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HOUSE BILL 2209

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State of Washington

66th Legislature

2020 Regular Session

By Representatives Cody and Macri; by request of Insurance  
Commissioner

Prefiled 12/06/19.

1 AN ACT Relating to insurance guaranty fund; and amending RCW  
2 48.32A.015, 48.32A.025, 48.32A.045, 48.32A.055, 48.32A.065,  
3 48.32A.075, 48.32A.085, 48.32A.095, 48.32A.115, 48.32A.135,  
4 48.32A.175, and 48.32A.185.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 48.32A.015 and 2001 c 50 s 2 are each amended to  
7 read as follows:

8 (1) The purpose of this chapter is to protect, subject to certain  
9 limitations, the persons specified in RCW 48.32A.025(1) against  
10 failure in the performance of contractual obligations, under life  
11 ~~((and))~~ insurance, disability insurance ((policies)), health care  
12 benefit agreements, plans, and certificates of coverage, and annuity  
13 policies, plans, or contracts specified in RCW 48.32A.025(2), because  
14 of the impairment or insolvency of the member insurer that issued the  
15 policies, plans, or contracts.

16 (2) To provide this protection, an association of member insurers  
17 is created to pay benefits and to continue coverages as limited by  
18 this chapter, and members of the association are subject to  
19 assessment to provide funds to carry out the purpose of this chapter.

1       **Sec. 2.** RCW 48.32A.025 and 2001 c 50 s 3 are each amended to  
2 read as follows:

3       (1) This chapter provides coverage for the policies and contracts  
4 specified in subsection (2) of this section as follows:

5       (a) To persons who, regardless of where they reside, except for  
6 nonresident certificate holders under group policies or contracts,  
7 are the beneficiaries, assignees, or payees, including health care  
8 providers and facilities rendering services covered under health care  
9 benefit policies or certificates of coverage, of the persons covered  
10 under (b) of this subsection;

11       (b) To persons who are owners of or certificate holders under the  
12 policies or contracts, other than unallocated annuity contracts and  
13 structured settlement annuities, and in each case who:

14       (i) Are residents; or

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

17       (A) The insurer that issued the policies or contracts is  
18 domiciled in this state;

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

21       (C) The persons are not eligible for coverage by an association  
22 in any other state due to the fact that the insurer, health care  
23 service contractor, or health maintenance organization was not  
24 licensed in the state at the time specified in the state's guaranty  
25 association law;

26       (c) For unallocated annuity contracts specified in subsection (2)  
27 of this section, (a) and (b) of this subsection do not apply, and  
28 this chapter, except as provided in (e) and (f) of this subsection,  
29 does provide coverage to:

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

34       (ii) Persons who are owners of unallocated annuity contracts  
35 issued to or in connection with government lotteries if the owners  
36 are residents;

37       (d) For structured settlement annuities specified in subsection  
38 (2) of this section, (a) and (b) of this subsection do not apply, and  
39 this chapter, except as provided in (e) and (f) of this subsection,  
40 does provide coverage to a person who is a payee under a structured

1 settlement annuity, or beneficiary of a payee if the payee is  
2 deceased, if the payee:

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

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

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

9 (II) The contract owner of the structured settlement annuity is  
10 not a resident, but the insurer that issued the structured settlement  
11 annuity is domiciled in this state; and the state in which the  
12 contract owner resides has an association similar to the association  
13 created by this chapter; and

14 (B) Neither the payee, nor beneficiary, nor enrollee, nor the  
15 contract owner is eligible for coverage by the association of the  
16 state in which the payee or contract owner resides;

17 (e) This chapter does not provide coverage to:

18 (i) A person who is a payee, or beneficiary, of a contract owner  
19 resident of this state, if the payee, or beneficiary, is afforded any  
20 coverage by the association of another state; (~~(e)~~)

21 (ii) A person covered under (c) of this subsection, if any  
22 coverage is provided by the association of another state to the  
23 person; or

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

28 (f) This chapter is intended to provide coverage to a person who  
29 is a resident of this state and, in special circumstances, to a  
30 nonresident. In order to avoid duplicate coverage, if a person who  
31 would otherwise receive coverage under this chapter is provided  
32 coverage under the laws of any other state, the person shall not be  
33 provided coverage under this chapter. In determining the application  
34 of this subsection (1)(f) in situations where a person could be  
35 covered by the association of more than one state, whether as an  
36 owner, payee, beneficiary, enrollee, or assignee, this chapter shall  
37 be construed in conjunction with other state laws to result in  
38 coverage by only one association.

39 (2) (a) This chapter provides coverage to the persons specified in  
40 subsection (1) of this section for direct, nongroup life, disability,

1 health benefit, or annuity policies, plans, or contracts and  
2 supplemental contracts to any of these, for certificates under direct  
3 group policies and contracts, and for unallocated annuity contracts  
4 issued by member insurers, except as limited by this chapter. Annuity  
5 contracts and certificates under group annuity contracts include but  
6 are not limited to guaranteed investment contracts, deposit  
7 administration contracts, unallocated funding agreements, allocated  
8 funding agreements, structured settlement annuities, annuities issued  
9 to or in connection with government lotteries, and any immediate or  
10 deferred annuity contracts. However, any annuity contracts that are  
11 unallocated annuity contracts are subject to the specific provisions  
12 in this chapter for unallocated annuity contracts.

13 (b) (~~This~~) Except as provided in (c) of this subsection, this  
14 chapter does not provide coverage for:

15 (i) A portion of a policy or contract not guaranteed by the  
16 insurer, or under which the risk is borne by the policy or contract  
17 owner;

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

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

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

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

39 (iv) A portion of a policy or contract issued to a plan or  
40 program of an employer, association, or other person to provide life,

1 disability, health, or annuity benefits to its employees, members, or  
2 others, to the extent that the plan or program is self-funded or  
3 uninsured, including but not limited to benefits payable by an  
4 employer, association, or other person under:

5 (A) A multiple employer welfare arrangement as defined in 29  
6 U.S.C. Sec. ((1144)) 1002;

7 (B) A minimum premium group insurance plan;

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

9 (D) An administrative services only contract;

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

12 (A) Dividends or experience rating credits;

13 (B) Voting rights; or

14 (C) Payment of any fees or allowances to any person, including  
15 the policy or contract owner, in connection with the service to or  
16 administration of the policy or contract;

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

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

26 (viii) A portion of an unallocated annuity contract that is not  
27 issued to or in connection with a specific employee, union, or  
28 association of natural persons benefit plan or a government lottery;

29 (ix) A portion of a policy or contract to the extent that the  
30 assessments required by RCW 48.32A.085 with respect to the policy or  
31 contract are preempted by federal or state law;

32 (x) An obligation that does not arise under the express written  
33 terms of the policy or contract issued by the member insurer to the  
34 enrollee, contract owner, certificate holder, or policy owner,  
35 including without limitation:

36 (A) Claims based on marketing materials;

37 (B) Claims based on side letters, riders, or other documents that  
38 were issued by the member insurer without meeting applicable policy  
39 or contract form filing or approval requirements;

1 (C) Misrepresentations of or regarding policy or contract  
2 benefits;

3 (D) Extra-contractual claims; or

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

5 (xi) A contractual agreement that establishes the member  
6 insurer's obligations to provide a book value accounting guaranty for  
7 defined contribution benefit plan participants by reference to a  
8 portfolio of assets that is owned by the benefit plan or its trustee,  
9 which in each case is not an affiliate of the member insurer; ((~~or~~))

10 (xii) A portion of a policy or contract to the extent it provides  
11 for interest or other changes in value to be determined by the use of  
12 an index or other external reference stated in the policy or  
13 contract, but which have not been credited to the policy or contract,  
14 or as to which the policy or contract owner's rights are subject to  
15 forfeiture, as of the date the member insurer becomes an impaired or  
16 insolvent insurer under this chapter, whichever is earlier. If a  
17 policy's or contract's interest or changes in value are credited less  
18 frequently than annually, then for purposes of determining the values  
19 that have been credited and are not subject to forfeiture under this  
20 subsection (2)(b)(xii), the interest or change in value determined by  
21 using the procedures defined in the policy or contract will be  
22 credited as if the contractual date of crediting interest or changing  
23 values was the date of impairment or insolvency, whichever is  
24 earlier, and will not be subject to forfeiture;

25 (xiii) A policy or contract providing any hospital, medical,  
26 prescription drug or other health care benefits pursuant to parts C  
27 and D of subchapter XVIII, chapter 7 of Title 42, United States Code  
28 (commonly known as medicare parts C and D) or subchapter XIX, chapter  
29 7 of Title 42, United States Code (commonly known as medicaid), and  
30 any regulations issued pursuant thereto, or chapter 74.09 RCW and any  
31 regulations issued pursuant thereto; or

32 (xiv) Structured settlement annuity benefits to which a payee or  
33 beneficiary has transferred his or her rights in a structured  
34 settlement factoring transaction as defined in 26 U.S.C. Sec.  
35 5891(c)(3)(A), regardless of whether the transaction occurred before  
36 or after such section became effective.

37 (c) The exclusion from coverage referenced in (b)(iii) of this  
38 subsection does not apply to any portion of a policy or contract,  
39 including a rider, that provides long-term care or any other health  
40 benefits.

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

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

6 (b)(i) With respect to one life, regardless of the number of  
7 policies or contracts:

8 (A) Five hundred thousand dollars in life insurance death  
9 benefits, but not more than five hundred thousand dollars in net cash  
10 surrender and net cash withdrawal values for life insurance;

11 (B) In disability insurance and health benefit plan benefits:

12 (I) Five hundred thousand dollars for coverages not defined as  
13 disability income insurance or (~~basic hospital, medical, and~~  
14 ~~surgical insurance or major medical insurance~~) health benefit plan  
15 coverage including any net cash surrender and net cash withdrawal  
16 values;

17 (II) Five hundred thousand dollars for disability income  
18 insurance;

19 (III) Five hundred thousand dollars for (~~basic hospital medical~~  
20 ~~and surgical insurance or major medical insurance~~) health benefit  
21 plan coverage;

22 (IV) Five hundred thousand dollars for long-term care insurance;

23 or

24 (C) Five hundred thousand dollars in the present value of annuity  
25 benefits, including net cash surrender and net cash withdrawal  
26 values, except as provided in (b)(ii), (iii), and (v) of this  
27 subsection (3) (~~(b)~~);

28 (ii) With respect to each individual participating in a  
29 governmental retirement benefit plan established under section 401,  
30 403(b), or 457 of the United States Internal Revenue Code covered by  
31 an unallocated annuity contract or the beneficiaries of each such  
32 individual if deceased, in the aggregate, one hundred thousand  
33 dollars in present value annuity benefits, including net cash  
34 surrender and net cash withdrawal values;

35 (iii) With respect to each payee of a structured settlement  
36 annuity, or beneficiary or beneficiaries of the payee if deceased,  
37 five hundred thousand dollars in present value annuity benefits, in  
38 the aggregate, including net cash surrender and net cash withdrawal  
39 values, if any;

1 (iv) However, in no event shall the association be obligated to  
2 cover more than: (A) An aggregate of five hundred thousand dollars in  
3 benefits with respect to any one life under (b)(i), (ii), ~~((and))~~  
4 (iii), and (iv) of this subsection (3) ~~((b))~~ except with respect to  
5 benefits for ~~((basic hospital, medical, and surgical insurance and~~  
6 ~~major medical insurance))~~ health benefit plan coverage under (b)  
7 (i)(B) of this subsection (3) ~~((b))~~, in which case the aggregate  
8 liability of the association shall not exceed five hundred thousand  
9 dollars with respect to any one individual; or (B) with respect to  
10 one owner of multiple nongroup policies of life insurance, whether  
11 the policy or contract owner is an individual, firm, corporation, or  
12 other person, and whether the persons insured are officers, managers,  
13 employees, or other persons, more than five million dollars in  
14 benefits, regardless of the number of policies and contracts held by  
15 the owner;

16 (v) With respect to either: (A) One contract owner provided  
17 coverage under subsection (1)(d)(ii) of this section; or (B) one plan  
18 sponsor whose plans own directly or in trust one or more unallocated  
19 annuity contracts not included in (b)(ii) of this subsection (3)  
20 ~~((b))~~, five million dollars in benefits, irrespective of the number  
21 of contracts with respect to the contract owner or plan sponsor.  
22 However, in the case where one or more unallocated annuity contracts  
23 are covered contracts under this chapter and are owned by a trust or  
24 other entity for the benefit of two or more plan sponsors, coverage  
25 shall be afforded by the association if the largest interest in the  
26 trust or entity owning the contract or contracts is held by a plan  
27 sponsor whose principal place of business is in this state and in no  
28 event shall the association be obligated to cover more than five  
29 million dollars in benefits with respect to all these unallocated  
30 contracts; ~~((or))~~

31 (vi) The limitations set forth in this subsection are limitations  
32 on the benefits for which the association is obligated before taking  
33 into account either its subrogation and assignment rights or the  
34 extent to which those benefits could be provided out of the assets of  
35 the impaired or insolvent insurer attributable to covered policies.  
36 The costs of the association's obligations under this chapter may be  
37 met by the use of assets attributable to covered policies or  
38 reimbursed to the association pursuant to its subrogation and  
39 assignment rights; or

1        (vii) For purposes of this chapter, benefits provided by a long-  
2 term care rider to a life insurance policy or annuity contract must  
3 be considered the same type of benefits as the base life insurance  
4 policy or annuity contract to which it relates.

5        (4) In performing its obligations to provide coverage under RCW  
6 48.32A.075, the association is not required to guarantee, assume,  
7 reinsure, reissue, or perform, or cause to be guaranteed, assumed,  
8 reinsured, reissued, or performed, the contractual obligations of the  
9 insolvent or impaired insurer under a covered policy or contract that  
10 do not materially affect the economic values or economic benefits of  
11 the covered policy or contract.

12        **Sec. 3.** RCW 48.32A.045 and 2001 c 50 s 5 are each amended to  
13 read as follows:

14        The definitions in this section apply throughout this chapter  
15 unless the context clearly requires otherwise.

16        (1) "Account" means either of the two accounts created under RCW  
17 48.32A.055.

18        (2) "Association" means the Washington life and disability  
19 insurance guaranty association created under RCW 48.32A.055.

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

25        (4) "Benefit plan" means a specific employee, union, or  
26 association of natural persons benefit plan issued pursuant to the  
27 requirements of chapter 48.20 RCW that is not a health benefit plan  
28 as defined in this section.

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

35        (6) "Commissioner" means the insurance commissioner of this  
36 state.

37        (7) "Contractual obligation" means an obligation under a policy  
38 or contract or certificate under a group policy or contract, or  
39 portion thereof for which coverage is provided under RCW 48.32A.025.

1 (8) "Covered policy" or "covered contract" means a policy or  
2 contract or portion of a policy or contract for which coverage is  
3 provided under RCW 48.32A.025.

4 (9) "Extra-contractual claims" includes, for example, claims  
5 relating to bad faith in the payment of claims, punitive or exemplary  
6 damages, or attorneys' fees and costs.

7 (10) "Health benefit plan" means any policy, contract, or  
8 agreement offered by a health carrier to provide, arrange, reimburse,  
9 or pay for health care services, except the following:

10 (a) Medicare supplemental health insurance governed by chapter  
11 48.66 RCW;

12 (b) Coverage supplemental to the coverage provided under chapter  
13 55 of Title 10 of the United States Code;

14 (c) Limited health care services offered by limited health care  
15 service contractors in accordance with RCW 48.44.035;

16 (d) Disability income;

17 (e) Coverage incidental to a property or casualty liability  
18 insurance policy, such as automobile personal injury protection  
19 coverage and homeowner guest medical;

20 (f) Workers' compensation coverage;

21 (g) Accident only coverage;

22 (h) Specified disease or illness-triggered fixed payment  
23 insurance, hospital confinement fixed payment insurance, or other  
24 fixed payment insurance offered as an independent, noncoordinated  
25 benefit;

26 (i) Employer-sponsored self-funded health plans;

27 (j) Dental only and vision only coverage;

28 (k) Plans deemed by the commissioner to have a short-term limited  
29 purpose or duration, or to be a student-only plan that is guaranteed  
30 renewable while the covered person is enrolled as a regular full-time  
31 undergraduate or graduate student at an accredited higher education  
32 institution, after a written request for such classification by the  
33 carrier and subsequent written approval by the commissioner;

34 (l) Civilian health and medical program for the veterans affairs  
35 administration (CHAMPVA); and

36 (m) Long-term care insurance as defined under chapter 48.83 or  
37 48.84 RCW, or benefits for home health care, community-based care, or  
38 any combination thereof.

39 (11) "Impaired insurer" means a member insurer which, after July  
40 22, 2001, is not an insolvent insurer, and is placed under an order

1 of rehabilitation or conservation by a court of competent  
2 jurisdiction.

3 ~~((11))~~ (12) "Insolvent insurer" means a member insurer which,  
4 after July 22, 2001, is placed under an order of liquidation by a  
5 court of competent jurisdiction with a finding of insolvency.

6 ~~((12))~~ (13) "Member insurer" means an insurer, health care  
7 service contractor, or health maintenance organization licensed, or  
8 that holds a certificate of authority, or a certificate of  
9 registration, to transact in this state any kind of insurance for  
10 which coverage is provided under RCW 48.32A.025, and includes an  
11 insurer, health care service contractor, or health maintenance  
12 organization whose license, certificate of registration, or  
13 certificate of authority in this state may have been suspended,  
14 revoked, not renewed, or voluntarily withdrawn, but does not include:

15 (a) ~~((A health care service contractor, whether profit or~~  
16 ~~nonprofit;~~

17 ~~(b) A health maintenance organization;~~

18 ~~(c)) A fraternal benefit society;~~

19 ~~((d))~~ (b) A mandatory state pooling plan;

20 ~~((e))~~ (c) A mutual assessment company or other person that  
21 operates on an assessment basis;

22 ~~((f))~~ (d) An insurance exchange;

23 ~~((g))~~ (e) An organization that has a certificate or license  
24 limited to the issuance of charitable gift annuities under RCW  
25 48.38.010;

26 (f) A nonrisk-bearing hospital or medical service organization,  
27 whether for profit or not for profit;

28 (g) A multiple employer welfare arrangement under chapter 48.125  
29 RCW; or

30 (h) An entity similar to (a) through (g) of this subsection.

31 ~~((13))~~ (14) "Moody's corporate bond yield average" means the  
32 monthly average corporates as published by Moody's investors service,  
33 inc., or any successor thereto.

34 ~~((14))~~ (15) "Owner" of a policy or contract and "policy  
35 holder," "policy owner," and "contract owner" mean the person who is  
36 identified as the legal owner under the terms of the policy or  
37 contract or who is otherwise vested with legal title to the policy or  
38 contract through a valid assignment completed in accordance with the  
39 terms of the policy or contract and properly recorded as the owner on  
40 the books of the insurer. "Owner," "policy holder," "contract owner,"

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

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

6 ~~((16))~~ (17) "Plan sponsor" means:

7 (a) The employer in the case of a benefit plan established or  
8 maintained by a single employer;

9 (b) The employee organization in the case of a benefit plan  
10 established or maintained by an employee organization; or

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

16 ~~((17))~~ (18) "Premiums" means amounts or considerations, by  
17 whatever name called, received on covered policies or contracts less  
18 returned premiums, considerations, and deposits and less dividends  
19 and experience credits. "Premiums" does not include amounts or  
20 considerations received for policies or contracts or for the portions  
21 of policies or contracts for which coverage is not provided under RCW  
22 48.32A.025(2), except that assessable premium shall not be reduced on  
23 account of RCW 48.32A.025(2)(b)(iii) relating to interest limitations  
24 and RCW 48.32A.025(3)(b) relating to limitations with respect to one  
25 individual, one participant, and one policy or contract owner.  
26 "Premiums" does not include:

27 (a) Premiums in excess of five million dollars on an unallocated  
28 annuity contract not issued under a governmental retirement benefit  
29 plan, or its trustee, established under section 401, 403(b), or 457  
30 of the United States Internal Revenue Code; or

31 (b) With respect to multiple nongroup policies of life insurance  
32 owned by one owner, whether the policy or contract owner is an  
33 individual, firm, corporation, or other person, and whether the  
34 persons insured are officers, managers, employees, or other persons,  
35 premiums in excess of five million dollars with respect to these  
36 policies or contracts, regardless of the number of policies or  
37 contracts held by the owner.

38 ~~((18))~~ (19) (a) "Principal place of business" of a plan sponsor  
39 or a person other than a natural person means the single state in  
40 which the natural persons who establish policy for the direction,

1 control, and coordination of the operations of the entity as a whole  
2 primarily exercise that function, determined by the association in  
3 its reasonable judgment by considering the following factors:

4 (i) The state in which the primary executive and administrative  
5 headquarters of the entity is located;

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

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

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

14 (v) The state from which the management of the overall operations  
15 of the entity is directed; and

16 (vi) In the case of a benefit plan sponsored by affiliated  
17 companies comprising a consolidated corporation, the state in which  
18 the holding company or controlling affiliate has its principal place  
19 of business as determined using the factors in (a)(i) through (v) of  
20 this subsection.

21 However, in the case of a plan sponsor, if more than fifty  
22 percent of the participants in the benefit plan are employed in a  
23 single state, that state is the principal place of business of the  
24 plan sponsor.

25 (b) The principal place of business of a plan sponsor of a  
26 benefit plan described in subsection (~~((16))~~) (17)(c) of this section  
27 is the principal place of business of the association, committee,  
28 joint board of trustees, or other similar group of representatives of  
29 the parties who establish or maintain the benefit plan that, in lieu  
30 of a specific or clear designation of a principal place of business,  
31 is the principal place of business of the employer or employee  
32 organization that has the largest investment in the benefit plan in  
33 question.

34 (~~((19))~~) (20) "Receivership court" means the court in the  
35 insolvent or impaired insurer's state having jurisdiction over the  
36 conservation, rehabilitation, or liquidation of the member insurer.

37 (~~((20))~~) (21) "Resident" means a person to whom a contractual  
38 obligation is owed and who resides in this state on the date of entry  
39 of a court order that determines a member insurer to be an impaired  
40 insurer or a court order that determines a member insurer to be an

1 insolvent insurer, whichever occurs first. A person may be a resident  
2 of only one state, which in the case of a person other than a natural  
3 person is its principal place of business. Citizens of the United  
4 States that are either (a) residents of foreign countries, or (b)  
5 residents of United States possessions, territories, or protectorates  
6 that do not have an association similar to the association created by  
7 this chapter, are residents of the state of domicile of the insurer  
8 that issued the policies or contracts.

9 ~~((21))~~ (22) "Structured settlement annuity" means an annuity  
10 purchased in order to fund periodic payments for a plaintiff or other  
11 claimant in payment for or with respect to personal injury suffered  
12 by the plaintiff or other claimant.

13 ~~((22))~~ (23) "State" means a state, the District of Columbia,  
14 Puerto Rico, and a United States possession, territory, or  
15 protectorate.

16 ~~((23))~~ (24) "Supplemental contract" means a written agreement  
17 entered into for the distribution of proceeds under a life,  
18 disability, or annuity policy or contract.

19 ~~((24))~~ (25) "Unallocated annuity contract" means an annuity  
20 contract or group annuity certificate which is not issued to and  
21 owned by an individual, except to the extent of any annuity benefits  
22 guaranteed to an individual by ~~((an))~~ a member insurer under the  
23 contract or certificate.

24 **Sec. 4.** RCW 48.32A.055 and 2001 c 50 s 6 are each amended to  
25 read as follows:

26 (1) There is created a nonprofit unincorporated legal entity to  
27 be known as the Washington life and disability insurance guaranty  
28 association which is composed of the commissioner ex officio and each  
29 member insurer. All member insurers must be and remain members of the  
30 association as a condition of their authority to transact the  
31 business of insurance, health care service contractor business, or  
32 health maintenance organization business in this state. The  
33 association shall perform its functions under the plan of operation  
34 established and approved under RCW 48.32A.095 and shall exercise its  
35 powers through a board of directors established under RCW 48.32A.065.  
36 For purposes of administration and assessment, the association shall  
37 maintain two accounts:

38 (a) The life insurance and annuity account which includes the  
39 following subaccounts:

- 1 (i) Life insurance account;
- 2 (ii) Annuity account which includes annuity contracts owned by a  
3 governmental retirement plan, or its trustee, established under  
4 section 401, 403(b), or 457 of the United States Internal Revenue  
5 Code, but otherwise excludes unallocated annuities; and
- 6 (iii) Unallocated annuity account, which excludes contracts owned  
7 by a governmental retirement benefit plan, or its trustee,  
8 established under section 401, 403(b), or 457 of the United States  
9 Internal Revenue Code; and
- 10 (b) The disability insurance account, which includes health  
11 benefit plans, disability benefit policies and contracts, and long-  
12 term care policies and contracts.

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

18 **Sec. 5.** RCW 48.32A.065 and 2001 c 50 s 7 are each amended to  
19 read as follows:

20 (1) The board of directors of the association consists of the  
21 commissioner ex officio and not less than (~~five~~) seven nor more  
22 than (~~nine~~) eleven member insurers serving terms as established in  
23 the plan of operation. The insurer members of the board are selected  
24 by member insurers subject to the approval of the commissioner.

25 Vacancies on the board are filled for the remaining period of the  
26 term by a majority vote of the remaining board members, subject to  
27 the approval of the commissioner.

28 (2) In approving selections or in appointing members to the  
29 board, the commissioner shall consider, among other things, whether  
30 all member insurers are fairly represented.

31 (3) Members of the board may be reimbursed from the assets of the  
32 association for expenses incurred by them as members of the board of  
33 directors but members of the board are not otherwise compensated by  
34 the association for their services.

35 **Sec. 6.** RCW 48.32A.075 and 2001 c 50 s 8 are each amended to  
36 read as follows:

37 (1) If a member insurer is an impaired insurer, the association  
38 may, in its discretion, and subject to any conditions imposed by the

1 association that do not impair the contractual obligations of the  
2 impaired insurer and that are approved by the commissioner:

3 (a) ((Guaranty)) Guarantee, assume, reissue, or reinsure, or  
4 cause to be guaranteed, reissued, assumed, or reinsured, any or all  
5 of the policies or contracts of the impaired insurer; or

6 (b) Provide such moneys, pledges, loans, notes, guarantees, or  
7 other means as are proper to effectuate (a) of this subsection and  
8 assure payment of the contractual obligations of the impaired insurer  
9 pending action under (a) of this subsection.

10 (2) If a member insurer is an insolvent insurer, the association  
11 shall, in its discretion, either:

12 (a) (i) (A) ((Guaranty)) Guarantee, assume, reissue, or reinsure,  
13 or cause to be guaranteed, assumed, reissued, or reinsured, the  
14 policies or contracts of the insolvent insurer; or

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

17 (ii) Provide moneys, pledges, loans, notes, guarantees, or other  
18 means reasonably necessary to discharge the association's duties; or

19 (b) Provide benefits and coverages in accordance with the  
20 following provisions:

21 (i) With respect to ((~~life and disability insurance~~)) policies  
22 and ((~~annuities~~)) contracts, assure payment of benefits ((~~for~~  
23 ~~premiums identical to the premiums and benefits, except for terms of~~  
24 ~~conversion and renewability,~~)) that would have been payable under the  
25 policies or contracts of the insolvent insurer((~~7~~)) for claims  
26 incurred:

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

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

37 (ii) Make diligent efforts to provide all known insureds,  
38 enrollees, or annuitants, for nongroup policies and contracts, or  
39 group policy or contract owners with respect to group policies and

1 contracts, thirty days notice of the termination of the benefits  
2 provided;

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

20 (iv) (A) The substitute coverage under (b)(iii) of this  
21 subsection, must be offered through a solvent, admitted member  
22 insurer. In the alternative, the association in its discretion, and  
23 subject to any conditions imposed by the association and approved by  
24 the commissioner, may reissue the terminated coverage or issue an  
25 alternative policy or contract at actuarially justified rates,  
26 subject to the prior approval of the commissioner;

27 (B) Substituted coverage must be offered without requiring  
28 evidence of insurability, and may not provide for any waiting period  
29 or exclusion that would not have applied under the terminated policy  
30 or contract;

31 (C) The association may reinsure any alternative or reissued  
32 policy or contract;

33 (v) If the association elects to reissue terminated coverage at a  
34 premium rate different from that charged under the terminated policy  
35 or contract, the premium must be actuarially justified and set by the  
36 association in accordance with the amount of insurance or coverage  
37 provided and the age and class of risk, subject to approval of the  
38 (~~(domiciliary insurance)~~) commissioner (~~(and the receivership~~  
39 ~~court)~~);

40 (vi) If the association elects to issue alternative coverage:

1 (A) Alternative policies or contracts adopted by the association  
2 must be subject to the approval of the commissioner. The association  
3 may adopt alternative policies or contracts of various types for  
4 future issuance without regard to any particular impairment or  
5 insolvency.

6 (B) Alternative policies or contracts must contain at least the  
7 minimum statutory provisions required in this state and provide  
8 benefits that cannot be unreasonable in relation to the premium  
9 charged. The association must set the premium in accordance with a  
10 table of rates that it must adopt. The premium must reflect the  
11 amount of insurance benefits or coverage to be provided and the age  
12 and class of risk of each insured, but must not reflect any changes  
13 in the health of the insured after the original policy or contract  
14 was last underwritten.

15 (C) Any alternative policy or contract issued by the association  
16 must provide coverage of a type similar to that of the policy or  
17 contract issued by the impaired or insolvent insurer, as determined  
18 by the association;

19 (vii) The association's obligations with respect to coverage  
20 under any policy or contract of the impaired or insolvent insurer or  
21 under any reissued policy or contract cease on the date the coverage  
22 or policy or contract is replaced by another similar policy or  
23 contract by the policy or contract owner, the insured, the enrollee,  
24 or the association; or

25 ~~((vii))~~ (viii) When proceeding under this subsection (2)(b)  
26 with respect to a policy or contract carrying guaranteed minimum  
27 interest rates, the association shall assure the payment or crediting  
28 of a rate of interest consistent with RCW 48.32A.025(2)(b)(iii).

29 (3) Nonpayment of premiums within thirty-one days after the date  
30 required under the terms of any guaranteed, assumed, alternative, or  
31 reissued policy or contract or substitute coverage terminates the  
32 association's obligations under the policy, contract, or coverage  
33 under this chapter with respect to the policy, contract, or coverage,  
34 except with respect to any claims incurred or any net cash surrender  
35 value which may be due in accordance with the provisions of this  
36 chapter.

37 (4) Premiums due for coverage after entry of an order of  
38 liquidation of an insolvent insurer belong to and are payable at the  
39 direction of the association, and the association is liable for

1 unearned premiums due to policy or contract owners arising after the  
2 entry of the order.

3 (5) The protection provided by this chapter does not apply when  
4 any guaranty protection is provided to residents of this state by the  
5 laws of the domiciliary state or jurisdiction of the impaired or  
6 insolvent insurer other than this state.

7 (6) In carrying out its duties under subsection (2) of this  
8 section, the association may:

9 (a) Subject to approval by a court in this state, impose  
10 permanent policy or contract liens in connection with a guarantee,  
11 assumption, or reinsurance agreement, if the association finds that  
12 the amounts which can be assessed under this chapter are less than  
13 the amounts needed to assure full and prompt performance of the  
14 association's duties under this chapter, or that the economic or  
15 financial conditions as they affect member insurers are sufficiently  
16 adverse to render the imposition of such permanent policy or contract  
17 liens, are in the public interest; and

18 (b) Subject to approval by a court in this state, impose  
19 temporary moratoriums or liens on payments of cash values and policy  
20 loans, or any other right to withdraw funds held in conjunction with  
21 policies or contracts, in addition to any contractual provisions for  
22 deferral of cash or policy loan value. In addition, in the event of a  
23 temporary moratorium or moratorium charge imposed by the receivership  
24 court on payment of cash values or policy loans, or on any other  
25 right to withdraw funds held in conjunction with policies or  
26 contracts, out of the assets of the impaired or insolvent insurer,  
27 the association may defer the payment of cash values, policy loans,  
28 or other rights by the association for the period of the moratorium  
29 or moratorium charge imposed by the receivership court, except for  
30 claims covered by the association to be paid in accordance with a  
31 hardship procedure established by the liquidator or rehabilitator and  
32 approved by the receivership court.

33 (7) A deposit in this state, held pursuant to law or required by  
34 the commissioner for the benefit of creditors, including policy or  
35 contract owners, not turned over to the domiciliary liquidator upon  
36 the entry of a final order of liquidation or order approving a  
37 rehabilitation plan of (~~an~~) a member insurer domiciled in this  
38 state or in a reciprocal state, under RCW 48.31.171, shall be  
39 promptly paid to the association. The association is entitled to  
40 retain a portion of any amount so paid to it equal to the percentage

1 determined by dividing the aggregate amount of policy or contract  
2 owners' claims related to that insolvency for which the association  
3 has provided statutory benefits by the aggregate amount of all policy  
4 or contract owners' claims in this state related to that insolvency  
5 and shall remit to the domiciliary receiver the amount so paid to the  
6 association and not retained under this subsection. Any amount so  
7 paid to the association less the amount not retained by it shall be  
8 treated as a distribution of estate assets under RCW 48.31.185 or  
9 similar provision of the state of domicile of the impaired or  
10 insolvent insurer.

11 (8) If the association fails to act within a reasonable period of  
12 time with respect to an insolvent insurer, as provided in subsection  
13 (2) of this section, the commissioner has the powers and duties of  
14 the association under this chapter with respect to the insolvent  
15 insurer.

16 (9) The association may render assistance and advice to the  
17 commissioner, upon the commissioner's request, concerning  
18 rehabilitation, payment of claims, continuance of coverage, or the  
19 performance of other contractual obligations of an impaired or  
20 insolvent insurer.

21 (10) The association has standing to appear or intervene before a  
22 court or agency in this state with jurisdiction over an impaired or  
23 insolvent insurer concerning which the association is or may become  
24 obligated under this chapter or with jurisdiction over any person or  
25 property against which the association may have rights through  
26 subrogation or otherwise. Standing extends to all matters germane to  
27 the powers and duties of the association, including, but not limited  
28 to, proposals for reissuing, reinsuring, modifying, or guaranteeing  
29 the policies or contracts of the impaired or insolvent insurer and  
30 the determination of the policies or contracts and contractual  
31 obligations. The association also has the right to appear or  
32 intervene before a court or agency in another state with jurisdiction  
33 over an impaired or insolvent insurer for which the association is or  
34 may become obligated or with jurisdiction over any person or property  
35 against whom the association may have rights through subrogation or  
36 otherwise.

37 (11)(a) A person receiving benefits under this chapter is deemed  
38 to have assigned the rights under, and any causes of action against  
39 any person for losses arising under, resulting from, or otherwise  
40 relating to, the covered policy or contract to the association to the

1 extent of the benefits received because of this chapter, whether the  
2 benefits are payments of or on account of contractual obligations,  
3 continuation of coverage, or provision of substitute or alternative  
4 policies, contracts, or coverages. The association may require an  
5 assignment to it of such rights and cause of action by any enrollee,  
6 payee, policy or contract owner, beneficiary, insured, or annuitant  
7 as a condition precedent to the receipt of any right or benefits  
8 conferred by this chapter upon the person.

9 (b) The subrogation rights of the association under this  
10 subsection have the same priority against the assets of the impaired  
11 or insolvent insurer as that possessed by the person entitled to  
12 receive benefits under this chapter.

13 (c) In addition to (a) and (b) of this subsection, the  
14 association has all common law rights of subrogation and any other  
15 equitable or legal remedy that would have been available to the  
16 impaired or insolvent insurer or owner, enrollee, beneficiary, or  
17 payee of a policy or contract with respect to the policy or  
18 contracts, including without limitation, in the case of a structured  
19 settlement annuity, any rights of the owner, beneficiary, or payee of  
20 the annuity, to the extent of benefits received under this chapter,  
21 against a person originally or by succession responsible for the  
22 losses arising from the personal injury relating to the annuity or  
23 payment therefor, excepting any such person responsible solely by  
24 reason of serving as an assignee in respect of a qualified assignment  
25 under section 130 of the United States Internal Revenue Code.

26 (d) If (a) through (c) of this subsection are invalid or  
27 ineffective with respect to any person or claim for any reason, the  
28 amount payable by the association with respect to the related covered  
29 obligations shall be reduced by the amount realized by any other  
30 person with respect to the person or claim that is attributable to  
31 the policies or contracts, or portion thereof, covered by the  
32 association.

33 (e) If the association has provided benefits with respect to a  
34 covered obligation and a person recovers amounts as to which the  
35 association has rights as described in this subsection, the person  
36 shall pay to the association the portion of the recovery attributable  
37 to the policies or contracts, or portion thereof, covered by the  
38 association.

39 (12) In addition to the rights and powers elsewhere in this  
40 chapter, the association may:

1 (a) Enter into such contracts as are necessary or proper to carry  
2 out the provisions and purposes of this chapter;

3 (b) Sue or be sued, including taking any legal actions necessary  
4 or proper to recover any unpaid assessments under RCW 48.32A.085 and  
5 to settle claims or potential claims against it;

6 (c) Borrow money to effect the purposes of this chapter; any  
7 notes or other evidence of indebtedness of the association not in  
8 default are legal investments for domestic insurers and may be  
9 carried as admitted assets;

10 (d) Employ or retain such persons as are necessary or appropriate  
11 to handle the financial transactions of the association, and to  
12 perform such other functions as become necessary or proper under this  
13 chapter;

14 (e) Take such legal action as may be necessary or appropriate to  
15 avoid or recover payment of improper claims;

16 (f) Exercise, for the purposes of this chapter and to the extent  
17 approved by the commissioner, the powers of a domestic life ~~((or))~~  
18 insurer, disability insurer, health care service contractor, or  
19 health maintenance organization, but in no case may the association  
20 issue insurance policies or annuity contracts other than those issued  
21 to perform its obligations under this chapter;

22 (g) Organize itself as a corporation or in other legal form  
23 permitted by the laws of the state;

24 (h) Request information from a person seeking coverage from the  
25 association in order to aid the association in determining its  
26 obligations under this chapter with respect to the person, and the  
27 person shall promptly comply with the request; ~~((and))~~

28 (i) In accordance with the terms and conditions of the policy or  
29 contract, file for actuarially justified rate or premium increases  
30 for any policy or contract for which it provides coverage under this  
31 chapter; and

32 (j) Take other necessary or appropriate action to discharge its  
33 duties and obligations under this chapter or to exercise its powers  
34 under this chapter.

35 (13) The association may join an organization of one or more  
36 other state associations of similar purposes, to further the purposes  
37 and administer the powers and duties of the association.

38 (14)(a) At any time within one year after the coverage date,  
39 which is the date on which the association becomes responsible for  
40 the obligations of a member insurer, the association may elect to

1 succeed to the rights and obligations of the member insurer, that  
2 accrue on or after the coverage date and that relate to policies,  
3 contracts, or annuities, covered((~~τ~~)) in whole or in part((~~τ~~)) by the  
4 association, under any one or more indemnity reinsurance agreements  
5 entered into by the member insurer as a ceding insurer and selected  
6 by the association. However, the association may not exercise an  
7 election with respect to a reinsurance agreement if the receiver,  
8 rehabilitator, or liquidator of the member insurer has previously and  
9 expressly disaffirmed the reinsurance agreement. The election is  
10 effective when notice is provided to the receiver, rehabilitator, or  
11 liquidator and to the affected reinsurers. If the association makes  
12 an election, the following provisions apply with respect to the  
13 agreements selected by the association:

14 (i) The association is responsible for all unpaid premiums due  
15 under the agreements, for periods both before and after the coverage  
16 date, and is responsible for the performance of all other obligations  
17 to be performed after the coverage date, in each case which relate to  
18 policies, contracts, or annuities, covered((~~τ~~)) in whole or in  
19 part((~~τ~~)) by the association. The association may charge policies,  
20 contracts, or annuities, covered in part by the association, through  
21 reasonable allocation methods, the costs for reinsurance in excess of  
22 the obligations of the association;

23 (ii) The association is entitled to any amounts payable by the  
24 reinsurer under the agreements with respect to losses or events that  
25 occur in periods after the coverage date and that relate to policies,  
26 contracts, or annuities, covered by the association((~~τ~~)) in whole or  
27 in part. However, upon receipt of any such amounts, the association  
28 is obliged to pay to the beneficiary under the policy ((~~⊕~~)),  
29 contract, or annuity on account of which the amounts were paid a  
30 portion of the amount equal to the excess of: The amount received by  
31 the association, over the benefits paid by the association on account  
32 of the policy ((~~⊕~~)), contract, or annuity, less the retention of the  
33 impaired or insolvent member insurer applicable to the loss or event;

34 (iii) Within thirty days following the association's election,  
35 the association and each indemnity reinsurer shall calculate the net  
36 balance due to or from the association under each reinsurance  
37 agreement as of the date of the association's election, giving full  
38 credit to all items paid by either the member insurer, or its  
39 receiver, rehabilitator, or liquidator, or the indemnity reinsurer  
40 during the period between the coverage date and the date of the

1 association's election. Either the association or indemnity reinsurer  
2 shall pay the net balance due the other within five days of the  
3 completion of this calculation. If the receiver, rehabilitator, or  
4 liquidator has received any amounts due the association pursuant to  
5 (a)(ii) of this subsection, the receiver, rehabilitator, or  
6 liquidator shall remit the same to the association as promptly as  
7 practicable; and

8 (iv) If the association, within sixty days of the election, pays  
9 the premiums due for periods both before and after the coverage date  
10 that relate to policies, contracts, or annuities, covered by the  
11 association(~~(7)~~) in whole or in part, the reinsurer is not entitled  
12 to terminate the reinsurance agreements, insofar as the agreements  
13 relate to policies, contracts, or annuities, covered by the  
14 association(~~(7)~~) in whole or in part, and is not entitled to set off  
15 any unpaid premium due for periods prior to the coverage date against  
16 amounts due the association;

17 (b) In the event the association transfers its obligations to  
18 another member insurer, and if the association and the other member  
19 insurers agree, the other member insurer succeeds to the rights and  
20 obligations of the association under (a) of this subsection effective  
21 as of the date agreed upon by the association and the other member  
22 insurers and regardless of whether the association has made the  
23 election referred to in (a) of this subsection. However:

24 (i) The indemnity reinsurance agreements automatically terminate  
25 for new reinsurance unless the indemnity reinsurer and the other  
26 member insurers agree to the contrary;

27 (ii) The obligations described in (a)(ii) of this subsection no  
28 longer apply on and after the date the indemnity reinsurance  
29 agreement is transferred to the third party member insurer; and

30 (iii) This subsection (14)(b) does not apply if the association  
31 has previously expressly determined in writing that it will not  
32 exercise the election referred to in (a) of this subsection;

33 (c) The provisions of this subsection supersede the provisions of  
34 any law of this state or of any affected reinsurance agreement that  
35 provides for or requires any payment of reinsurance proceeds, on  
36 account of losses or events that occur in periods after the coverage  
37 date, to the receiver, liquidator, or rehabilitator of the insolvent  
38 (~~member~~) insurer. The receiver, rehabilitator, or liquidator  
39 remains entitled to any amounts payable by the reinsurer under the  
40 reinsurance agreement with respect to losses or events that occur in

1 periods prior to the coverage date, subject to applicable setoff  
2 provisions; and

3 (d) Except as set forth under this subsection, this subsection  
4 does not alter or modify the terms and conditions of the indemnity  
5 reinsurance agreements of the insolvent (~~member~~) insurer. This  
6 subsection does not abrogate or limit any rights of any reinsurer to  
7 claim that it is entitled to rescind a reinsurance agreement. This  
8 subsection does not give a policy or contract owner, an enrollee, or  
9 a beneficiary an independent cause of action against an indemnity  
10 reinsurer that is not otherwise set forth in the indemnity  
11 reinsurance agreement.

12 (15) The board of directors of the association has discretion and  
13 may exercise reasonable business judgment to determine the means by  
14 which the association provides the benefits of this chapter in an  
15 economical and efficient manner.

16 (16) When the association has arranged or offered to provide the  
17 benefits of this chapter to a covered person under a plan or  
18 arrangement that fulfills the association's obligations under this  
19 chapter, the person is not entitled to benefits from the association  
20 in addition to or other than those provided under the plan or  
21 arrangement.

22 (17) Venue in a suit against the association arising under this  
23 chapter is in the county in which liquidation or rehabilitation  
24 proceedings have been filed in the case of a domestic member insurer.  
25 In other cases, venue is in King county or Thurston county. The  
26 association is not required to give an appeal bond in an appeal that  
27 relates to a cause of action arising under this chapter.

28 (18) In carrying out its duties in connection with guaranteeing,  
29 assuming, reissuing, or reinsuring policies or contracts under  
30 subsection (1) or (2) of this section, the association may(~~(, subject~~  
31 ~~to approval of the receivership court,)~~) issue substitute coverage  
32 for a policy or contract that provides an interest rate, crediting  
33 rate, or similar factor determined by use of an index or other  
34 external reference stated in the policy or contract employed in  
35 calculating returns or changes in value by issuing an alternative  
36 policy or contract in accordance with the following provisions:

37 (a) In lieu of the index or other external reference provided for  
38 in the original policy or contract, the alternative policy or  
39 contract provides for: (i) A fixed interest rate; (ii) payment of

1 dividends with minimum guarantees; or (iii) a different method for  
2 calculating interest or changes in value;

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

6 (c) The alternative policy or contract is substantially similar  
7 to the replaced policy or contract in all other material terms.

8 **Sec. 7.** RCW 48.32A.085 and 2001 c 50 s 9 are each amended to  
9 read as follows:

10 (1) For the purpose of providing the funds necessary to carry out  
11 the powers and duties of the association, the board of directors  
12 shall assess the member insurers, separately for each account, at  
13 such time and for such amounts as the board finds necessary.  
14 Assessments are due not less than thirty days after prior written  
15 notice to the member insurers and accrue interest at twelve percent  
16 per annum on and after the due date.

17 (2) There are two classes of assessments, as follows:

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

22 (b) Class B assessments are authorized and called to the extent  
23 necessary to carry out the powers and duties of the association under  
24 RCW 48.32A.075 with regard to an impaired or an insolvent insurer.

25 (3) (a) The amount of a class A assessment is determined by the  
26 board and may be authorized and called on a pro rata or nonpro rata  
27 basis. If pro rata, the board may provide that it be credited against  
28 future class B assessments. ~~((The total of all nonpro rata  
29 assessments may not exceed one hundred fifty dollars per member  
30 insurer in any one calendar year.))~~

31 (b) The amount of a class B assessment ((may)), except for  
32 assessments related to long-term care insurance, must be allocated  
33 for assessment purposes ((among)) between the accounts and among the  
34 subaccounts of the life insurance and annuity accounts, pursuant to  
35 an allocation formula which may be based on the premiums or reserves  
36 of the impaired or insolvent insurer or any other standard determined  
37 by the board to be fair and reasonable under the circumstances.

38 ((b)) (c) The amount of the class B assessment for long-term  
39 care insurance written by an impaired or insolvent insurer must be

1 allocated according to a methodology included in the plan of  
2 operation and approved by the commissioner. The methodology must  
3 provide for fifty percent of the assessment to be allocated to  
4 disability and health member insurers and fifty percent to be  
5 allocated to life and annuity member insurers.

6 (d) Class B assessments against member insurers for each account  
7 and subaccount must be in the proportion that the premiums received  
8 on business in this state by each assessed member insurer on policies  
9 or contracts covered by each account for the three most recent  
10 calendar years for which information is available preceding the year  
11 in which the insurer became insolvent or, in the case of an  
12 assessment with respect to an impaired insurer, the three most recent  
13 calendar years for which information is available preceding the year  
14 in which the insurer became impaired, bears to premiums received on  
15 business in this state for those calendar years by all assessed  
16 member insurers.

17 (~~(e)~~) (e) Assessments for funds to meet the requirements of the  
18 association with respect to an impaired or insolvent insurer may not  
19 be authorized or called until necessary to implement the purposes of  
20 this chapter. Classification of assessments under subsection (2) of  
21 this section and computation of assessments under this subsection  
22 must be made with a reasonable degree of accuracy, recognizing that  
23 exact determinations are not always possible. The association shall  
24 notify each member insurer of its anticipated pro rata share of an  
25 authorized assessment not yet called within one hundred eighty days  
26 after the assessment is authorized.

27 (4) The association may abate or defer, in whole or in part, the  
28 assessment of a member insurer if, in the opinion of the board,  
29 payment of the assessment would endanger the ability of the member  
30 insurer to fulfill its contractual obligations. In the event an  
31 assessment against a member insurer is abated, or deferred in whole  
32 or in part, the amount by which the assessment is abated or deferred  
33 may be assessed against the other member insurers in a manner  
34 consistent with the basis for assessments set forth in this section.  
35 Once the conditions that caused a deferral have been removed or  
36 rectified, the member insurer shall pay all assessments that were  
37 deferred pursuant to a repayment plan approved by the association.

38 (5) (a) (i) Subject to the provisions of (a) (ii) of this  
39 subsection, the total of all assessments authorized by the  
40 association with respect to a member insurer for each subaccount of

1 the life insurance and annuity account and for the ((health))  
2 disability and health insurance account may not in one calendar year  
3 exceed two percent of that member insurer's average annual premiums  
4 received in this state on the policies and contracts covered by the  
5 subaccount or account during the three calendar years preceding the  
6 year in which the insurer became an impaired or insolvent insurer.

7 (ii) If two or more assessments are authorized in one calendar  
8 year with respect to insurers that become impaired or insolvent in  
9 different calendar years, the average annual premiums for purposes of  
10 the aggregate assessment percentage limitation in (a)(i) of this  
11 subsection must be equal and limited to the higher of the three-year  
12 average annual premiums for the applicable subaccount or account as  
13 calculated under this section.

14 (iii) If the maximum assessment, together with the other assets  
15 of the association in an account, does not provide in one year in  
16 either account an amount sufficient to carry out the responsibilities  
17 of the association, the necessary additional funds must be assessed  
18 as soon thereafter as permitted by this chapter.

19 (b) The board may provide in the plan of operation a method of  
20 allocating funds among claims, whether relating to one or more  
21 impaired or insolvent insurers, when the maximum assessment is  
22 insufficient to cover anticipated claims.

23 (c) If the maximum assessment for a subaccount of the life and  
24 annuity account in one year does not provide an amount sufficient to  
25 carry out the responsibilities of the association, then under  
26 subsection (3) ~~((b))~~ (d) of this section, the board shall access the  
27 other subaccounts of the life and annuity account for the necessary  
28 additional amount, subject to the maximum stated in (a) of this  
29 subsection.

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

1 (7) Any member insurer may when determining its premium rates and  
2 policy owner dividends, as to any kind of insurance, health care  
3 service contractor business, or health maintenance organization  
4 business within the scope of this chapter, consider the amount  
5 reasonably necessary to meet its assessment obligations under this  
6 chapter.

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

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

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

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

34 (d) In the alternative to rendering a final decision with respect  
35 to a protest based on a question regarding the assessment base, the  
36 association may refer protests to the commissioner for a final  
37 decision, with or without a recommendation from the association.

38 (e) If the protest or appeal on the assessment is upheld, the  
39 amount paid in error or excess must be returned to the member

1 ((company)) insurer. Interest on a refund due a protesting member  
2 must be paid at the rate actually earned by the association.

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

6 **Sec. 8.** RCW 48.32A.095 and 2001 c 50 s 10 are each amended to  
7 read as follows:

8 (1)(a) The association shall submit to the commissioner a plan of  
9 operation and any amendments necessary or suitable to assure the  
10 fair, reasonable, and equitable administration of the association.  
11 The plan of operation and any amendments are effective upon the  
12 commissioner's written approval or unless it has not been disapproved  
13 within thirty days.

14 (b) If the association fails to submit a suitable plan of  
15 operation within one hundred twenty days following July 22, 2001, or  
16 if at any time thereafter the association fails to submit suitable  
17 amendments to the plan, the commissioner shall, after notice and  
18 hearing, adopt reasonable rules as necessary or advisable to  
19 effectuate the provisions of this chapter. The rules continue in  
20 force until modified by the commissioner or superseded by a plan  
21 submitted by the association and approved by the commissioner.

22 (2) All member insurers shall comply with the plan of operation.

23 (3) The plan of operation must, in addition to requirements  
24 enumerated elsewhere in this chapter:

25 (a) Establish procedures for handling the assets of the  
26 association;

27 (b) Establish the amount and method of reimbursing members of the  
28 board of directors under RCW 48.32A.065;

29 (c) Establish regular places and times for meetings including  
30 telephone conference calls of the board of directors;

31 (d) Establish procedures for records to be kept of all financial  
32 transactions of the association, its agents, and the board of  
33 directors;

34 (e) Establish the procedures whereby selections for the board of  
35 directors are made and submitted to the commissioner;

36 (f) Establish any additional procedures for assessments under RCW  
37 48.32A.085; ((and))

1       (g) Establish procedures whereby a director may be removed for  
2 cause, including in the case where a member insurer becomes an  
3 impaired or insolvent insurer;

4       (h) Require the board of directors to establish policies and  
5 procedures for addressing conflicts of interests among the board of  
6 directors and the member insurers they represent; and

7       (i) Contain additional provisions necessary or proper for the  
8 execution of the powers and duties of the association.

9       (4) The plan of operation may provide that any or all powers and  
10 duties of the association, except those under RCW 48.32A.075(12)(c)  
11 and 48.32A.085, are delegated to a corporation, association, or other  
12 organization which performs or will perform functions similar to  
13 those of this association, or its equivalent, in two or more states.  
14 Such a corporation, association, or organization must be reimbursed  
15 for any payments made on behalf of the association and must be paid  
16 for its performance of any function of the association. A delegation  
17 under this subsection takes effect only with the approval of both the  
18 board of directors and the commissioner, and may be made only to a  
19 corporation, association, or organization which extends protection  
20 not substantially less favorable and effective than that provided by  
21 this chapter.

22       **Sec. 9.** RCW 48.32A.115 and 2001 c 50 s 12 are each amended to  
23 read as follows:

24       The commissioner shall aid in the detection and prevention of  
25 insurer insolvencies or impairments.

26       (1) It is the duty of the commissioner to:

27       (a) Notify the commissioners of all the other states, territories  
28 of the United States, and the District of Columbia within thirty days  
29 following the action taken or the date the action occurs, when the  
30 commissioner takes any of the following actions against a member  
31 insurer:

32       (i) Revocation of license;

33       (ii) Suspension of license; or

34       (iii) Makes a formal order that the ((company)) member insurer  
35 restrict its premium writing, obtain additional contributions to  
36 surplus, withdraw from the state, reinsure all or any part of its  
37 business, or increase capital, surplus, or any other account for the  
38 security of policy owners, certificate holders, contract owners, or  
39 creditors;

1 (b) Report to the board of directors when the commissioner has  
2 taken any of the actions set forth in (a) of this subsection or has  
3 received a report from any other commissioner indicating that any  
4 such action has been taken in another state. The report to the board  
5 of directors must contain all significant details of the action taken  
6 or the report received from another commissioner;

7 (c) Report to the board of directors when the commissioner has  
8 reasonable cause to believe from an examination, whether completed or  
9 in process, of any member insurer that the insurer may be an impaired  
10 or insolvent insurer; and

11 (d) Furnish to the board of directors the national association of  
12 insurance commissioners insurance regulatory information system  
13 ratios and listings of companies not included in the ratios developed  
14 by the national association of insurance commissioners, and the board  
15 may use the information contained therein in carrying out its duties  
16 and responsibilities under this section. The report and the  
17 information must be kept confidential by the board of directors until  
18 such time as made public by the commissioner or other lawful  
19 authority.

20 (2) The commissioner may seek the advice and recommendations of  
21 the board of directors concerning any matter affecting the duties and  
22 responsibilities of the commissioner regarding the financial  
23 condition of member insurers and (~~companies~~) insurers, health care  
24 service contractors, or health maintenance organizations seeking  
25 admission to transact (~~insurance~~) business in this state.

26 (3) The board of directors may, upon majority vote, make reports  
27 and recommendations to the commissioner upon any matter germane to  
28 the solvency, liquidation, rehabilitation, or conservation of any  
29 member insurer or germane to the solvency of any (~~company~~) insurer,  
30 health care service contractor, or health maintenance organization  
31 seeking to do an insurance business in this state. The reports and  
32 recommendations are not public documents.

33 (4) The board of directors may, upon majority vote, notify the  
34 commissioner of any information indicating a member insurer may be an  
35 impaired or insolvent insurer.

36 (5) The board of directors may, upon majority vote, make  
37 recommendations to the commissioner for the detection and prevention  
38 of member insurer insolvencies.

1       **Sec. 10.** RCW 48.32A.135 and 2001 c 50 s 14 are each amended to  
2 read as follows:

3       (1) This chapter does not reduce the liability for unpaid  
4 assessments of the insureds of an impaired or insolvent insurer  
5 operating under a plan with assessment liability.

6       (2) Records must be kept of all meetings of the board of  
7 directors to discuss the activities of the association in carrying  
8 out its powers and duties under RCW 48.32A.075. The records of the  
9 association with respect to an impaired or insolvent insurer may not  
10 be disclosed prior to the termination of a liquidation,  
11 rehabilitation, or conservation proceeding involving the impaired or  
12 insolvent insurer, upon the termination of the impairment or  
13 insolvency of the insurer, or upon the order of a court of competent  
14 jurisdiction. This subsection does not limit the duty of the  
15 association to render a report of its activities under RCW  
16 48.32A.145.

17       (3) For the purpose of carrying out its obligations under this  
18 chapter, the association is a creditor of the impaired or insolvent  
19 insurer to the extent of assets attributable to covered policies  
20 reduced by any amounts to which the association is entitled as  
21 subrogee under RCW 48.32A.075(11). Assets of the impaired or  
22 insolvent insurer attributable to covered policies must be used to  
23 continue all covered policies and pay all contractual obligations of  
24 the impaired or insolvent insurer as required by this chapter. Assets  
25 attributable to covered policies, as used in this subsection, are  
26 that proportion of the assets which the reserves that should have  
27 been established for such policies bear to the reserves that should  
28 have been established for all policies of insurance written by the  
29 impaired or insolvent insurer.

30       (4) As a creditor of the impaired or insolvent member insurer as  
31 established in subsection (3) of this section, the association and  
32 other similar associations are entitled to receive a disbursement of  
33 assets out of the marshaled assets, from time to time as the assets  
34 become available to reimburse it, as a credit against contractual  
35 obligations under this chapter. If the liquidator has not, within one  
36 hundred twenty days of a final determination of insolvency of (~~an~~)  
37 a member insurer by the receivership court, made an application to  
38 the court for the approval of a proposal to disburse assets out of  
39 marshaled assets to guaranty associations having obligations because  
40 of the insolvency, then the association is entitled to make

1 application to the receivership court for approval of its own  
2 proposal to disburse these assets.

3 (5) (a) Prior to the termination of any liquidation,  
4 rehabilitation, or conservation proceeding, the court may take into  
5 consideration the contributions of the respective parties, including  
6 the association, (~~the~~) shareholders, contract owners, certificate  
7 holders, enrollees, and (~~the~~) policy owners of the insolvent  
8 insurer, and any other party with a bona fide interest, in making an  
9 equitable distribution of the ownership rights of the insolvent  
10 insurer. In such a determination, consideration must be given to the  
11 welfare of the policy owners, contract owners, certificate holders,  
12 and enrollees of the continuing or successor member insurer.

13 (b) A distribution to stockholders, if any, of an impaired or  
14 insolvent insurer shall not be made until and unless the total amount  
15 of valid claims of the association with interest thereon for funds  
16 expended in carrying out its powers and duties under RCW 48.32A.075  
17 with respect to the member insurer have been fully recovered by the  
18 association.

19 (6) (a) If an order for liquidation or rehabilitation of (~~a~~) a  
20 member insurer domiciled in this state has been entered, the receiver  
21 appointed under the order has a right to recover on behalf of the  
22 member insurer, from any affiliate that controlled it, the amount of  
23 distributions, other than stock dividends paid by the insurer on its  
24 capital stock, made at any time during the five years preceding the  
25 petition for liquidation or rehabilitation subject to the limitations  
26 of (b) through (d) of this subsection.

27 (b) A distribution is not recoverable if the member insurer,  
28 health care service contractor, or health maintenance organization  
29 shows that when paid the distribution was lawful and reasonable, and  
30 that the member insurer did not know and could not reasonably have  
31 known that the distribution might adversely affect the ability of the  
32 member insurer to fulfill its contractual obligations.

33 (c) Any person who was an affiliate that controlled the member  
34 insurer at the time the distributions were paid is liable up to the  
35 amount of distributions received. Any person who was an affiliate  
36 that controlled the member insurer at the time the distributions were  
37 declared, is liable up to the amount of distributions which would  
38 have been received if they had been paid immediately. If two or more  
39 persons are liable with respect to the same distributions, they are  
40 jointly and severally liable.

1 (d) The maximum amount recoverable under this subsection is the  
2 amount needed in excess of all other available assets of the  
3 insolvent insurer to pay the contractual obligations of the insolvent  
4 insurer.

5 (e) If any person liable under (c) of this subsection is  
6 insolvent, all its affiliates that controlled it at the time the  
7 distribution was paid are jointly and severally liable for any  
8 resulting deficiency in the amount recovered from the insolvent  
9 affiliate.

10 **Sec. 11.** RCW 48.32A.175 and 2001 c 50 s 18 are each amended to  
11 read as follows:

12 All proceedings in which the insolvent insurer is a party in any  
13 court in this state are stayed (~~(sixty)~~) one hundred eighty days from  
14 the date an order of liquidation, rehabilitation, or conservation is  
15 final to permit proper legal action by the association on any matters  
16 germane to its powers or duties. As to judgment under any decision,  
17 order, verdict, or finding based on default the association may apply  
18 to have such a judgment set aside by the same court that made such a  
19 judgment and must be permitted to defend against the suit on the  
20 merits.

21 **Sec. 12.** RCW 48.32A.185 and 2005 c 274 s 313 are each amended to  
22 read as follows:

23 (1) No person, including (~~(an)~~) a member insurer, agent, or  
24 affiliate of (~~(an)~~) a member insurer may make, publish, disseminate,  
25 circulate, or place before the public, or cause directly or  
26 indirectly, to be made, published, disseminated, circulated, or  
27 placed before the public, in any newspaper, magazine, or other  
28 publication, or in the form of a notice, circular, pamphlet, letter,  
29 or poster, or over any radio station or television station, or in any  
30 other way, any advertisement, announcement, or statement, written or  
31 oral, which uses the existence of the insurance guaranty association  
32 of this state for the purpose of sales, solicitation, or inducement  
33 to purchase any form of insurance or other coverage covered by the  
34 Washington life and disability insurance guaranty association act.  
35 However, this section does not apply to the Washington life and  
36 disability insurance guaranty association or any other entity which  
37 does not sell or solicit insurance or coverage by a health care  
38 service contractor or health maintenance organization.

1           (2) (~~Within one hundred eighty days after July 22, 2001, the~~)  
2 The association shall prepare a summary document describing the  
3 general purposes and current limitations of this chapter and  
4 complying with subsection (3) of this section. This summary document  
5 must be submitted to the commissioner for approval. The summary  
6 document must also be available upon request by a policy owner,  
7 contract owner, certificate owner, or enrollee. The distribution,  
8 delivery, contents, or interpretation of this document does not  
9 guarantee that either the policy or the contract or the (~~owner of~~  
10 ~~the policy or contract~~) policy owner, contract owner, certificate  
11 holder, or enrollee is covered in the event of the impairment or  
12 insolvency of a member insurer. The (~~description~~) summary document  
13 must be revised by the association as amendments to this chapter may  
14 require. Failure to receive this document does not give the policy  
15 owner, contract owner, certificate holder, enrollee, or insured any  
16 greater rights than those stated in this chapter.

17           (3) The summary document prepared under subsection (2) of this  
18 section must contain a clear and conspicuous disclaimer on its face.  
19 The commissioner shall establish the form and content of the  
20 disclaimer. The disclaimer must:

21           (a) State the name and address of the life and disability  
22 insurance guaranty association and insurance department;

23           (b) Prominently warn the (~~policy or contract owner~~) policy  
24 owner, contract owner, certificate holder, or enrollee that the life  
25 and disability insurance guaranty association may not cover the  
26 policy or contract or, if coverage is available, it is subject to  
27 substantial limitations and exclusions and conditioned on continued  
28 residence in this state;

29           (c) State the types of policies or contracts for which guaranty  
30 funds provide coverage;

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

36           (e) State that the policy (~~or~~) owner, contract owner,  
37 certificate holder, insured, or enrollee should not rely on coverage  
38 under the life and disability insurance guaranty association when  
39 selecting an insurer, health care service contractor, or health  
40 maintenance organization;

1 (f) Explain rights available and procedures for filing a  
2 complaint to allege a violation of any provisions of this chapter;  
3 and

4 (g) Provide other information as directed by the commissioner  
5 including but not limited to, sources for information about the  
6 financial condition of member insurers provided that the information  
7 is not proprietary and is subject to disclosure under chapter 42.56  
8 RCW.

9 (4) A member insurer must retain evidence of compliance with  
10 subsection (2) of this section for as long as the policy or contract  
11 for which the notice is given remains in effect.

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