or otherwise obtained by the association and shall be invited to be present at all
30 association meetings. The disclosure of confidential or privileged association information,
31 documents, or records to the commissioner shall not change the confidential or privileged status of
32 the information, documents or records.

33 **27-34.3-7. Board of directors.**

34 (a) The board of directors of the association shall consist of:

1 (1) Not less than ~~five (5)~~ seven (7) nor more than ~~nine (9)~~ eleven (11) member insurers
2 serving terms as established in the plan of operation; and

3 (2) The commissioner or the commissioner's designee. Only member insurers or a health
4 maintenance organization shall be eligible to vote. The members of the board shall be selected by
5 member insurers subject to the approval of the commissioner. The board of directors, previously
6 established under § 27-34.1-8 [Repealed], shall continue to operate in accordance with the
7 provision of this section. Vacancies on the board shall be filled for the remaining period of the term
8 by a majority vote of the remaining board members, subject to the approval of the commissioner.

9 (b) In approving selections to the board, the commissioner shall consider, among other
10 things, whether all member insurers are fairly represented.

11 (c) Members of the board may be reimbursed from the assets of the association for expenses
12 incurred by them as members of the board of directors but members of the board shall not be
13 compensated by the association for their services.

14 **27-34.3-8. Powers and duties of the association.**

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

18 (1) Guarantee, assume, reissue or reinsure, or cause to be guaranteed, assumed, reissued or
19 reinsured, any or all of the policies or contracts of the impaired insurer;

20 (2) Provide the monies, pledges, loans, notes, guarantees or other means that are proper to
21 effectuate subdivision (1) of this subsection and assure payment of the contractual obligations of
22 the impaired insurer pending action under subdivision (1) of this subsection.

23 (b) If a member insurer is an insolvent insurer, the association shall, in its discretion, either:

24 (1)(i)(A) Guaranty, assume, reissue or reinsure, or cause to be guaranteed, assumed,
25 reissued or reinsured, the policies or contracts of the insolvent insurer; or

26 (B) Assure payment of the contractual obligations of the insolvent insurer; and

27 (ii) Provide monies, pledges, loans, notes, guarantees, or other means that are reasonably
28 necessary to discharge the association's duties; or

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

30 (i) With respect to policies and contracts ~~life and health insurance policies and annuities,~~
31 assure payment of benefits ~~for premiums identical to the premiums and benefits (except for terms~~
32 ~~of conversion and renewability)~~ that would have been payable under the policies or contracts of the
33 insolvent insurer, for claims incurred:

34 (A) With respect to group policies and contracts, not later than the earlier of the next

1 renewal date under such policies or contracts or forty-five (45) days, but in no event less than thirty
2 (30) days after the date on which the association becomes obligated with respect to the policies or
3 contracts;

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

8 (ii) Make diligent efforts to provide all known ~~insured~~ insureds, enrollees or annuitants (for
9 non-group policies and contracts) or group policy or contract owners with respect to group policies
10 or contracts thirty (30) days notice of the termination (pursuant to subparagraph (i) of this
11 paragraph) of the benefits provided;

12 (iii) With respect to nongroup policies and contracts ~~life and health insurance policies and~~
13 ~~annuities~~ covered by the association, make available to each known insured, enrollee, or annuitant,
14 or owner if other than the insured, or annuitant and with respect to an individual formerly an
15 insured, enrollee or ~~formerly an~~ annuitant under a group policy or contract who is not eligible for
16 replacement group coverage, make available substitute coverage on an individual basis in
17 accordance with the provisions of subdivision (iv) of this subsection, if the insureds, enrollees or
18 annuitants had a right under law or the terminated policy to convert coverage to individual coverage
19 or to continue an individual policy, contract or annuity in force until a specified age or for a
20 specified time, during which the insurer or health maintenance organization had no right
21 unilaterally to make changes in any provision of the policy or contract or annuity or had a right
22 only to make changes in premium by class;

23 (iv)(A) In providing the substitute coverage required under subdivision (iii) of this
24 subsection, the association may offer either to reissue the terminated coverage or to issue an
25 alternative policy or contract at actuarially justified rates subject to the prior approval of the
26 commissioner.

27 (B) Alternative or reissued policies shall be offered without requiring evidence of
28 insurability, and shall not provide for any waiting period or exclusion that would not have applied
29 under the terminated policy or contract.

30 (C) The association may reinsure any alternative or reissued policy or contract.

31 (v)(A) Alternative policies adopted by the association shall be subject to the approval of
32 the ~~domiciliary insurance~~ commissioner ~~and the receivership court~~. The association may adopt
33 alternative policies or contracts of various types for future issuance without regard to any particular
34 impairment or insolvency.

1 (B) Alternative policies [or contracts](#) shall contain at least the minimum statutory provisions
2 required in this state and provide benefits that shall not be unreasonable in relation to the premium
3 charged. The association shall set the premium in accordance with a table of rates which it shall
4 adopt. The premium shall reflect the amount of insurance to be provided and the age and class of
5 risk of each insured, but shall not reflect any changes in the health of the insured after the original
6 policy [or contract](#) was last underwritten.

7 (C) Any alternative policy [or contract](#) issued by the association shall provide coverage of
8 a type similar to that of the policy [or contract](#) issued by the impaired or insolvent insurer, as
9 determined by the association.

10 (vi) If the association elects to reissue terminated coverage at a premium rate different from
11 that charged under the terminated policy [or contract](#), the premium shall be [actuarially justified and](#)
12 [be](#) set by the association in accordance with the amount of insurance [or coverage](#) provided and the
13 age and class of risk, subject to approval of the ~~domiciliary insurance~~ commissioner ~~and the~~
14 ~~receivership court~~.

15 (vii) The association's obligations with respect to coverage under any policy [or contract](#) of
16 the impaired or insolvent insurer or under any reissued or alternative policy [or contract](#) shall cease
17 on the date such coverage or policy [or contract](#) is replaced by another similar policy [or contract](#) by
18 the policy owner, the insured, [the enrollee](#) or the association.

19 (viii) When proceeding under paragraph (b)(2) of this section with respect to any policy or
20 contract carrying guaranteed minimum interest rates, the association shall assure the payment or
21 crediting of a rate of interest consistent with § 27-34.3-3(b)(2)(iii).

22 (c) Nonpayment of premiums within thirty-one (31) days after the date required under the
23 terms of any guaranteed, assumed, alternative or reissued policy or contract or substitute coverage
24 shall terminate the association's obligations under the policy, [contract](#) or coverage under this
25 chapter with respect to the policy, [contract](#) or coverage, except with respect to any claims incurred
26 or any net cash surrender value which may be due in accordance with the provisions of this chapter.

27 (d) Premiums due for coverage after entry of an order of liquidation of an insolvent insurer
28 shall belong to and be payable at the direction of the association. If the liquidator of an insolvent
29 insurer requests, the association shall provide a report to the liquidator regarding such premium
30 collected by the association. The association shall be liable for unearned premiums due to policy
31 or contract owners arising after the entry of the order.

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

1 (f) In carrying out its duties under subsection (b), the association may:

2 (1) Subject to approval by a court of competent jurisdiction in this state, impose permanent
3 policy or contract liens in connection with any guarantee, assumption or reinsurance agreement, if
4 the association finds that the amounts which can be assessed under this chapter are less than the
5 amounts needed to assure full and prompt performance of the association's duties under this chapter,
6 or that the economic or financial conditions as they affect member insurers are sufficiently adverse
7 to render the imposition of such permanent policy or contract liens, to be in the public interest;

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

19 (g) A deposit in this state, held pursuant to law or required by the commissioner for the
20 benefit of creditors, including policy or contract owners, not turned over to the domiciliary
21 liquidator upon the entry of a final order of liquidation or order approving a rehabilitation plan of
22 ~~an~~ a member insurer domiciled in this state or in a reciprocal state, pursuant to § 27-14.3-56, shall
23 be promptly paid to the association. The association shall be entitled to retain a portion of any
24 amounts so paid to it equal to the percentage determined by dividing the aggregate amount of policy
25 or contract owners' claims related to that insolvency for which the association has provided
26 statutory benefits by the aggregate amount of all policy or contract owners' claims in this state
27 related to that insolvency and shall remit to the domiciliary receiver the amount so paid to the
28 association less the amount retained pursuant to this subsection. Any amount so paid to the
29 association and retained by it shall be treated as a distribution of estate assets pursuant to applicable
30 state insurance law dealing with early access disbursements.

31 (h) If the association fails to act within a reasonable period of time with respect to an
32 insolvent insurer, as provided in subsection (b) of this section, the commissioner shall have the
33 powers and duties of the association under this chapter with respect to the insolvent insurers.

34 (i) The association may render assistance and advice to the commissioner, upon the

1 commissioner's request, concerning rehabilitation, payment of claims, continuance of coverage, or
2 the performance of other contractual obligations of any impaired or insolvent insurer.

3 (j) The association shall have standing to appear or intervene before any court or agency in
4 this state with jurisdiction over an impaired or insolvent insurer concerning which the association
5 is or may become obligated under this chapter or with jurisdiction over any person or property
6 against whom the association may have rights through subrogation or otherwise. Standing shall
7 extend to all matters germane to the powers and duties of the association, including, but not limited
8 to, proposals for reinsuring, [reissuing](#), modifying or guaranteeing the policies or contracts of the
9 impaired or insolvent insurer and the determination of the policies or contracts and contractual
10 obligations. The association shall also have the right to appear or intervene before a court or agency
11 in another state with jurisdiction over an impaired or insolvent insurer for which the association is
12 or may become obligated or with jurisdiction over any person or property against whom the
13 association may have rights through subrogation or otherwise.

14 (k)(1) A person receiving benefits under this chapter shall be deemed to have assigned the
15 rights under, and any causes of action against any person for losses arising under, resulting from or
16 otherwise relating to, the covered policy or contract to the association to the extent of the benefits
17 received because of this chapter, whether the benefits are payments of or on account of contractual
18 obligations, continuation of coverage or provision of substitute or alternative [policies, contracts or](#)
19 coverage. The association may require an assignment to it of these rights and causes of action by
20 any [enrollee](#), payee, policy or contract owner, beneficiary, insured or annuitant as a condition
21 precedent to the receipt of any right or benefits conferred by this chapter upon the person.

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

25 (3) In addition to subdivisions (1) and (2) of this subsection, the association shall have all
26 common law rights of subrogation and any other equitable or legal remedy that would have been
27 available to the impaired or insolvent insurer or owner, beneficiary, [enrollee](#) or payee, of a policy
28 or contract with respect to the policy or contracts including without limitation, in the case of a
29 structured settlement annuity, any rights of the owner, beneficiary or payee of the annuity, to the
30 extent of benefits received pursuant to this chapter, against a person originally or by succession
31 responsible for the losses arising from the personal injury relating to the annuity or payment
32 therefore, excepting any such person responsible solely by reason of serving as an assignee in
33 respect of a qualified assignment under § 130 of the United States Internal Revenue Code, 26 U.S.C.
34 § 130.

1 (4) If the preceding provisions of this subsection are invalid or ineffective with respect to
2 any person or claim for any reason, the amount payable by the association with respect to the related
3 covered obligations shall be reduced by the amount realized by any other person with respect to the
4 person or claim that is attributable to the policies or contracts, or portion thereof, covered by the
5 association.

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

10 (1) In addition to the rights and powers provided in this chapter, the association may:

11 (1) Enter into any contracts as are necessary or proper to carry out the provisions and
12 purposes of this chapter;

13 (2) Sue or be sued, including taking any legal actions necessary or proper to recover any
14 unpaid assessments under § 27-34.3-9 and to settle claims or potential claims against it;

15 (3) Borrow money to effect the purposes of this chapter; any notes or other evidence of
16 indebtedness of the association not in default shall be legal investments for domestic insurers and
17 may be carried as admitted assets;

18 (4) Employ or retain persons as are necessary or appropriate to handle the financial
19 transactions of the association, and to perform any other functions as become necessary or proper
20 under this chapter;

21 (5) Take such legal action that may be necessary or appropriate to avoid or recover payment
22 of improper claims;

23 (6) Exercise, for the purposes of this chapter and to the extent approved by the
24 commissioner, the powers of a domestic life insurer, ~~or~~ health insurer, or health maintenance
25 organization, but in no case may the association issue ~~insurance~~ policies or ~~annuity~~ contracts other
26 than those issued to perform its obligations under this chapter;

27 (7) Organize itself as a corporation or another legal form permitted by the laws of this state;

28 (8) Request information from a person seeking coverage from the association in order to
29 aid the association in determining its obligations under this chapter with respect to the person, and
30 the person shall promptly comply with the request; ~~and~~

31 (9) Unless prohibited by law, in accordance with the terms and conditions of the policy or
32 contract, file for actuarially justified rate or premium increases for any policy or contract for which
33 it provides coverage under this act; and

34 ~~(9)~~(10) Take other necessary or appropriate action to discharge its duties and obligations

1 under this chapter or to exercise its powers under this chapter.

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

4 (n)(1)(a) At any time within one hundred eighty (180) days of the date of the order of
5 liquidation, the association may elect to succeed to the rights and obligations of the ceding member
6 insurer that relate to policies, [contracts](#) or annuities covered, in whole or in part, by the association,
7 in each case under any one or more reinsurance contracts entered into by the insolvent insurer and
8 its reinsurers and selected by the association. Any such assumption shall be effective as of the date
9 of the order of liquidation. The election shall be effected by the association or the national
10 organization of life and health insurance guaranty associations (NOLHGA) on its behalf sending
11 written notice, return receipt requested to the affected reinsurers.

12 (b) To facilitate the earliest practicable decision about whether to assume any of the
13 contracts of reinsurance, and in order to protect the financial position of the estate, the receiver and
14 each reinsurer of the ceding member insurer shall make available upon request to the association
15 or to NOLHGA on its behalf as soon as possible after commencement of formal delinquency
16 proceedings: (i) Copies of in-force contracts of reinsurance and all related files and records relevant
17 to the determination of whether such contracts should be assumed, and (ii) Notices of any defaults
18 under the reinsurance contracts or any known event or condition which with the passage of time
19 could become a default under the reinsurance contracts.

20 (c) The following subparagraphs (i) through (iv) shall apply to reinsurance contracts so
21 assumed by the association.

22 (i) The association shall be responsible for all unpaid premiums due under the reinsurance
23 contracts for periods both before and after the date of the order of liquidation, and shall be
24 responsible for the performance of all other obligations to be performed after the date of the order
25 of liquidation, in each case which relate to policies, [contracts](#) and annuities covered, in whole or in
26 part, by the association. The association may charge policies, [contracts](#) and annuities covered in
27 part by the association, through reasonable allocation methods, the costs for reinsurance in excess
28 of the obligations of the association and shall provide notice and an accounting of these charges
29 to the liquidator;

30 (ii) The association shall be entitled to any amounts payable by the reinsurer under the
31 reinsurance contracts with respect to losses or events that occur in periods after the date of the order
32 of liquidation and that relate to policies, [contracts](#) or annuities covered in whole or in part, by the
33 association provided, that, upon receipt of any such amounts, the association shall be obliged to
34 pay to the beneficiary under the policy, [contract](#) or annuity on account of which the amounts were

1 paid a portion of the amount equal to the lesser of:

2 (A) The amount received by the association; or

3 (B) The excess of the amount received by the association; over the amount equal to the
4 benefits paid by the association on account of the policy, [contract](#) or annuity less the retention of
5 the insurer applicable to the loss or event;

6 (iii) Within thirty (30) days following the association's election (the "election date"), the
7 association and each reinsurer under contracts assumed by the association shall calculate the net
8 balance due to or from the association under each such reinsurance contract as of the election date
9 with respect to policies, [contracts](#) or annuities covered, in whole or in part, by the association which
10 calculation shall give, full credit to all items paid by either the [member](#) insurer or its receiver or the
11 reinsurer prior to the election date. The reinsurer shall pay the receiver any amounts due for losses
12 or events prior to the date of the order of liquidation, subject to any set-off for premiums unpaid
13 for periods prior to the date, and the association or reinsurer shall pay any remaining premiums in
14 each case within five (5) days of the completion of the aforementioned calculation. Any disputes
15 over the amounts due to either the association or the reinsurer shall be resolved by arbitration
16 pursuant to the terms of the affected reinsurance contracts or, if the contract contains no arbitration
17 clause, as otherwise provided by law. If the receiver has received any amounts due the association
18 pursuant to paragraph (ii), the receiver, shall remit the same to the association as promptly as
19 practicable.

20 (iv) If the association or receiver, on the association's behalf, within sixty (60) days of the
21 election date, pays the unpaid premiums due for periods both before and after the election date, that
22 relate to policies, [contracts](#) or annuities covered in whole or in part by the association the reinsurer
23 shall not be entitled to terminate the reinsurance contracts for failure to pay premium insofar as the
24 reinsurance contracts relate to policies, [contracts](#), or annuities covered in whole or in part by the
25 association and shall not be entitled to set off any unpaid amounts due under other contracts, or
26 unpaid amounts due from parties other than the association against amounts due to the association.

27 (2) During the period from the date of the order of liquidation until the election date (or, if
28 the election date does not occur, until one hundred eighty (180) days after the date of the order of
29 liquidation).

30 (a)(i) Neither the association nor the reinsurer shall have any rights or obligations under
31 reinsurance contracts that the association has the right to assume under subdivision (n)(1), whether
32 for periods prior to or after the date of the order of liquidation; and

33 (ii) The reinsurer, the receiver and the association shall, to the extent practicable, provide
34 each other data and records reasonably requested;

1 (b) Provided that once the association has elected to assume a reinsurance contract, the
2 parties' rights and obligations shall be governed by subdivision (n)(1).

3 (3) If the association does not elect to assume a reinsurance contract by the election date
4 pursuant to subdivision (n)(1), the association shall have no rights or obligations, in each case for
5 periods both before and after the date of the order of liquidation, with respect to the reinsurance
6 contract.

7 (4) When policies, [contracts](#) or annuities, or covered obligations with respect thereto, are
8 transferred to an assuming insurer, reinsurance on the policies, [contracts](#) or annuities may also be
9 transferred by the association, in the case of contracts assumed under subdivision (n)(1), subject to
10 the following:

11 (a) Unless the reinsurer and the assuming insurer agree otherwise, the reinsurance contract
12 transferred shall not cover any new policies of insurance, [contracts](#), or annuities in addition to those
13 transferred;

14 (b) The obligations described in paragraph (n)(1) of this section shall not apply with respect
15 to matters arising after the effective date of the transfer;

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

18 (5) The provisions of subsection (n) shall supersede the provisions of any [state](#) law or of
19 any affected reinsurance contract that provides for or requires any payment of reinsurance proceeds,
20 on account of losses or events that occur in periods after the date of the order of liquidation to the
21 receiver, of the insolvent insurer or any other person. The receiver, shall remain entitled to any
22 amounts payable by the reinsurer under the reinsurance contracts with respect to losses or events
23 that occur in periods prior to the date of the order of liquidation subject to applicable setoff
24 provisions.

25 (6) Except as otherwise provided in this section, nothing in this section (n):

26 Shall alter or modify the terms and conditions of any reinsurance contract.

27 Nothing in this section shall abrogate or limit any rights of any reinsurer to claim that it is
28 entitled to rescind a reinsurance contract.

29 Nothing in this section shall give a policy holder, [contract owner, enrollee, certificate](#)
30 [holder](#), or beneficiary an independent cause of action against an indemnity reinsurer that is not
31 otherwise set forth in the reinsurance contract. Nothing in this section shall limit or affect the
32 association's rights as a creditor of the estate against the assets of the estate. Nothing in this section
33 shall apply to reinsurance agreements covering property or casualty risks.

34 (o) The board of directors of the association shall have discretion and shall exercise

1 reasonable business judgment to determine the means by which the association is to provide the
2 benefits of this chapter in an economical and efficient manner.

3 (p) Where the association has arranged or offered to provide the benefits of this chapter to
4 a covered person under a plan or arrangement that fulfills the association's obligations under this
5 chapter, the person shall not be entitled to benefits from the association in addition to or other than
6 those provided under the plan or arrangement.

7 (q) Venue in a suit against the association arising under this chapter shall be in Providence
8 County. The association shall not be required to give an appeal bond in an appeal that relates to a
9 cause of action arising under this chapter.

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

16 ~~(r) Venue in a suit against the association arising under this chapter shall be in Providence~~
17 ~~County. The association shall not be required to give an appeal bond in an appeal that relates to a~~
18 ~~cause of action arising under this chapter.~~

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

- 21 (i) A fixed interest rate; or
22 (ii) Payment of dividends with minimum guarantees; or
23 (iii) A different method of calculating interest or changes in value.

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

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

28 **27-34.3-9. Assessments.**

29 (a) For the purpose of providing the funds necessary to carry out the powers and duties of
30 the association, the board of directors shall assess the member insurers, separately for each account,
31 at such time and for such amounts as the board finds necessary. Assessments shall be due not less
32 than thirty (30) days after prior written notice to the member insurers and shall accrue interest at
33 nine percent (9%) per annum on and after the due date.

34 (b) There shall be two (2) classes of assessments, as follows:

1 (1) Class A assessments shall be authorized and called for the purpose of meeting
2 administrative and legal costs and other expenses. Class A assessments may be authorized and
3 called whether or not related to a particular impaired or insolvent insurer.

4 (2) Class B assessments shall be authorized and called to the extent necessary to carry out
5 the powers and duties of the association under § 27-34.3-8 with regard to an impaired or an
6 insolvent insurer.

7 (c)(1) The amount of any Class A assessment shall be determined by the board and may be
8 authorized and called on a pro rata or non-pro rata basis. If pro rata, the board may provide that it
9 be credited against future Class B assessments. The total of all non-pro rata assessment shall not
10 exceed three hundred dollars (\$300) per member insurer in any one calendar year. The amount of
11 any Class B assessment shall be allocated for assessment purposes among the accounts pursuant to
12 an allocation formula that may be based on the premiums or reserves of the impaired or insolvent
13 insurer or any other standard deemed by the board in its sole discretion as being fair and reasonable
14 under the circumstances.

15 (2) The amount of a Class B assessment, except for assessments related to long-term care
16 insurance, shall be allocated for assessment purposes between the accounts and among the
17 subaccounts of the life insurance and annuity account, pursuant to an allocation formula which may
18 be based on the premiums or reserves of the impaired or insolvent insurer or any other standard
19 deemed by the board in its sole discretion as being fair and reasonable under the circumstances.

20 (3) The amount of the Class B assessment for long-term care insurance written by the
21 impaired or insolvent insurer shall be allocated according to a methodology included in the Plan of
22 Operation and approved by the commissioner. The methodology shall provide for fifty percent
23 (50%) of the assessment to be allocated to accident and health member insurers and fifty percent
24 (50%) to be allocated to life and annuity member insurers.

25 ~~(2)~~(4) Class B assessments against member insurers for each account and subaccount shall
26 be in the proportion that the premiums received on business in this state by each assessed member
27 insurer or policies or contracts covered by each account for the three (3) most recent calendar years
28 for which information is available preceding the year in which the insurer became insolvent, (or, in
29 the case of an assessment with respect to an impaired insurer, the three (3) most recent calendar
30 years for which information is available preceding the year in which the insurer became impaired)
31 bears to premiums received on business in this state for such calendar years by all assessed member
32 insurers.

33 ~~(3)~~(5) Assessments for funds to meet the requirements of the Association with respect to
34 an impaired or insolvent insurer shall not be authorized or called until necessary to implement the

1 purposes of this chapter. Classification of assessments under subsection (b) of this section and
2 computation of assessments under this subsection shall be made with a reasonable degree of
3 accuracy, recognizing that exact determinations may not always be possible. The association shall
4 notify each member insurer of its anticipated pro rata share of an authorized assessment not yet
5 called within one hundred eighty (180) days after the assessment is authorized.

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

14 (e)(1)(i) Subject to the provisions of subparagraph (ii) of this paragraph, the total of all
15 assessments authorized by the association with respect to a member insurer for each subaccount of
16 the life insurance and annuity account and for the health account shall not in any one calendar year
17 exceed three percent (3%) of that member insurer's average annual premiums received in this state
18 on the policies and contracts covered by the subaccount or account during the three (3) calendar
19 years preceding the year in which the insurer became an impaired or insolvent insurer.

20 (ii) If two (2) or more assessments are authorized in one calendar year with respect to
21 insurers that become impaired or insolvent in different calendar years, the average annual premiums
22 for purposes of the aggregate assessment percentage limitation referenced in subparagraph (i) of
23 this paragraph shall be equal and limited to the higher of the three (3) year average annual premiums
24 for the applicable subaccount or account as calculated pursuant to this section.

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

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

32 (3) If the maximum assessment for a subaccount of the life and annuity account in any one
33 year does not provide an amount sufficient to carry out the responsibilities of the association, then
34 pursuant to subdivision (c)(2) of this section, the board shall assess the other subaccounts of the

1 life and annuity account for the necessary additional amount, subject to the maximum stated in
2 subdivision (1) of this subsection.

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

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

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

19 (i)(1) A member insurer that wishes to protest all or part of an assessment shall pay when
20 due the full amount of the assessment as set forth in the notice provided by the association. The
21 payment shall be available to meet association obligations during the pendency of the protest or
22 any subsequent appeal. Payment shall be accompanied by a statement in writing that the payment
23 is made under protest and setting forth a brief statement of the grounds for the protest.

24 (2) Within sixty (60) days following the payment of an assessment under protest by a
25 member insurer, the association shall notify the member insurer in writing of its determination with
26 respect to the protest unless the association notifies the member insurer that additional time is
27 required to resolve the issues raised by the protest.

28 (3) Within thirty (30) days after a final decision has been made, the association shall notify
29 the protesting member insurer in writing of that final decision. Within sixty (60) days of receipt of
30 notice of the final decision, the protesting member insurer may appeal that final action to the
31 commissioner.

32 (4) In the alternative to rendering a final decision with respect to a protest based on a
33 question regarding the assessment base, the association may refer the protest to the commissioner
34 for a final decision, with or without a recommendation from the association.

1 (5) If the protest or appeal on the assessment is upheld, the amount paid in error or excess
2 shall be returned to the member company. Interest on a refund due a protesting member shall be
3 paid at the rate actually earned by the association.

4 (j) The association may request information of member insurers in order to aid in the
5 exercise of its power under this section and member insurers shall promptly comply with a request.

6 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO INSURANCE

- 1 This act would bring the Rhode Island Life and Health Insurance Guaranty Fund statute
- 2 into conformance with the latest version of the National Association of Insurance Commissioners
- 3 Model Act.
- 4 This act would take effect upon passage.

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