

SUBSTITUTE FOR
HOUSE BILL NO. 6313

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
by amending sections 7702, 7704, 7705, 7706, 7707, 7708, 7709,
7711, 7712, 7714, and 7717 (MCL 500.7702, 500.7704, 500.7705,
500.7706, 500.7707, 500.7708, 500.7709, 500.7711, 500.7712,
500.7714, and 500.7717), sections 7702, 7708, 7709, 7711, 7712,
7714, and 7717 as amended by 1989 PA 302, sections 7704, 7705, and
7706 as amended by 1996 PA 548, and section 7707 as added by 1982
PA 194, and by adding section 838a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 838A. (1) AS USED IN THIS SECTION:

2 (A) "2001 CSO MORTALITY TABLE" MEANS THAT TERM AS DEFINED IN
3 SECTION 838.

4 (B) "2001 CSO PREFERRED CLASS STRUCTURE MORTALITY TABLE" MEANS

1 MORTALITY TABLES WITH SEPARATE RATES OF MORTALITY FOR SUPER
2 PREFERRED NONSMOKERS, PREFERRED NONSMOKERS, RESIDUAL STANDARD
3 NONSMOKERS, PREFERRED SMOKERS, AND RESIDUAL STANDARD SMOKER SPLITS
4 OF THE 2001 CSO NONSMOKER AND SMOKER TABLES AS ADOPTED BY THE NAIC
5 AT THE SEPTEMBER 2006 NATIONAL MEETING AND PUBLISHED IN THE "NAIC
6 PROCEEDINGS" (3RD QUARTER 2006). UNLESS THE CONTEXT INDICATES
7 OTHERWISE, THE "2001 CSO PREFERRED CLASS STRUCTURE MORTALITY TABLE"
8 INCLUDES BOTH THE ULTIMATE FORM OF THAT TABLE AND THE SELECT AND
9 ULTIMATE FORM OF THAT TABLE. IT INCLUDES BOTH THE SMOKER AND
10 NONSMOKER MORTALITY TABLES. IT INCLUDES BOTH THE MALE AND FEMALE
11 MORTALITY TABLES AND THE GENDER COMPOSITE MORTALITY TABLES. IT ALSO
12 INCLUDES BOTH THE AGE-NEAREST-BIRTHDAY AND AGE-LAST-BIRTHDAY BASES
13 OF THE MORTALITY TABLE.

14 (C) "NAIC" MEANS THE NATIONAL ASSOCIATION OF INSURANCE
15 COMMISSIONERS.

16 (D) "SMOKER AND NONSMOKER MORTALITY TABLES" MEANS THAT TERM AS
17 DEFINED IN SECTION 838.

18 (E) "STATISTICAL AGENT" MEANS AN ENTITY WITH PROVEN SYSTEMS
19 FOR PROTECTING THE CONFIDENTIALITY OF INDIVIDUAL INSURED AND
20 INSURER INFORMATION; DEMONSTRATED RESOURCES FOR AND HISTORY OF
21 ONGOING ELECTRONIC COMMUNICATIONS AND DATA TRANSFER ENSURING DATA
22 INTEGRITY WITH INSURERS, WHICH ARE ITS MEMBERS OR SUBSCRIBERS; AND
23 A HISTORY OF AND MEANS FOR AGGREGATION OF DATA AND ACCURATE
24 PROMULGATION OF THE EXPERIENCE MODIFICATIONS IN A TIMELY MANNER.

25 (2) AN INSURER MAY, FOR EACH CALENDAR YEAR OF ISSUE FOR ANY 1
26 OR MORE SPECIFIED PLANS OF INSURANCE AND SUBJECT TO THIS SECTION,
27 SUBSTITUTE THE 2001 CSO PREFERRED CLASS STRUCTURE MORTALITY TABLE

1 IN PLACE OF THE 2001 CSO SMOKER AND NONSMOKER MORTALITY TABLES AS
2 THE MINIMUM VALUATION STANDARD FOR POLICIES ISSUED ON OR AFTER
3 JANUARY 1, 2007. AN INSURER SHALL NOT ELECT THE 2001 CSO PREFERRED
4 CLASS STRUCTURE MORTALITY TABLE UNTIL THE INSURER DEMONSTRATES THAT
5 AT LEAST 20% OF THE BUSINESS TO BE VALUED ON THIS TABLE IS IN 1 OR
6 MORE OF THE PREFERRED CLASSES. A TABLE FROM THE 2001 CSO PREFERRED
7 CLASS STRUCTURE MORTALITY TABLE USED IN PLACE OF A 2001 CSO
8 MORTALITY TABLE AS PROVIDED IN THIS SECTION SHALL BE TREATED AS
9 PART OF THE 2001 CSO MORTALITY TABLE ONLY FOR PURPOSES OF RESERVE
10 VALUATION PURSUANT TO SECTION 838.

11 (3) FOR EACH PLAN OF INSURANCE WITH SEPARATE RATES FOR
12 PREFERRED AND STANDARD NONSMOKER LIVES, AN INSURER MAY USE THE
13 SUPER PREFERRED NONSMOKER, PREFERRED NONSMOKER, AND RESIDUAL
14 STANDARD NONSMOKER TABLES TO SUBSTITUTE FOR THE NONSMOKER MORTALITY
15 TABLE FOUND IN THE 2001 CSO MORTALITY TABLE TO DETERMINE MINIMUM
16 RESERVES. AT THE TIME OF ELECTION AND ANNUALLY THEREAFTER, EXCEPT
17 FOR BUSINESS VALUED UNDER THE RESIDUAL STANDARD NONSMOKER TABLE,
18 THE APPOINTED ACTUARY SHALL CERTIFY BOTH OF THE FOLLOWING:

19 (A) THAT THE PRESENT VALUE OF DEATH BENEFITS OVER THE NEXT 10
20 YEARS AFTER THE VALUATION DATE, USING THE ANTICIPATED MORTALITY
21 EXPERIENCE WITHOUT RECOGNITION OF MORTALITY IMPROVEMENT BEYOND THE
22 VALUATION DATE FOR EACH CLASS, IS LESS THAN THE PRESENT VALUE OF
23 DEATH BENEFITS USING THE VALUATION BASIC TABLE CORRESPONDING TO THE
24 VALUATION TABLE BEING USED FOR THAT CLASS.

25 (B) THAT THE PRESENT VALUE OF DEATH BENEFITS OVER THE FUTURE
26 LIFE OF THE CONTRACTS, USING ANTICIPATED MORTALITY EXPERIENCE
27 WITHOUT RECOGNITION OF MORTALITY IMPROVEMENT BEYOND THE VALUATION

1 DATE FOR EACH CLASS, IS LESS THAN THE PRESENT VALUE OF DEATH
2 BENEFITS USING THE VALUATION BASIC TABLE CORRESPONDING TO THE
3 VALUATION TABLE BEING USED FOR THAT CLASS.

4 (4) FOR EACH PLAN OF INSURANCE WITH SEPARATE RATES FOR
5 PREFERRED AND STANDARD SMOKER LIVES, AN INSURER MAY USE THE
6 PREFERRED SMOKER AND RESIDUAL STANDARD SMOKER TABLES TO SUBSTITUTE
7 FOR THE SMOKER MORTALITY TABLE FOUND IN THE 2001 CSO MORTALITY
8 TABLE TO DETERMINE MINIMUM RESERVES. AT THE TIME OF ELECTION AND
9 ANNUALLY THEREAFTER, FOR BUSINESS VALUED UNDER THE PREFERRED SMOKER
10 TABLE, THE APPOINTED ACTUARY SHALL CERTIFY BOTH OF THE FOLLOWING:

11 (A) THAT THE PRESENT VALUE OF DEATH BENEFITS OVER THE NEXT 10
12 YEARS AFTER THE VALUATION DATE, USING THE ANTICIPATED MORTALITY
13 EXPERIENCE WITHOUT RECOGNITION OF MORTALITY IMPROVEMENT BEYOND THE
14 VALUATION DATE FOR EACH CLASS, IS LESS THAN THE PRESENT VALUE OF
15 DEATH BENEFITS USING THE PREFERRED SMOKER VALUATION BASIC TABLE
16 CORRESPONDING TO THE VALUATION TABLE BEING USED FOR THAT CLASS.

17 (B) THAT THE PRESENT VALUE OF DEATH BENEFITS OVER THE FUTURE
18 LIFE OF THE CONTRACTS, USING ANTICIPATED MORTALITY EXPERIENCE
19 WITHOUT RECOGNITION OF MORTALITY IMPROVEMENT BEYOND THE VALUATION
20 DATE FOR EACH CLASS, IS LESS THAN THE PRESENT VALUE OF DEATH
21 BENEFITS USING THE PREFERRED SMOKER VALUATION BASIC TABLE.

22 (5) UNLESS EXEMPTED BY THE COMMISSIONER, EVERY AUTHORIZED
23 INSURER USING THE 2001 CSO PREFERRED CLASS STRUCTURE MORTALITY
24 TABLE SHALL FILE ANNUALLY WITH THE COMMISSIONER, WITH THE NAIC, OR
25 WITH A STATISTICAL AGENT DESIGNATED BY THE NAIC AND ACCEPTABLE TO
26 THE COMMISSIONER STATISTICAL REPORTS SHOWING MORTALITY AND SUCH
27 OTHER INFORMATION AS THE COMMISSIONER MAY CONSIDER NECESSARY OR

**EXPEDIENT FOR THE ADMINISTRATION OF THIS SECTION. THE FORM OF THE
REPORTS SHALL BE ESTABLISHED BY THE COMMISSIONER.**

Sec. 7702. (1) The purpose of this chapter is to protect, subject to certain limitations, persons specified in section 7704(1) against failure in the performance of contractual obligations under insurance policies and annuity contracts specified in section 7704(2) because of the impairment or insolvency of the insurer issuing the policies or contracts. To provide this protection:

(a) An association of insurers is created to enable the guaranty of payment of benefits and continuation of coverages as limited in this chapter.

(b) Members of the association are subject to assessment to provide funds to carry out the purpose of this chapter.

(c) The association is authorized to assist the commissioner, in the prescribed manner, in the detection and prevention of insurer impairments or insolvencies.

(2) This chapter shall be ~~liberally~~ construed to execute the purposes provided in subsection (1).

Sec. 7704. (1) This chapter shall provide coverage for the policies and contracts specified in subsection (2) to the following persons:

(a) To a person, other than nonresident certificate holders under group policies or contracts, who, regardless of where he or she resides, is the beneficiary, assignee, or payee of a person covered under subdivision (b).

(b) To a person who is an owner of, or certificate holder

under, a policy or contract described in subsection (2), ~~or, in~~
~~the case of~~ **OTHER THAN** an unallocated annuity contract ~~, to the~~
~~person who is the contract holder~~ **OR STRUCTURED SETTLEMENT**
CONTRACT, and which owner ~~, OR~~ certificate holder ~~, or contract~~
~~holder~~ is 1 of the following:

(i) A resident.

(ii) Not a resident, if all of the following conditions are
met:

(A) The insurer that issued the policy or contract is
domiciled in this state.

(B) ~~The insurer never held a license or certificate of~~
~~authority in the states in which the person resides.~~ **THE STATE IN**
WHICH THE PERSON RESIDES HAS AN ASSOCIATION SIMILAR TO THE
ASSOCIATION CREATED BY THIS CHAPTER.

(C) ~~Such states have associations similar to the association~~
~~created by this chapter.~~ **THE PERSON IS NOT ELIGIBLE FOR COVERAGE**
BY AN ASSOCIATION IN ANY OTHER STATE BECAUSE THE INSURER WAS NOT
LICENSED IN THAT STATE AT THE TIME SPECIFIED IN THE STATE'S
GUARANTY ASSOCIATION LAW.

~~—— (D) The person is not eligible for coverage by those~~
~~associations.~~

(iii) Not a resident, if both of the following conditions are
met:

(A) The person ~~was~~ **WOULD HAVE BEEN CONSIDERED** a resident at
the time the coverage was obtained by the person.

(B) The person is not eligible for coverage by another
guaranty association.

1 (C) FOR AN UNALLOCATED ANNUITY CONTRACT, EXCEPT AS PROVIDED IN
2 SUBSECTION (3), TO EITHER OF THE FOLLOWING:

3 (i) TO A PERSON WHO IS THE OWNER OF AN UNALLOCATED ANNUITY
4 CONTRACT IF THE CONTRACT IS ISSUED TO OR IN CONNECTION WITH A
5 SPECIFIC PLAN WHOSE SPONSOR HAS ITS PRINCIPAL PLACE OF BUSINESS IN
6 THIS STATE.

7 (ii) TO A PERSON WHO IS THE OWNER OF AN UNALLOCATED ANNUITY
8 CONTRACT ISSUED TO OR IN CONNECTION WITH A GOVERNMENT LOTTERY IF
9 THE OWNER IS A RESIDENT OF THIS STATE.

10 (D) FOR A STRUCTURED SETTLEMENT ANNUITY, EXCEPT AS PROVIDED IN
11 SUBSECTION (3), TO A PERSON WHO IS A PAYEE UNDER A STRUCTURED
12 SETTLEMENT ANNUITY, OR A BENEFICIARY OF A PAYEE IF THE PAYEE IS
13 DECEASED, AND THE PAYEE IS EITHER OF THE FOLLOWING:

14 (i) A RESIDENT, REGARDLESS OF WHERE THE CONTRACT OWNER RESIDES.

15 (ii) NOT A RESIDENT, IF EITHER OF THE FOLLOWING CONDITIONS IS
16 MET:

17 (A) THE CONTRACT OWNER OF THE STRUCTURED SETTLEMENT ANNUITY IS
18 A RESIDENT, AND THE PAYEE OR BENEFICIARY IS NOT ELIGIBLE FOR
19 COVERAGE FROM THE ASSOCIATION WHERE THE PAYEE OR BENEFICIARY
20 RESIDES.

21 (B) THE CONTRACT OWNER OF THE STRUCTURED SETTLEMENT ANNUITY IS
22 NOT A RESIDENT, AND BOTH OF THE FOLLOWING CONDITIONS ARE MET:

23 (I) THE INSURER THAT ISSUED THE STRUCTURED SETTLEMENT ANNUITY
24 IS DOMICILED IN THIS STATE, AND THE STATE IN WHICH THE CONTRACT
25 OWNER RESIDES HAS AN ASSOCIATION SIMILAR TO THE ASSOCIATION CREATED
26 BY THIS CHAPTER.

27 (II) NEITHER THE PAYEE OR BENEFICIARY NOR THE CONTRACT OWNER

1 IS ELIGIBLE FOR COVERAGE BY THE ASSOCIATION OF THE STATE IN WHICH
2 THE PAYEE OR CONTRACT OWNER RESIDES.

3 (2) Except as provided in ~~subsection~~ SUBSECTIONS (3), (4),
4 AND (5), this chapter provides coverage to a person specified in
5 subsection (1) for direct, nongroup life, health, annuity, and
6 supplemental policies or contracts, for certificates under direct
7 group life, health, annuity, and supplemental policies and
8 contracts, and for unallocated annuity contracts issued by member
9 insurers, except as limited by this chapter.

10 (3) THIS CHAPTER DOES NOT PROVIDE COVERAGE TO A PERSON WHO IS
11 A PAYEE OR BENEFICIARY OF A CONTRACT OWNER THAT IS A RESIDENT OF
12 THIS STATE, IF THE PAYEE OR BENEFICIARY IS AFFORDED ANY COVERAGE BY
13 THE ASSOCIATION OF ANOTHER STATE OR TO A PERSON OTHERWISE COVERED
14 UNDER SUBSECTION (1)(C), IF ANY COVERAGE IS PROVIDED BY THE
15 ASSOCIATION OF ANOTHER STATE TO THAT PERSON.

16 (4) THIS CHAPTER IS INTENDED TO PROVIDE COVERAGE TO A PERSON
17 WHO IS A RESIDENT OF THIS STATE AND, IN SPECIAL CIRCUMSTANCES, TO A
18 NONRESIDENT. TO AVOID DUPLICATE COVERAGE, IF A PERSON WHO WOULD
19 OTHERWISE RECEIVE COVERAGE UNDER THIS CHAPTER IS PROVIDED COVERAGE
20 UNDER THE LAWS OF ANY OTHER STATE, THE PERSON SHALL NOT BE PROVIDED
21 COVERAGE UNDER THIS CHAPTER. IN DETERMINING THE APPLICATION OF THE
22 PROVISIONS OF THIS CHAPTER IN SITUATIONS WHERE A PERSON COULD BE
23 COVERED BY THE ASSOCIATION OF MORE THAN 1 STATE, WHETHER AS AN
24 OWNER, PAYEE, BENEFICIARY, OR ASSIGNEE, THIS CHAPTER SHALL BE
25 CONSTRUED IN CONJUNCTION WITH OTHER STATE LAWS TO RESULT IN
26 COVERAGE BY ONLY 1 ASSOCIATION.

27 (5) ~~(3)~~ This chapter does not provide coverage for the

1 following:

2 (a) A portion of a policy or contract not guaranteed by the
3 insurer or under which the risk is borne by the policy or contract
4 ~~holder~~ **OWNER, INCLUDING, BUT NOT LIMITED TO, THE NONGUARANTEED**
5 **PORTION OF A VARIABLE OR SEPARATE ACCOUNT PRODUCT.**

6 (b) A policy or contract of reinsurance, unless assumption
7 certificates have been issued **PURSUANT TO THE REINSURANCE POLICY OR**
8 **CONTRACT.**

9 (c) A portion of a policy or contract to the extent that the
10 rate of interest on which it is based **OR THE INTEREST RATE,**
11 **CREDITING RATE, OR SIMILAR FACTOR DETERMINED BY USE OF AN INDEX OR**
12 **OTHER EXTERNAL REFERENCE STATED IN THE POLICY OR CONTRACT EMPLOYED**
13 **IN CALCULATING RETURNS OR CHANGES IN VALUE** exceeds the following:

14 (i) Averaged over the period of 4 years prior to the date on
15 which the ~~association becomes obligated with respect to the policy~~
16 ~~or contract, a~~ **MEMBER INSURER BECOMES AN IMPAIRED INSURER OR AN**
17 **INSOLVENT INSURER, WHICHEVER OCCURS FIRST, THE** rate of interest
18 determined by subtracting 2 percentage points from Moody's
19 corporate bond yield average averaged for that same 4-year period
20 or for a lesser period if the policy or contract was issued less
21 than 4 years before the ~~association became obligated~~ **MEMBER**
22 **INSURER BECOMES AN IMPAIRED INSURER OR AN INSOLVENT INSURER,**
23 **WHICHEVER OCCURS FIRST.**

24 (ii) On and after the date on which the ~~association becomes~~
25 ~~obligated with respect to the policy or contract~~ **MEMBER INSURER**
26 **BECOMES AN IMPAIRED INSURER OR AN INSOLVENT INSURER, WHICHEVER**
27 **OCCURS FIRST,** the rate of interest determined by subtracting 3

1 percentage points from Moody's corporate bond yield average as most
2 recently available.

3 (d) A **PORTION OF A PLAN OR CONTRACT ISSUED TO A** plan or
4 program of an employer, association, or ~~similar entity~~ **OTHER**
5 **PERSON** to provide life, health, or annuity benefits to its
6 employees, ~~or~~ members, **OR OTHERS** to the extent that the plan or
7 program is self-funded or uninsured, including, but not limited to,
8 benefits payable by an employer, association, or ~~similar entity~~
9 **OTHER PERSON** under any of the following:

10 (i) A multiple employer welfare arrangement as defined in
11 section 7001.

12 (ii) A minimum premium group insurance plan.

13 (iii) A stop-loss **OR EXCESS-LOSS** group insurance plan. **THIS**
14 **SUBPARAGRAPH DOES NOT APPLY TO THE INSURED PORTION OF A STOP-LOSS**
15 **OR EXCESS-LOSS GROUP INSURANCE PLAN WRITTEN PURSUANT TO SECTION**
16 **407A OR 5208 OR WRITTEN BY A MEMBER PROPERTY CASUALTY INSURER IF**
17 **THE PREMIUMS WERE IDENTIFIED AS DISABILITY INSURANCE PREMIUMS IN**
18 **ITS ANNUAL STATEMENT.**

19 (iv) An administrative services only contract.

20 (e) A portion of a policy or contract to the extent that it
21 provides dividends or experience rating credits, ~~or provides that~~
22 **VOTING RIGHTS, OR PAYMENT OF** any fees or allowances be paid to a
23 person, including the policy or contract ~~holder~~ **OWNER**, in
24 connection with the service to or administration of the policy or
25 contract.

26 (f) A policy or contract issued in this state by an insurer at
27 a time when it did not have a certificate of authority to issue the

1 policy or contract in this state.

2 (g) An unallocated annuity contract issued to ~~an employee~~ OR
3 **IN CONNECTION WITH A** benefit plan protected under the federal
4 pension benefit guaranty corporation **REGARDLESS OF WHETHER THE**
5 **FEDERAL PENSION BENEFIT GUARANTY CORPORATION HAS BECOME LIABLE TO**
6 **MAKE ANY PAYMENTS WITH RESPECT TO THE BENEFIT PLAN.**

7 (h) A portion of an unallocated annuity contract that is not
8 issued to or in connection with a specific employee, union, or
9 association of natural persons benefit plan or a government
10 lottery.

11 (i) ~~An amount that is not a contractual obligation including,~~
12 ~~but not limited to, an award of exemplary or punitive damages or~~
13 ~~statutory interest.~~ **AN OBLIGATION THAT DOES NOT ARISE UNDER THE**
14 **EXPRESS WRITTEN TERMS OF THE POLICY OR CONTRACT ISSUED BY THE**
15 **INSURER TO THE CONTRACT OWNER OR POLICY OWNER, INCLUDING, BUT NOT**
16 **LIMITED TO, ANY OF THE FOLLOWING:**

17 (i) A CLAIM BASED ON MARKETING MATERIALS.

18 (ii) A CLAIM BASED ON SIDE LETTERS, RIDERS, OR OTHER DOCUMENTS
19 THAT WERE ISSUED BY THE INSURER WITHOUT MEETING APPLICABLE POLICY
20 FORM FILING OR APPROVAL REQUIREMENTS.

21 (iii) A CLAIM BASED ON MISREPRESENTATIONS OF OR REGARDING POLICY
22 BENEFITS.

23 (iv) AN AWARD OF EXEMPLARY OR PUNITIVE DAMAGES OR STATUTORY
24 INTEREST AND CLAIMS RELATED TO BAD FAITH IN THE PAYMENT OF CLAIMS,
25 AND ATTORNEY FEES AND COSTS.

26 (v) A CLAIM FOR PENALTIES OR CONSEQUENTIAL OR INCIDENTAL
27 DAMAGES.

1 (J) A CONTRACTUAL AGREEMENT THAT ESTABLISHES THE MEMBER
2 INSURER'S OBLIGATIONS TO PROVIDE A BOOK VALUE ACCOUNTING GUARANTY
3 FOR DEFINED CONTRIBUTION BENEFIT PLAN PARTICIPANTS BY REFERENCE TO
4 A PORTFOLIO OF ASSETS THAT IS OWNED BY THE BENEFIT PLAN OR ITS
5 TRUSTEE, WHICH IN EACH CASE IS NOT AN AFFILIATE OF THE MEMBER
6 INSURER.

7 (K) A PORTION OF A POLICY OR CONTRACT TO THE EXTENT IT
8 PROVIDES FOR INTEREST OR OTHER CHANGES IN VALUE TO BE DETERMINED BY
9 THE USE OF AN INDEX OR OTHER EXTERNAL REFERENCE STATED IN THE
10 POLICY OR CONTRACT, BUT WHICH HAVE NOT BEEN CREDITED TO THE POLICY
11 OR CONTRACT, OR AS TO WHICH THE POLICY OR CONTRACT OWNER'S RIGHTS
12 ARE SUBJECT TO FORFEITURE, AS OF THE DATE THE MEMBER INSURER
13 BECOMES AN IMPAIRED INSURER OR AN INSOLVENT INSURER, WHICHEVER
14 OCCURS FIRST. IF A POLICY'S OR CONTRACT'S INTEREST OR CHANGES IN
15 VALUE ARE CREDITED LESS FREQUENTLY THAN ANNUALLY, THEN FOR PURPOSES
16 OF DETERMINING THE VALUES THAT HAVE BEEN CREDITED AND ARE NOT
17 SUBJECT TO FORFEITURE UNDER THIS SUBDIVISION, THE INTEREST OR
18 CHANGE IN VALUE DETERMINED BY USING THE PROCEDURES DEFINED IN THE
19 POLICY OR CONTRACT SHALL BE CREDITED AS IF THE CONTRACTUAL DATE OF
20 CREDITING INTEREST OR CHANGING VALUES WAS THE DATE OF IMPAIRMENT OR
21 INSOLVENCY, WHICHEVER IS EARLIER, AND IS NOT SUBJECT TO FORFEITURE.

22 (6) ~~—(4)—~~ The benefits ~~for which~~ **THAT** the association may
23 become ~~liable~~ **OBLIGATED TO COVER** shall not exceed the lesser of
24 the following:

25 (a) The contractual obligations for which the insurer is
26 liable or would have been liable if it were not an impaired **INSURER**
27 or **AN** insolvent insurer.

1 (b) With respect to ~~any~~ 1 life, regardless of the number of
2 policies or contracts:

3 (i) \$300,000.00 in life insurance death benefits, but not more
4 than \$100,000.00 in net cash surrender and net cash withdrawal
5 values for life insurance.

6 (ii) **EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPHS (iv) AND (v),**
7 \$100,000.00 in health insurance benefits, including any net cash
8 surrender and net cash withdrawal values.

9 (iii) \$100,000.00 in the present value of annuity benefits,
10 including net cash surrender and net cash withdrawal values;
11 **HOWEVER, FOR AN INDIVIDUAL QUALIFIED RETIREMENT ANNUITY,**
12 **\$250,000.00 IN THE PRESENT VALUE OF ANNUITY BENEFITS, INCLUDING NET**
13 **CASH SURRENDER AND NET CASH WITHDRAWAL VALUES. AS USED IN THIS**
14 **SUBPARAGRAPH, "INDIVIDUAL QUALIFIED RETIREMENT ANNUITY" MEANS AN**
15 **ANNUITY ISSUED TO AN INDIVIDUAL OR A CUSTODIAN ON BEHALF OF THE**
16 **INDIVIDUAL PURSUANT TO SECTION 408 OR 408A OF THE INTERNAL REVENUE**
17 **CODE OF 1986, 26 USC 408 AND 408A, OR AN ANNUITY CERTIFICATE ISSUED**
18 **TO AN INDIVIDUAL PURSUANT TO SECTION 403(B) OF THE INTERNAL REVENUE**
19 **CODE OF 1986, 26 USC 403(B).**

20 (iv) \$300,000.00 IN DISABILITY INCOME INSURANCE BENEFITS OR
21 LONG-TERM CARE BENEFITS.

22 (v) \$500,000.00 IN BASIC HOSPITAL, MEDICAL, AND SURGICAL
23 INSURANCE BENEFITS.

24 (c) With respect to each individual participating in a
25 governmental retirement **BENEFIT** plan established under section
26 401(k), 403(b), or 457 of the internal revenue code of 1986, 26
27 ~~U.S.C.~~ **USC** 401, 403, and 457, covered by an unallocated annuity

1 contract or the beneficiaries of each such individual, if deceased,
2 in the aggregate, \$100,000.00 in present value annuity benefits,
3 including net cash surrender and net cash withdrawal values.

4 ~~—— (d) With respect to any 1 contract holder covered by an~~
5 ~~unallocated annuity contract not included in subdivision (c),~~
6 ~~\$5,000,000.00 in benefits, irrespective of the number of contracts~~
7 ~~held by that contract holder.~~

8 ~~—— (5) The association is not liable to expend more than the~~
9 ~~\$300,000.00 in the aggregate with respect to any 1 individual under~~
10 ~~subsection (4) (b) and (c).~~

11 (D) WITH RESPECT TO EACH PAYEE OF A STRUCTURED SETTLEMENT
12 ANNUITY, OR THE BENEFICIARY OR BENEFICIARIES OF A DECEASED PAYEE,
13 \$100,000.00 IN PRESENT VALUE ANNUITY BENEFITS, IN THE AGGREGATE,
14 INCLUDING NET CASH SURRENDER AND NET CASH WITHDRAWAL VALUES, IF
15 ANY.

16 (E) FOR EITHER 1 CONTRACT OWNER PROVIDED COVERAGE UNDER
17 SUBSECTION (1) (C) (ii) OR 1 PLAN SPONSOR WHOSE PLANS OWN DIRECTLY OR
18 IN TRUST 1 OR MORE UNALLOCATED ANNUITY CONTRACTS NOT INCLUDED IN
19 SUBDIVISION (C), \$5,000,000.00 IN BENEFITS, IRRESPECTIVE OF THE
20 NUMBER OF CONTRACTS WITH RESPECT TO THE CONTRACT OWNER OR PLAN
21 SPONSOR. HOWEVER, IF 1 OR MORE UNALLOCATED ANNUITY CONTRACTS ARE
22 COVERED CONTRACTS UNDER THIS CHAPTER AND ARE OWNED BY A TRUST OR
23 OTHER ENTITY FOR THE BENEFIT OF 2 OR MORE PLAN SPONSORS, COVERAGE
24 SHALL BE AFFORDED BY THE ASSOCIATION IF THE LARGEST INTEREST IN THE
25 TRUST OR ENTITY OWNING THE CONTRACT OR CONTRACTS IS HELD BY A PLAN
26 SPONSOR WHOSE PRINCIPAL PLACE OF BUSINESS IS IN THIS STATE, BUT IN
27 NO EVENT IS THE ASSOCIATION OBLIGATED TO COVER MORE THAN

1 \$5,000,000.00 IN BENEFITS FOR ALL THOSE UNALLOCATED CONTRACTS.

2 (7) IN NO EVENT IS THE ASSOCIATION OBLIGATED TO COVER MORE
3 THAN THE FOLLOWING:

4 (A) AN AGGREGATE OF \$300,000.00 IN BENEFITS FOR ANY 1 LIFE
5 UNDER SUBSECTION (6) (B) (i), (ii), (iii), AND (iv), (C), AND (D).

6 (B) AN AGGREGATE OF \$500,000.00 IN BENEFITS FOR ANY 1 LIFE
7 UNDER SUBSECTION (6) (B) (v).

8 (C) FOR 1 OWNER OF MULTIPLE NONGROUP POLICIES OF LIFE
9 INSURANCE, WHETHER THE POLICY OWNER IS AN INDIVIDUAL, FIRM,
10 CORPORATION, OR OTHER PERSON, AND WHETHER THE PERSONS INSURED ARE
11 OFFICERS, MANAGERS, EMPLOYEES, OR OTHER PERSONS, \$5,000,000.00 IN
12 BENEFITS, REGARDLESS OF THE NUMBER OF POLICIES AND CONTRACTS HELD
13 BY THE OWNER.

14 (8) THE LIMITATIONS UNDER SUBSECTIONS (6) AND (7) ARE
15 LIMITATIONS ON THE BENEFITS FOR WHICH THE ASSOCIATION IS OBLIGATED
16 BEFORE TAKING INTO ACCOUNT EITHER ITS SUBROGATION AND ASSIGNMENT
17 RIGHTS OR THE EXTENT TO WHICH THOSE BENEFITS COULD BE PROVIDED OUT
18 OF THE ASSETS OF THE IMPAIRED INSURER OR INSOLVENT INSURER
19 ATTRIBUTABLE TO COVERED POLICIES. THE COSTS OF THE ASSOCIATION'S
20 OBLIGATIONS UNDER THIS ACT MAY BE SATISFIED BY THE USE OF ASSETS
21 ATTRIBUTABLE TO COVERED POLICIES OR REIMBURSED TO THE ASSOCIATION
22 PURSUANT TO ITS SUBROGATION AND ASSIGNMENT RIGHTS.

23 (9) IN PERFORMING ITS OBLIGATIONS TO PROVIDE COVERAGE UNDER
24 SECTION 7708, THE ASSOCIATION IS NOT REQUIRED TO GUARANTEE, ASSUME,
25 REINSURE, OR PERFORM, OR CAUSE TO BE GUARANTEED, ASSUMED,
26 REINSURED, OR PERFORMED, CONTRACTUAL OBLIGATIONS OF THE INSOLVENT
27 INSURER OR IMPAIRED INSURER UNDER A COVERED POLICY OR CONTRACT THAT

1 DO NOT MATERIALLY AFFECT THE ECONOMIC BENEFITS OF THE COVERED
2 POLICY OR CONTRACT.

3 Sec. 7705. As used in this chapter:

4 (a) "Account" means either of the 2 accounts created under
5 section 7706.

6 (b) "Association" means the Michigan life and health insurance
7 guaranty association created under section 7706.

8 (C) "AUTHORIZED ASSESSMENT" OR "AUTHORIZED" WHEN USED IN THE
9 CONTEXT OF ASSESSMENTS MEANS A RESOLUTION OR MOTION PASSED BY THE
10 ASSOCIATION'S BOARD OF DIRECTORS THAT DIRECTS THAT AN ASSESSMENT BE
11 CALLED IMMEDIATELY OR IN THE FUTURE FROM MEMBER INSURERS FOR A
12 SPECIFIC AMOUNT. AN ASSESSMENT IS AUTHORIZED WHEN THE RESOLUTION OR
13 MOTION IS PASSED.

14 (D) "BENEFIT PLAN" MEANS A SPECIFIC EMPLOYEE, UNION, OR
15 ASSOCIATION OF NATURAL PERSONS BENEFIT PLAN.

16 (E) "CALLED ASSESSMENT" OR "CALLED" WHEN USED IN THE CONTEXT
17 OF ASSESSMENTS MEANS THAT A NOTICE HAS BEEN ISSUED BY THE
18 ASSOCIATION TO MEMBER INSURERS REQUIRING THAT AN AUTHORIZED
19 ASSESSMENT BE PAID WITHIN THE TIME FRAME SET FORTH WITHIN THE
20 NOTICE. AN AUTHORIZED ASSESSMENT BECOMES A CALLED ASSESSMENT WHEN
21 NOTICE IS MAILED BY THE ASSOCIATION TO MEMBER INSURERS.

22 (F) ~~—(e)—~~ "Contractual obligation" means an obligation under
23 covered policies.

24 (G) ~~—(d)—~~ "Covered policy" means a policy or contract or
25 certificate under a group policy or contract, or portion thereof,
26 for which coverage is provided under section 7704.

27 (H) ~~—(e)—~~ "Health insurance" means disability insurance as

1 defined in section 606.

2 (I) ~~—(f)—~~ "Impaired insurer" means a member insurer considered
3 by the commissioner after May 1, 1982, to be potentially unable to
4 fulfill the insurer's contractual obligations or **THAT** is placed
5 under an order of rehabilitation or conservation by a court of
6 competent jurisdiction. Impaired insurer does not mean an insolvent
7 insurer.

8 (J) ~~—(g)—~~ "Insolvent insurer" means a member insurer ~~—which~~
9 **THAT** after May 1, 1982, becomes insolvent and is placed under an
10 order of liquidation, by a court of competent jurisdiction with a
11 finding of insolvency.

12 (K) ~~—(h)—~~ "Member insurer" means a person authorized to
13 transact a kind of insurance or annuity business in this state for
14 which coverage is provided under section 7704 and includes an
15 insurer whose certificate of authority in this state may have been
16 suspended, revoked, not renewed, or voluntarily withdrawn. Member
17 insurer does not include the following:

18 (i) A fraternal benefit society.

19 (ii) A cooperative plan insurer authorized under chapter 64.

20 (iii) A health maintenance organization authorized or licensed
21 under ~~part 210 of the public health code, Act No. 368 of the~~
22 ~~Public Acts of 1978, being sections 333.21001 to 333.21098 of the~~
23 ~~Michigan Compiled Laws—~~ **CHAPTER 35.**

24 (iv) A mandatory state pooling plan.

25 (v) A mutual assessment or any entity that operates on an
26 assessment basis.

27 (vi) A nonprofit dental care corporation operating under ~~Act~~

~~No. 125 of the Public Acts of 1963, being sections 550.351 to 550.373 of the Michigan Compiled Laws 1963 PA 125, MCL 550.351 TO 550.373.~~

(vii) A nonprofit health care corporation operating under the nonprofit health care corporation reform act, ~~Act No. 350 of the Public Acts of 1980, being sections 550.1101 to 550.1704 of the Michigan Compiled Laws 1980 PA 350, MCL 550.1101 TO 550.1704.~~

(viii) An insurance exchange.

(ix) AN ORGANIZATION THAT HAS A CERTIFICATE OR LICENSE LIMITED TO THE ISSUANCE OF CHARITABLE GIFT ANNUITIES.

(x) ~~(ix)~~ Any entity similar to the entities described in this subdivision.

(l) ~~(i)~~ "Moody's corporate bond yield average" means the monthly average corporates as published by Moody's investors service, inc., or a successor to that service.

(M) "OWNER" OF A CONTRACT OR POLICY AND "CONTRACT OWNER" AND "POLICY OWNER" MEAN THE PERSON WHO IS IDENTIFIED AS THE LEGAL OWNER UNDER THE TERMS OF THE CONTRACT OR POLICY OR WHO IS OTHERWISE VESTED WITH THE LEGAL TITLE TO THE CONTRACT OR POLICY THROUGH A VALID ASSIGNMENT COMPLETED IN ACCORDANCE WITH THE TERMS OF THE CONTRACT OR POLICY AND PROPERLY RECORDED AS THE OWNER ON THE BOOKS OF THE INSURER. THE TERMS OWNER, CONTRACT OWNER, AND POLICY OWNER DO NOT INCLUDE PERSONS WITH A MERE BENEFICIAL INTEREST IN A CONTRACT OR POLICY.

(N) ~~(j)~~ "Person" means an individual, corporation, partnership, association, or voluntary organization.

(O) "PLAN SPONSOR" MEANS THE FOLLOWING:

1 (i) FOR A BENEFIT PLAN ESTABLISHED OR MAINTAINED BY A SINGLE
2 EMPLOYER, THE SINGLE EMPLOYER.

3 (ii) FOR A BENEFIT PLAN ESTABLISHED OR MAINTAINED BY AN
4 EMPLOYEE ORGANIZATION, THE EMPLOYEE OR ORGANIZATION.

5 (iii) FOR A BENEFIT PLAN ESTABLISHED OR MAINTAINED BY 2 OR MORE
6 EMPLOYERS OR JOINTLY BY 1 OR MORE EMPLOYERS AND 1 OR MORE EMPLOYEE
7 ORGANIZATIONS, THE ASSOCIATION, COMMITTEE, JOINT BOARD OF TRUSTEES,
8 OR OTHER SIMILAR GROUP OF REPRESENTATIVES OF THE PARTIES WHO
9 ESTABLISH OR MAINTAIN THE BENEFIT PLAN.

10 (P) ~~—(k)—~~ "Premiums" means amounts ~~—received in a calendar~~
11 ~~year—~~ OR CONSIDERATIONS, BY WHATEVER NAME CALLED, RECEIVED on
12 covered policies or contracts less RETURNED premiums,
13 considerations, and deposits ~~—returned—~~ and less dividends and
14 experience credits. The term "premiums" does not include an amount
15 OR CONSIDERATION received for a policy or contract, or a portion of
16 a policy or contract for which coverage is not provided under
17 section 7704. However, accessible premiums shall not be reduced on
18 account of sections ~~—7704(3)(e)—~~ 7704(5)(C) relating to interest
19 limitations and ~~—7704(4)(b), (c), and (d)—~~ 7704(6)(B), (C), AND (E)
20 relating to limitations with respect to any 1 individual, any 1
21 participant, and any 1 contract holder. Premiums shall not include
22 ~~a premium in excess of \$5,000,000.00 on an unallocated annuity~~
23 ~~contract not issued under a governmental retirement plan~~
24 ~~established under section 401(k), 403(b), or 457 of the internal~~
25 ~~revenue code of 1986, 26 U.S.C. 401, 403, and 457.—~~ PREMIUMS IN
26 EXCESS OF THE FOLLOWING:

27 (i) \$5,000,000.00 ON AN UNALLOCATED ANNUITY CONTRACT NOT ISSUED

1 UNDER A GOVERNMENTAL RETIREMENT PLAN ESTABLISHED UNDER SECTION
2 401(K), 403(B), OR 457 OF THE INTERNAL REVENUE CODE OF 1986, 26 USC
3 401, 403, AND 457.

4 (ii) FOR MULTIPLE NONGROUP POLICIES OF LIFE INSURANCE OWNED BY
5 1 OWNER, WHETHER THE POLICYOWNER IS AN INDIVIDUAL, FIRM,
6 CORPORATION, OR OTHER PERSON, AND WHETHER THE PERSONS INSURED ARE
7 OFFICERS, MANAGERS, EMPLOYEES, OR OTHER PERSONS, \$5,000,000.00 WITH
8 RESPECT TO THESE POLICES OR CONTRACTS, REGARDLESS OF THE NUMBER OF
9 POLICIES OR CONTRACTS HELD BY THE OWNER.

10 (Q) "PRINCIPAL PLACE OF BUSINESS" OF A PLAN SPONSOR OR A
11 PERSON OTHER THAN A NATURAL PERSON MEANS THE STATE IN WHICH THE
12 NATURAL PERSONS WHO ESTABLISH POLICY FOR THE DIRECTION, CONTROL,
13 AND COORDINATION OF THE ENTITY AS A WHOLE PRIMARILY EXERCISE THAT
14 FUNCTION. IN MAKING THIS DETERMINATION, THE ASSOCIATION, IN ITS
15 REASONABLE JUDGMENT, SHALL CONSIDER ALL OF THE FOLLOWING FACTORS:

16 (i) THE STATE IN WHICH THE PRIMARY EXECUTIVE AND ADMINISTRATIVE
17 HEADQUARTERS OF THE ENTITY IS LOCATED.

18 (ii) THE STATE IN WHICH THE PRINCIPAL OFFICE OF THE CHIEF
19 EXECUTIVE OFFICER OF THE ENTITY IS LOCATED.

20 (iii) THE STATE IN WHICH THE BOARD OF DIRECTORS, OR THE ENTITY'S
21 SIMILAR GOVERNING PERSON OR PERSONS, CONDUCTS THE MAJORITY OF ITS
22 MEETINGS.

23 (iv) THE STATE IN WHICH THE EXECUTIVE OR MANAGEMENT COMMITTEE
24 OF THE BOARD OF DIRECTORS, OR THE ENTITY'S SIMILAR GOVERNING PERSON
25 OR PERSONS, CONDUCTS THE MAJORITY OF ITS MEETINGS.

26 (v) THE STATE FROM WHICH THE MANAGEMENT OF THE OVERALL
27 OPERATIONS OF THE ENTITY IS DIRECTED.

(vi) FOR A BENEFIT PLAN SPONSORED BY AFFILIATED COMPANIES COMPRISING A CONSOLIDATED CORPORATION, THE STATE IN WHICH THE HOLDING COMPANY OR CONTROLLING AFFILIATE HAS ITS PRINCIPAL PLACE OF BUSINESS AS DETERMINED USING SUBPARAGRAPHS (i) TO (v). HOWEVER, FOR A PLAN SPONSOR, IF MORE THAN 50% OF THE PARTICIPANTS IN THE BENEFIT PLAN ARE EMPLOYED IN A SINGLE STATE, THAT STATE IS THE PRINCIPAL PLACE OF BUSINESS OF THE PLAN SPONSOR.

(vii) FOR A PLAN SPONSOR OF A BENEFIT PLAN, THE PRINCIPAL PLACE OF BUSINESS OF THE ASSOCIATION, COMMITTEE, JOINT BOARD OF TRUSTEES, OR OTHER SIMILAR GROUP OF REPRESENTATIVES OF THE PARTIES WHO ESTABLISH OR MAINTAIN THE BENEFIT PLAN SHALL BE BASED UPON THE LOCATION OF THE PRINCIPAL PLACE OF BUSINESS OF THE EMPLOYER OR EMPLOYEE ORGANIZATION THAT HAS THE LARGEST INVESTMENT IN THE BENEFIT PLAN IN LIEU OF A SPECIFIC OR CLEAR DESIGNATION OF A PRINCIPAL PLACE OF BUSINESS.

(R) "RECEIVERSHIP COURT" MEANS THE COURT IN THE INSOLVENT INSURER'S OR IMPAIRED INSURER'S STATE HAVING JURISDICTION OVER THE CONSERVATION, REHABILITATION, OR LIQUIDATION OF THE INSURER.

(S) ~~—(I)—~~ "Resident" means a person who resides in this state at the time a member insurer is determined to be an impaired **INSURER** or insolvent insurer and to whom contractual obligations are owed. A person ~~shall~~ **MAY** be considered a resident of only 1 state, which in the case of a person other than a natural person, ~~shall be~~ **IS** its principal place of business. **CITIZENS OF THE UNITED STATES WHO ARE EITHER RESIDENTS OF FOREIGN COUNTRIES OR RESIDENTS OF THE UNITED STATES POSSESSIONS, TERRITORIES, OR PROTECTORATES THAT DO NOT HAVE AN ASSOCIATION SIMILAR TO THE**

1 ASSOCIATION CREATED BY THIS CHAPTER SHALL BE CONSIDERED RESIDENTS
 2 OF THIS STATE IF THE INSURER THAT ISSUED THE POLICIES OR CONTRACTS
 3 IS DOMICILED IN THIS STATE.

4 (T) "STATE" MEANS A STATE, THE DISTRICT OF COLUMBIA, PUERTO
 5 RICO, OR A UNITED STATES POSSESSION, TERRITORY, OR PROTECTORATE.

6 (U) "STRUCTURED SETTLEMENT ANNUITY" MEANS AN ANNUITY PURCHASED
 7 IN ORDER TO FUND PERIODIC PAYMENTS FOR A PLAINTIFF OR OTHER
 8 CLAIMANT IN PAYMENT FOR OR WITH RESPECT TO PERSONAL INJURY SUFFERED
 9 BY THE PLAINTIFF OR OTHER CLAIMANT.

10 (V) ~~—(m)—~~ "Supplemental contract" means ~~—an—~~ A WRITTEN
 11 agreement entered into for the distribution of PROCEEDS UNDER A
 12 LIFE, HEALTH, OR ANNUITY policy or contract. ~~—proceeds—~~

13 (W) ~~—(n)—~~ "Unallocated annuity contract" means an annuity
 14 contract or group annuity certificate that is not issued to and
 15 owned by an individual, except to the extent of an annuity benefit
 16 guaranteed to an individual by an insurer under the contract or
 17 certificate. The term shall also include, but **IS** not ~~—be—~~ limited
 18 to, guaranteed investment contracts ~~—,~~ **AND** deposit administration
 19 contracts. ~~—, and contracts qualified under section 403(b) of the~~
 20 ~~internal revenue code of 1986, 26 U.S.C. 403—~~

21 Sec. 7706. (1) There is created a nonprofit legal entity to be
 22 known as the Michigan life and health insurance guaranty
 23 association. A member insurer shall be and remain a member of the
 24 association as a condition of authority to transact insurance in
 25 this state. The association shall perform its functions under the
 26 plan of operation established and approved under section 7710 and
 27 shall exercise its powers through a board of directors established

1 under section 7707. For purposes of administration and assessment
2 the association shall maintain the following 2 accounts:

3 (a) The health insurance account.

4 (b) The life insurance and annuity account which includes the
5 following subaccounts:

6 (i) A life insurance subaccount.

7 (ii) An annuity subaccount, **WHICH SHALL INCLUDE UNALLOCATED**
8 **ANNUITY CONTRACTS OWNED BY A GOVERNMENTAL RETIREMENT PLAN, OR ITS**
9 **TRUSTEE, ESTABLISHED UNDER SECTION 401, 403(B), OR 457 OF THE**
10 **INTERNAL REVENUE CODE OF 1986, 26 USC 401, 403, AND 457, BUT SHALL**
11 **NOT INCLUDE OTHER UNALLOCATED ANNUITIES.**

12 (iii) An unallocated annuity subaccount, **WHICH SHALL NOT INCLUDE**
13 **UNALLOCATED ANNUITY CONTRACTS OWNED BY A GOVERNMENTAL RETIREMENT**
14 **BENEFIT PLAN, OR ITS TRUSTEE, ESTABLISHED UNDER SECTION 401,**
15 **403(B), OR 457 OF THE INTERNAL REVENUE CODE OF 1986, 26 USC 401,**
16 **403, AND 457.**

17 (2) The association is under the immediate supervision of the
18 commissioner and is subject to the applicable provisions of the
19 insurance laws of this state. Meetings or records of the
20 association may be open to the public upon majority vote of the
21 board of directors of the association.

22 Sec. 7707. (1) The board of directors of the association shall
23 consist of not less than 5 nor more than 9 member insurers and 2
24 persons representing the general public serving terms as
25 established in the plan of operation. The 2 members of the board
26 representing the general public shall be appointed by the
27 commissioner, **SHALL NOT BE ENGAGED IN THE BUSINESS OF INSURANCE,**

1 **AND SHALL NOT BE OFFICERS, DIRECTORS, OR EMPLOYEES OF AN INSURANCE**
2 **COMPANY.** The remaining members of the board shall be elected by
3 member insurers subject to the approval of the commissioner. A
4 vacancy on the board for a member representing the general public
5 shall be filled for the remaining period of the term by appointment
6 by the commissioner. A vacancy on the board for a member
7 representing member insurers shall be filled for the remaining
8 period of the term by a majority vote of the remaining board
9 members, subject to the approval of the commissioner. To elect the
10 initial board of directors, and initially organize the association,
11 the commissioner shall give notice to all member insurers of the
12 time and place of the organizational meeting. In determining voting
13 rights at the organizational meeting each member insurer shall be
14 entitled to 1 vote in person or by proxy.

15 (2) In approving an election or in appointing a member to the
16 board, the commissioner shall consider, among other things, whether
17 all member insurers are fairly represented.

18 (3) A member of the board may be reimbursed from the assets of
19 the association for expenses incurred by the member as a member of
20 the board of directors but a member of the board shall not
21 otherwise be compensated by the association for his or her
22 services.

23 Sec. 7708. (1) In addition to the powers and duties enumerated
24 in other sections of this chapter, the association has the powers
25 and duties provided in this section.

26 (2) If a member insurer is an impaired ~~domestic~~ insurer, the
27 association, subject to conditions imposed by the association that

1 do not impair the contractual obligations of the impaired insurer,
 2 and **THAT ARE** approved by the commissioner, ~~and, except for cases~~
 3 ~~of court ordered conservation or rehabilitation, also approved by~~
 4 ~~the impaired insurer,~~ may do **ANY OF** the following:

5 (a) Guarantee, assume, or reinsure, or cause to be guaranteed,
 6 assumed, or reinsured, any or all of the covered policies of the
 7 impaired insurer.

8 (b) Provide money, pledges, notes, guarantees, or other means
 9 as are proper to effectuate subdivision (a), and to assure payment
 10 of the contractual obligations of the impaired insurer pending
 11 action under subdivision (a).

12 (c) Loan money to the impaired insurer.

13 (3) Subject to the conditions specified in subsection (4), if
 14 a member insurer is an impaired insurer, whether domestic, foreign,
 15 or alien, and the insurer is not paying claims timely, the
 16 association shall do either of the following:

17 (a) Take any of the actions specified in subsection (2).

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

25 (4) The association ~~shall be~~ **IS** subject to ~~the requirements~~
 26 ~~of~~ subsection (3) only if the following are met:

27 (a) The laws of the impaired insurer's state of domicile

1 provide that until all payments of or on account of the impaired
2 insurer's contractual obligations by all guaranty associations,
3 along with all expenses thereof and interest on all such payments
4 and expenses, have been repaid to the guaranty associations or a
5 plan of repayment by the impaired insurer shall have been approved
6 by the guaranty associations:

7 (i) The delinquency proceeding shall not be dismissed.

8 (ii) Neither the impaired insurer nor its assets shall be
9 returned to the control of its shareholders or private management.

10 (iii) It shall not be permitted to solicit or accept new
11 business or have any suspended or revoked license restored.

12 (b) If the impaired insurer is a domestic insurer, it has been
13 placed under an order of rehabilitation by a court of competent
14 jurisdiction in this state.

15 (c) If the impaired insurer is a foreign or alien insurer, any
16 of the following has occurred:

17 (i) It has been prohibited from soliciting or accepting new
18 business in this state.

19 (ii) Its certificate of authority has been suspended or
20 revoked in this state.

21 (iii) A petition for rehabilitation or liquidation has been
22 filed in a court of competent jurisdiction in its state of domicile
23 by the commissioner of that state.

24 (5) If a member insurer is an insolvent insurer, the
25 association shall do either of the following:

26 (a) Guarantee, assume, or reinsure, or cause to be guaranteed,
27 assumed, or reinsured, the covered policies of the insolvent

insurer or assure payment of the contractual obligations of the insolvent insurer; and provide money, pledges, notes, guarantees, or other means as are reasonably necessary to effectuate this subdivision.

(b) ~~With respect to life and health insurance policies,~~
~~provide~~ **PROVIDE** benefits and coverage pursuant to subsection (6).

(6) If proceeding under subsection (3)(b) or (5)(b), ~~with respect to only life and health insurance policies~~ all of the following apply:

(a) The association shall assure payment of benefits for premiums identical to the premiums and benefits, except for terms of conversion and renewability, that would have been payable under the policies **OR CONTRACTS** of the insolvent insurer, for claims incurred as follows:

(i) ~~With respect to a~~ **FOR** group ~~policy~~ **POLICIES OR CONTRACTS**, not later than the earlier of the next renewal date under the policy or contract or 45 days, but not less than 30 days, after the date on which the association becomes obligated with respect to the ~~policy~~ **POLICIES AND CONTRACTS**.

(ii) With respect to ~~an individual policy~~ **NONGROUP POLICIES, CONTRACTS, AND ANNUITIES**, not later than the earlier of the next renewal date, if any, under the ~~policy~~ **POLICIES OR CONTRACTS** or 1 year, but not less than 30 days, from the date on which the association becomes obligated with respect to the ~~policy~~ **POLICIES OR CONTRACTS**.

(b) The association shall make diligent efforts to provide all known insureds **OR ANNUITANTS OF NONGROUP CONTRACTS**, or group

1 policyholders ~~with respect to~~ **OF** group policies **AND CONTRACTS**, 30
2 days' notice of the termination of the benefits provided **PURSUANT**
3 **TO SUBDIVISION (A)** .

4 (c) The association shall make available substitute coverage
5 on an individual basis in accordance with the provisions of
6 subdivision (d), to each known insured ~~under an individual policy~~
7 **OR AN ANNUITANT UNDER NONGROUP LIFE AND HEALTH INSURANCE POLICIES**
8 **AND ANNUITIES COVERED BY THE ASSOCIATION**, or owner if other than
9 the insured **OR ANNUITANT**, and to each individual formerly insured
10 **OR FORMERLY AN ANNUITANT** under a group policy who is not eligible
11 for replacement group coverage, if the insured **OR ANNUITANT** had a
12 right under law or the terminated policy **OR ANNUITY** to convert
13 coverage to individual coverage or to continue an individual policy
14 **OR ANNUITY** in force until a specified age or for a specified time,
15 during which the insurer had no right unilaterally to make changes
16 in any provision of the policy **OR ANNUITY** or had a right only to
17 make changes in premium by class.

18 (d) In providing the substitute coverage required under
19 subdivision (c), all of the following apply:

20 (i) The association may offer either to reissue the terminated
21 coverage or to issue an alternative policy.

22 (ii) Alternative or reissued policies shall be offered without
23 requiring evidence of insurability, and shall not provide for any
24 waiting period or exclusion that would not have applied under the
25 terminated policy.

26 (iii) The association may reinsure an alternative or reissued
27 policy.

1 (e) An alternative policy adopted by the association shall be
2 subject to the approval of the commissioner. The association may
3 adopt an alternative policy for future issuance without regard to
4 any particular impairment or insolvency. An alternative policy
5 shall contain at least the minimum statutory provisions required in
6 this state and provide benefits that shall not be unreasonable in
7 relation to the premium charged. The association shall set the
8 premium in accordance with a table of rates which it shall adopt.
9 The premium shall reflect the amount of insurance to be provided
10 and the age and class of risk of each insured, but shall not
11 reflect any changes in the health of the insured after the original
12 policy was last underwritten. An alternative policy issued by the
13 association shall provide coverage of a type similar to that of the
14 policy issued by the impaired or insolvent insurer, as determined
15 by the association.

16 (f) If the association elects to reissue terminated coverage
17 at a premium rate different from that charged under the terminated
18 policy, the premium shall be set by the association in accordance
19 with the amount of insurance provided and the age and class of
20 risk, subject to approval of the commissioner or by a court of
21 competent jurisdiction.

22 (g) The association's obligations with respect to coverage
23 under a policy of the impaired or insolvent insurer or under a
24 reissued or alternative policy shall cease on the date the coverage
25 or policy is replaced by another similar policy by the
26 policyholder, the insured, or the association.

27 (7) If proceeding under subsection (3)(b) or (5) ~~—, with~~

1 ~~respect to~~ **FOR** a policy or contract carrying guaranteed minimum
 2 interest rates, the association shall assure the payment or
 3 crediting of a rate of interest consistent with section ~~7704(3)(e)~~
 4 **7704(5)(C)** .

5 (8) Nonpayment of premiums within 31 days after the date
 6 required under the terms of a guaranteed, assumed, alternative, or
 7 reissued policy or contract or substitute coverage ~~shall terminate~~
 8 **TERMINATES** the association's obligations under the policy or
 9 coverage under this chapter with respect to the policy or coverage,
 10 except ~~with respect to~~ **FOR** a claim incurred or any net cash
 11 surrender value which may be due in accordance with the provisions
 12 of this chapter.

13 (9) Premiums due for coverage after entry of an order of
 14 liquidation of an insolvent insurer ~~shall~~ belong to and ~~be~~ **ARE**
 15 payable at the direction of the association, and the association
 16 ~~shall be~~ **IS** liable for unearned premiums due to policy or contract
 17 owners arising after the entry of the order.

18 (10) The protection provided by this chapter ~~shall~~ **DOES** not
 19 apply if guaranty protection is also provided to residents of this
 20 state by the laws of the domiciliary state of the impaired **INSURER**
 21 or insolvent insurer.

22 (11) In carrying out its duties under this section, the
 23 association, subject to approval by ~~the~~ **A court IN THIS STATE**,
 24 may do the following:

25 (a) Impose permanent policy or contract liens in connection
 26 with a guarantee, assumption, or reinsurance agreement, if the
 27 association finds that the amounts ~~which~~ **THAT** can be assessed

1 under this chapter are less than the amounts needed to assure full
2 and prompt performance of the association's duties under this
3 chapter or that the economic or financial conditions as they affect
4 member insurers are sufficiently adverse to render the imposition
5 of the permanent policy or contract liens to be in the public
6 interest.

7 (b) Impose temporary moratoriums or liens on payments of cash
8 values and policy loans, or any other right to withdraw funds held
9 in conjunction with policies or contracts, in addition to any
10 contractual provisions for deferral of cash or policy loan value.

11 IN ADDITION, IF THE RECEIVERSHIP COURT IMPOSES A TEMPORARY
12 MORATORIUM OR MORATORIUM CHARGE ON PAYMENT OF CASH VALUES OR POLICY
13 LOANS, OR ON ANY OTHER RIGHT TO WITHDRAW FUNDS HELD IN CONJUNCTION
14 WITH POLICIES OR CONTRACTS, OUT OF THE ASSETS OF THE IMPAIRED
15 INSURER OR INSOLVENT INSURER, THE ASSOCIATION MAY DEFER THE PAYMENT
16 OF THE CASH VALUES, POLICY LOANS, OR OTHER RIGHTS BY THE
17 ASSOCIATION FOR THE PERIOD OF THE MORATORIUM OR MORATORIUM CHARGE
18 IMPOSED BY THE RECEIVERSHIP COURT, BUT NOT FOR CLAIMS COVERED BY
19 THE ASSOCIATION THAT ARE TO BE PAID IN ACCORDANCE WITH A HARDSHIP
20 PROCEDURE ESTABLISHED BY THE LIQUIDATOR OR REHABILITATOR AND
21 APPROVED BY THE RECEIVERSHIP COURT.

22 (12) A DEPOSIT IN THIS STATE, HELD PURSUANT TO LAW OR REQUIRED
23 BY THE COMMISSIONER FOR THE BENEFIT OF CREDITORS, INCLUDING POLICY
24 OWNERS, NOT TURNED OVER TO THE DOMICILIARY LIQUIDATOR UPON THE
25 ENTRY OF A FINAL ORDER OF LIQUIDATION OR ORDER APPROVING A
26 REHABILITATION PLAN OF AN INSURER DOMICILED IN THIS STATE OR IN A
27 RECIPROCAL STATE, PURSUANT TO SECTION 8153, SHALL BE PROMPTLY

1 TRANSFERRED TO THE ASSOCIATION IN ACCORDANCE WITH SECTION 8141A.
 2 THE ASSOCIATION MAY APPLY A PORTION OF ANY AMOUNT SO PAID TO IT
 3 EQUAL TO THE PERCENTAGE DETERMINED BY DIVIDING THE AGGREGATE AMOUNT
 4 OF ALL POLICY OWNERS' CLAIMS RELATED TO THAT INSOLVENCY FOR WHICH
 5 THE ASSOCIATION HAS PROVIDED OR WILL PROVIDE STATUTORY BENEFITS BY
 6 THE AGGREGATE AMOUNT OF ALL POLICY OWNERS' CLAIMS IN THIS STATE
 7 RELATED TO THAT INSOLVENCY WITH THE REMAINDER USED TO PAY CLAIMS
 8 PURSUANT TO SECTION 8141A(1)(A) TO (E). ANY AMOUNT REMAINING AFTER
 9 THE PAYMENT OF CLAIMS UNDER SECTION 8141A(1)(A) TO (E) SHALL BE
 10 TRANSFERRED TO THE DOMICILIARY RECEIVER.

11 (13) ~~—(12)—~~ If the association fails to act as provided in
 12 subsections ~~—(3)(b),—~~ (3) AND (5) ~~—, and (6)—~~ within a reasonable
 13 period of time, the commissioner shall have the powers and duties
 14 of the association under this chapter with respect to impaired
 15 **INSURERS** or insolvent insurers.

16 (14) ~~—(13)—~~ The association may render assistance and advice
 17 to the commissioner, upon his or her request, concerning
 18 rehabilitation, payment of claims, continuance of coverage, or the
 19 performance of other contractual obligations of an impaired **INSURER**
 20 or insolvent insurer.

21 (15) ~~—(14)—~~ The association ~~—shall have—~~ **HAS** standing to
 22 appear **OR INTERVENE** before a court **OR AGENCY** in this state with
 23 jurisdiction over an impaired **INSURER** or insolvent insurer
 24 concerning which the association is or may become obligated under
 25 this chapter **OR WITH JURISDICTION OVER ANY PERSON OR PROPERTY THAT**
 26 **THE ASSOCIATION MAY HAVE RIGHTS TO THROUGH SUBROGATION OR**
 27 **OTHERWISE.** The standing shall extend to all matters germane to the

1 powers and duties of the association, including, but not limited
2 to, proposals for reinsuring, modifying, or guaranteeing the
3 covered policies **OR CONTRACTS** of the impaired **INSURER** or insolvent
4 insurer and the determination of the covered policies and
5 contractual obligations. The association may also appear or
6 intervene before a court in another state with jurisdiction over an
7 impaired **INSURER** or insolvent insurer for which the association is
8 or may become obligated or with jurisdiction over a third party
9 against whom the association may have rights through subrogation of
10 the insurer's policyholders.

11 (16) ~~—(15)—~~ A person receiving benefits under this chapter
12 shall be considered to have assigned the rights under, and any
13 causes of action **AGAINST ANY PERSON FOR LOSSES ARISING UNDER,**
14 **RESULTING FROM, OR OTHERWISE** relating to, the covered policy **OR**
15 **CONTRACT** to the association to the extent of the benefits received
16 because of this chapter whether the benefits are payments of or on
17 account of contractual obligations, continuation of coverage, or
18 provision of substitute or alternative coverages. The association
19 may require an assignment to the association of such rights and
20 causes of action by a payee, policy or contract owner, beneficiary,
21 insured, or annuitant as a condition precedent to the receipt of
22 rights or benefits conferred by this chapter upon that person. The
23 association shall be subrogated to these rights against the assets
24 of an impaired **INSURER** or insolvent insurer. The subrogation rights
25 of the association under this subsection ~~—shall have—~~ **HAS** the same
26 priority against the assets of the impaired **INSURER** or insolvent
27 insurer as that possessed by the person entitled to receive

1 benefits under this chapter. In addition, the association ~~shall~~
2 ~~have~~ **HAS** all common law rights of subrogation and any other
3 equitable or legal remedy ~~which~~ **THAT** would have been available to
4 the impaired **INSURER** or insolvent insurer or ~~holder~~ **OWNER,**
5 **BENEFICIARY, OR PAYEE** of a policy or contract with respect to the
6 policy or contract, **INCLUDING WITHOUT LIMITATION FOR A STRUCTURED**
7 **SETTLEMENT ANNUITY, ANY RIGHT OF THE OWNER, BENEFICIARY, OR PAYEE**
8 **OF THE ANNUITY, TO THE EXTENT OF BENEFITS RECEIVED PURSUANT TO THIS**
9 **CHAPTER, AGAINST A PERSON ORIGINALLY OR BY SUCCESSION RESPONSIBLE**
10 **FOR THE LOSSES ARISING FROM THE PERSONAL INJURY RELATING TO THE**
11 **ANNUITY OR PAYMENT OF THE ANNUITY.**

12 (17) IF SUBSECTION (16) IS INVALID OR INEFFECTIVE FOR ANY
13 PERSON OR CLAIM FOR ANY REASON, THE AMOUNT PAYABLE BY THE
14 ASSOCIATION FOR THE RELATED COVERED OBLIGATIONS SHALL BE REDUCED BY
15 THE AMOUNT REALIZED BY ANY OTHER PERSON WITH RESPECT TO THE PERSON
16 OR CLAIM THAT IS ATTRIBUTABLE TO THE POLICIES, OR PORTIONS THEREOF,
17 COVERED BY THE ASSOCIATION.

18 (18) IF THE ASSOCIATION HAS PROVIDED BENEFITS FOR A COVERED
19 OBLIGATION AND A PERSON RECOVERS AN AMOUNT THAT THE ASSOCIATION HAS
20 RIGHTS TO AS DESCRIBED IN SUBSECTION (16), THE PERSON SHALL PAY TO
21 THE ASSOCIATION THE PORTION OF THE RECOVERY ATTRIBUTABLE TO THE
22 POLICIES, OR PORTION THEREOF, COVERED BY THE ASSOCIATION.

23 (19) ~~—(16)—The~~ IN ADDITION TO OTHER RIGHTS AND POWERS UNDER
24 THIS CHAPTER, THE association may do the following:

25 (a) Enter into contracts ~~which are~~ necessary or proper to
26 carry out the provisions and purposes of this chapter.

27 (b) Sue or be sued, including taking legal actions necessary

1 or proper for recovery of unpaid assessments levied under section
2 7709 and to settle claims or potential claims against it.

3 (c) Borrow money to effect the purposes of this chapter. Notes
4 or other evidence of indebtedness of the association not in default
5 shall be legal investments for domestic insurers and may be carried
6 as admitted assets.

7 (d) Employ or retain the people necessary to handle the
8 financial transactions of the association and to perform other
9 functions ~~which~~ **THAT** become necessary or proper under this
10 chapter.

11 (e) Negotiate and contract with a liquidator, rehabilitator,
12 conservator, or ancillary receiver to carry out the powers and
13 duties of the association.

14 (f) Take legal action ~~which is~~ necessary to avoid **OR RECOVER**
15 payment of improper claims.

16 (g) Exercise, for the purposes of this chapter and to the
17 extent approved by the commissioner, the powers of a domestic life
18 or health insurer, but in no case may the association issue
19 insurance policies or annuity contracts other than those issued to
20 perform its obligations under this chapter.

21 (h) Join an organization of 1 or more other state associations
22 of similar purposes, to further the purposes and administer the
23 powers and duties of the association.

24 **(I) REQUEST INFORMATION FROM A PERSON SEEKING COVERAGE FROM**
25 **THE ASSOCIATION IN ORDER TO AID THE ASSOCIATION IN DETERMINING ITS**
26 **OBLIGATIONS UNDER THIS CHAPTER TO THE PERSON, AND THE PERSON SHALL**
27 **PROMPTLY COMPLY WITH THE REQUEST.**

1 (J) TAKE OTHER NECESSARY OR APPROPRIATE ACTION TO DISCHARGE
2 ITS DUTIES AND OBLIGATIONS AND TO EXERCISE ITS POWERS UNDER THIS
3 CHAPTER.

4 (20) AT ANY TIME WITHIN 1 YEAR AFTER THE COVERAGE DATE, THE
5 ASSOCIATION MAY ELECT TO SUCCEED TO THE RIGHTS AND OBLIGATIONS OF
6 THE MEMBER INSURER, THAT ACCRUE ON OR AFTER THE COVERAGE DATE AND
7 THAT RELATE TO CONTRACTS, IN WHOLE OR IN PART, BY THE ASSOCIATION,
8 UNDER ANY 1 OR MORE INDEMNITY REINSURANCE AGREEMENTS ENTERED INTO
9 BY THE MEMBER INSURER AS A CEDING INSURER AND SELECTED BY THE
10 ASSOCIATION; PROVIDED, HOWEVER, THAT THE ASSOCIATION SHALL NOT
11 EXERCISE THIS ELECTION FOR A REINSURANCE AGREEMENT IF THE RECEIVER,
12 REHABILITATOR, OR LIQUIDATOR OF THE MEMBER INSURER HAS PREVIOUSLY
13 AND EXPRESSLY DISAFFIRMED THE REINSURANCE AGREEMENT ON WHICH THE
14 ASSOCIATION BECOMES RESPONSIBLE FOR THE OBLIGATIONS OF A MEMBER
15 INSURER. THE ASSOCIATION SHALL MAKE AN ELECTION UNDER THIS
16 SUBSECTION BY PROVIDING A NOTICE TO THE RECEIVER, REHABILITATOR, OR
17 LIQUIDATOR AND TO THE AFFECTED REINSURER. IF THE ASSOCIATION MAKES
18 AN ELECTION, ALL OF THE FOLLOWING APPLY WITH RESPECT TO THE
19 AGREEMENTS SELECTED BY THE ASSOCIATION:

20 (A) THE ASSOCIATION IS RESPONSIBLE FOR ALL UNPAID PREMIUMS DUE
21 UNDER THE AGREEMENTS FOR PERIODS BOTH BEFORE AND AFTER THE COVERAGE
22 DATE, AND FOR THE PERFORMANCE OF ALL OTHER OBLIGATIONS TO BE
23 PERFORMED AFTER THE COVERAGE DATE, FOR CONTRACTS COVERED, IN WHOLE
24 OR IN PART, BY THE ASSOCIATION. THE ASSOCIATION MAY CHARGE
25 CONTRACTS COVERED IN PART BY THE ASSOCIATION, THROUGH REASONABLE
26 ALLOCATION METHODS, THE COST FOR REINSURANCE IN EXCESS OF THE
27 OBLIGATIONS OF THE ASSOCIATION.

1 (B) THE ASSOCIATION IS ENTITLED TO ANY AMOUNTS PAYABLE BY THE
2 REINSURER UNDER THE AGREEMENTS FOR LOSSES OR EVENTS THAT OCCUR IN
3 PERIODS AFTER THE COVERAGE DATE AND THAT RELATE TO CONTRACTS
4 COVERED BY THE ASSOCIATION, IN WHOLE OR IN PART, PROVIDED THAT THE
5 ASSOCIATION IS OBLIGATED UPON RECEIPT OF THIS AMOUNT TO PAY TO THE
6 BENEFICIARY UNDER THE POLICY OR CONTRACT ON ACCOUNT OF WHICH THEY
7 WERE PAID THE AMOUNT RECEIVED BY THE ASSOCIATION THAT IS IN EXCESS
8 OF THE BENEFITS PAID BY THE ASSOCIATION ON ACCOUNT OF THE POLICY OR
9 CONTRACT LESS THE RETENTION OF THE IMPAIRED MEMBER INSURER OR
10 INSOLVENT MEMBER INSURER APPLICABLE TO THE LOSS OR EVENT.

11 (C) WITHIN 30 DAYS FOLLOWING THE ASSOCIATION'S ELECTION, THE
12 ASSOCIATION AND EACH INDEMNITY REINSURER SHALL CALCULATE THE NET
13 BALANCE DUE TO OR FROM THE ASSOCIATION UNDER EACH SUCH REINSURANCE
14 AGREEMENT AS OF THE DATE OF THE ASSOCIATION'S ELECTION, WHICH
15 CALCULATION SHALL GIVE FULL CREDIT TO ALL ITEMS PAID BY EITHER THE
16 MEMBER INSURER OR ITS RECEIVER, REHABILITATOR, OR LIQUIDATOR OR THE
17 INDEMNITY REINSURER DURING THE PERIOD BETWEEN THE COVERAGE DATE AND
18 THE DATE OF THE ASSOCIATION'S ELECTION. EITHER THE ASSOCIATION OR
19 THE INDEMNITY REINSURER SHALL PAY THE NET BALANCE DUE THE OTHER
20 WITHIN 5 DAYS OF THE COMPLETION OF THIS CALCULATION. IF THE
21 RECEIVER, REHABILITATOR, OR LIQUIDATOR HAS RECEIVED ANY AMOUNTS DUE
22 THE ASSOCIATION PURSUANT TO SUBDIVISION (B), THE RECEIVER,
23 REHABILITATOR, OR LIQUIDATOR SHALL REMIT THIS AMOUNT TO THE
24 ASSOCIATION AS PROMPTLY AS PRACTICABLE.

25 (D) IF, WITHIN 60 DAYS OF THE ELECTION, THE ASSOCIATION PAYS
26 THE PREMIUMS DUE FOR PERIODS BOTH BEFORE AND AFTER THE COVERAGE
27 DATE THAT RELATE TO CONTRACTS COVERED BY THE ASSOCIATION, IN WHOLE

1 OR IN PART, THE REINSURER SHALL NOT TERMINATE THE REINSURANCE
2 AGREEMENTS INsofar AS THE AGREEMENTS RELATE TO CONTRACTS COVERED BY
3 THE ASSOCIATION IN WHOLE OR IN PART AND SHALL NOT SET OFF ANY
4 UNPAID PREMIUMS DUE FOR PERIODS PRIOR TO THE COVERAGE DATE AGAINST
5 AMOUNTS DUE THE ASSOCIATION.

6 (E) AS USED IN THIS SUBSECTION, "COVERAGE DATE" MEANS THE DATE
7 ON WHICH THE ASSOCIATION BECOMES RESPONSIBLE FOR THE OBLIGATIONS OF
8 THE MEMBER INSURER.

9 (21) IF THE ASSOCIATION TRANSFERS ITS OBLIGATIONS TO ANOTHER
10 INSURER, AND IF THE ASSOCIATION AND THE OTHER INSURER AGREE, THE
11 OTHER INSURER SHALL SUCCEED TO THE RIGHTS AND OBLIGATIONS OF THE
12 ASSOCIATION UNDER SUBSECTION (20) EFFECTIVE ON THE DATE AGREED TO
13 BY THE ASSOCIATION AND THE OTHER INSURER AND REGARDLESS OF WHETHER
14 THE ASSOCIATION HAS MADE THE ELECTION REFERRED TO IN SUBSECTION
15 (20). IF THIS OCCURS, THE INDEMNITY REINSURANCE AGREEMENT
16 AUTOMATICALLY TERMINATES FOR NEW REINSURANCE UNLESS THE INDEMNITY
17 REINSURER AND OTHER INSURER AGREE TO THE CONTRARY AND THE
18 OBLIGATIONS DESCRIBED IN SUBSECTION (20) (B) NO LONGER APPLY ON AND
19 AFTER THE DATE THE INDEMNITY REINSURANCE AGREEMENT IS TRANSFERRED
20 TO THE THIRD PARTY INSURER. THIS SUBSECTION DOES NOT APPLY IF THE
21 ASSOCIATION HAS PREVIOUSLY EXPRESSLY DETERMINED IN WRITING THAT IT
22 WILL NOT EXERCISE THE ELECTION REFERRED TO IN SUBSECTION (20).

23 (22) SUBSECTIONS (20) AND (21) SHALL BE APPLIED CONSISTENTLY
24 WITH SECTION 8132 AND SHALL SUPERSEDE THE PROVISIONS OF ANY
25 AFFECTED REINSURANCE AGREEMENT THAT PROVIDES FOR OR REQUIRES ANY
26 PAYMENT OF REINSURANCE PROCEEDS, ON ACCOUNT OF LOSSES OR EVENTS
27 THAT OCCUR IN PERIODS AFTER THE COVERAGE DATE, TO THE RECEIVER,

1 LIQUIDATOR, OR REHABILITATOR OR THE INSOLVENT MEMBER INSURER. THE
2 RECEIVER, REHABILITATOR, OR LIQUIDATOR REMAIN ENTITLED TO ANY
3 AMOUNTS PAYABLE BY THE REINSURER UNDER THE REINSURANCE AGREEMENT
4 WITH RESPECT TO LOSSES OR EVENTS THAT OCCUR IN PERIODS PRIOR TO THE
5 COVERAGE DATE, SUBJECT TO APPLICABLE SETOFF PROVISIONS.

6 (23) EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN SUBSECTIONS
7 (20) TO (22), THIS SECTION DOES NOT DO ANY OF THE FOLLOWING:

8 (A) ALTER OR MODIFY THE TERMS AND CONDITIONS OF THE INDEMNITY
9 REINSURANCE AGREEMENTS OF THE INSOLVENT MEMBER INSURER.

10 (B) ABROGATE OR LIMIT ANY RIGHTS OF ANY REINSURER TO CLAIM
11 THAT IT IS ENTITLED TO RESCIND A REINSURANCE AGREEMENT.

12 (C) GIVE A POLICY OWNER OR BENEFICIARY AN INDEPENDENT CAUSE OF
13 ACTION AGAINST AN INDEMNITY REINSURER THAT IS NOT OTHERWISE SET
14 FORTH IN THE INDEMNITY REINSURANCE AGREEMENT.

15 (24) THE BOARD OF DIRECTORS OF THE ASSOCIATION, IN THE
16 EXERCISE OF REASONABLE BUSINESS JUDGMENT, MAY DETERMINE THE MEANS
17 BY WHICH THE ASSOCIATION IS TO PROVIDE THE BENEFITS OF THIS CHAPTER
18 IN AN ECONOMICAL AND EFFICIENT MANNER.

19 (25) IF THE ASSOCIATION HAS ARRANGED OR OFFERED TO PROVIDE THE
20 BENEFITS OF THIS CHAPTER TO A COVERED PERSON UNDER A PLAN OR
21 ARRANGEMENT THAT FULFILLS THE ASSOCIATION'S OBLIGATIONS UNDER THIS
22 CHAPTER, THE PERSON IS NOT ENTITLED TO BENEFITS FROM THE
23 ASSOCIATION IN ADDITION TO, OR OTHER THAN THOSE PROVIDED UNDER, THE
24 PLAN OR ARRANGEMENT.

25 (26) VENUE IN A SUIT AGAINST THE ASSOCIATION ARISING UNDER
26 THIS CHAPTER SHALL BE IN INGHAM COUNTY. THE ASSOCIATION SHALL NOT
27 BE REQUIRED TO GIVE AN APPEAL BOND IN AN APPEAL THAT RELATES TO A

1 CAUSE OF ACTION ARISING UNDER THIS CHAPTER.

2 (27) IN CARRYING OUT ITS DUTIES IN CONNECTION WITH
3 GUARANTEEING, ASSUMING, OR REINSURING POLICIES OR CONTRACTS UNDER
4 SUBSECTION (3) OR (5), THE ASSOCIATION MAY, SUBJECT TO THE
5 COMMISSIONER'S OR THE RECEIVERSHIP COURT'S APPROVAL, ISSUE
6 SUBSTITUTE COVERAGE FOR A POLICY OR CONTRACT THAT PROVIDES AN
7 INTEREST RATE, CREDITING RATE, OR SIMILAR FACTOR DETERMINED BY USE
8 OF AN INDEX OR OTHER EXTERNAL REFERENCE STATED IN THE POLICY OR
9 CONTRACT EMPLOYED IN CALCULATING RETURNS OR CHANGES IN VALUE, BY
10 ISSUING AN ALTERNATIVE POLICY OR CONTRACT IN ACCORDANCE WITH THE
11 FOLLOWING PROVISIONS:

12 (A) INSTEAD OF THE INDEX OR OTHER EXTERNAL REFERENCE PROVIDED
13 FOR IN THE ORIGINAL POLICY OR CONTRACT, THE ALTERNATIVE POLICY OR
14 CONTRACT PROVIDES FOR A FIXED INTEREST RATE, PAYMENT OF DIVIDENDS
15 WITH MINIMUM GUARANTEES, OR A DIFFERENT METHOD FOR CALCULATING
16 INTEREST OR CHANGES IN VALUE.

17 (B) THERE IS NO REQUIREMENT FOR EVIDENCE OF INSURABILITY,
18 WAITING PERIOD, OR OTHER EXCLUSION THAT WOULD NOT HAVE APPLIED
19 UNDER THE REPLACED POLICY OR CONTRACT.

20 (C) THE ALTERNATIVE POLICY OR CONTRACT IS SUBSTANTIALLY
21 SIMILAR TO THE REPLACED POLICY OR CONTRACT IN ALL OTHER MATERIAL
22 TERMS.

23 Sec. 7709. (1) Except as otherwise provided in this section,
24 for the purpose of providing the funds necessary to carry out the
25 powers and duties of the association, the board of directors shall
26 assess the member insurers, separately for each account, at such
27 time and for such amounts as the board finds necessary. Assessments

1 shall be due not less than 30 days after written notice to the
2 member insurers and shall accrue interest at 12% per annum on and
3 after the due date.

4 (2) There shall be 2 classes of assessments, as follows:

5 (a) Class A assessments shall be ~~made~~ **AUTHORIZED AND CALLED**
6 for the purpose of meeting administrative and legal costs ~~—, AND~~
7 other general expenses ~~—, and the expenses of examinations~~
8 ~~conducted under section 7712(5) —~~ **AND MAY BE AUTHORIZED AND CALLED**
9 **WHETHER OR NOT THE ASSESSMENT RELATES TO A PARTICULAR IMPAIRED**
10 **INSURER OR INSOLVENT INSURER.**

11 (b) Class B assessments shall be ~~made~~ **AUTHORIZED AND CALLED**
12 to the extent necessary to carry out the powers and duties of the
13 association under section 7708 ~~with regard to~~ **FOR** an impaired
14 **INSURER** or insolvent insurer.

15 (3) The amount of a class A assessment shall be determined by
16 the board and may be ~~made~~ **AUTHORIZED AND CALLED** on a pro rata or
17 ~~non-pro~~ **NONPRO** rata basis. If pro rata, the board may provide that
18 it be credited against future class B assessments. ~~A— THE TOTAL OF~~
19 **ALL** ~~non-pro~~ **NONPRO** rata ~~assessment~~ **ASSESSMENTS** shall not exceed
20 \$150.00 per member insurer in 1 calendar year.

21 (4) The amount of a class B assessment shall be allocated for
22 assessment purposes among the accounts pursuant to an allocation
23 formula ~~which~~ **THAT** may be based on the premiums or reserves of
24 the impaired **INSURER** or insolvent insurer or any other standard
25 considered by the board in its sole discretion as being fair and
26 reasonable under the circumstances.

27 (5) A class B assessment against member insurers for each

1 account and subaccount shall be in the proportion that the premiums
2 received on business in this state by each assessed member insurer
3 on policies **OR CONTRACTS** covered by each account for the 3 most
4 recent calendar years for which information is available preceding
5 the year in which the insurer became impaired or insolvent bears to
6 such premiums received on business in this state for those 3 most
7 recent calendar years by all assessed member insurers.

8 (6) An assessment for funds to meet the requirements of the
9 association with respect to an impaired **INSURER** or insolvent
10 insurer shall not be ~~made~~ **AUTHORIZED OR CALLED** until necessary to
11 implement the purposes of this chapter. Classification of
12 assessments under subsection (2) and computation of assessments
13 under this section shall be made with a reasonable degree of
14 accuracy, recognizing that exact determinations may not always be
15 possible. **THE ASSOCIATION SHALL NOTIFY EACH MEMBER INSURER OF ITS**
16 **ANTICIPATED PRO RATA SHARE OF AN AUTHORIZED ASSESSMENT NOT YET**
17 **CALLED WITHIN 180 DAYS AFTER THE ASSESSMENT IS AUTHORIZED.**

18 (7) The association may abate or defer, in whole or in part,
19 the assessment of a member insurer if, in the opinion of the board,
20 payment of the assessment would endanger the ability of the member
21 insurer to fulfill that insurer's contractual obligations. ~~In the~~
22 ~~event~~ **IF** an assessment against a member insurer is abated or
23 deferred, in whole or in part, the amount by which ~~such~~ **THE**
24 assessment is abated or deferred may be assessed against the other
25 member insurers in a manner consistent with the basis for
26 assessments set forth in this section. **ONCE THE CONDITIONS THAT**
27 **CAUSED A DEFERRAL HAVE BEEN REMOVED OR RECTIFIED, THE MEMBER**

1 INSURER SHALL PAY ALL ASSESSMENTS THAT WERE DEFERRED PURSUANT TO A
2 REPAYMENT PLAN APPROVED BY THE ASSOCIATION.

3 (8) The total of all assessments ~~upon~~ AUTHORIZED BY THE
4 ASSOCIATION FOR a member insurer for each ~~account or~~ subaccount
5 OF THE LIFE INSURANCE AND ANNUITY ACCOUNT AND FOR THE HEALTH
6 ACCOUNT shall not in 1 calendar year exceed 2% of that MEMBER
7 insurer's average ANNUAL premiums received in this state ~~during~~
8 ~~the calendar years for which information is available preceding the~~
9 ~~assessment on the policies covered by the account on the policies~~
10 and contracts covered by the account OR SUBACCOUNT during the 3
11 calendar years preceding the year in which the insurer became an
12 impaired INSURER or insolvent insurer, ~~— If the maximum assessment~~
13 ~~for any account, together with the other assets of the association~~
14 ~~in that account, does not provide in 1 calendar year in that~~
15 ~~account an amount sufficient to carry out the responsibilities of~~
16 ~~the association, the necessary additional funds shall be assessed~~
17 ~~as soon thereafter as permitted by this chapter.~~ SUBJECT TO THE
18 FOLLOWING:

19 (A) IF 2 OR MORE ASSESSMENTS ARE AUTHORIZED IN 1 CALENDAR YEAR
20 FOR INSURERS THAT BECOME IMPAIRED INSURERS OR INSOLVENT INSURERS IN
21 DIFFERENT CALENDAR YEARS, THE AVERAGE ANNUAL PREMIUMS FOR PURPOSES
22 OF THE AGGREGATE ASSESSMENT PERCENTAGE LIMITATION UNDER THIS
23 SUBSECTION ARE EQUAL AND LIMITED TO THE HIGHER OF THE 3-YEAR
24 AVERAGE ANNUAL PREMIUMS FOR THE APPLICABLE SUBACCOUNT OR ACCOUNT AS
25 CALCULATED PURSUANT TO THIS SECTION.

26 (B) IF THE MAXIMUM ASSESSMENT, TOGETHER WITH THE OTHER ASSETS
27 OF THE ASSOCIATION IN AN ACCOUNT, DOES NOT PROVIDE IN 1 YEAR, IN

1 EITHER ACCOUNT, AN AMOUNT SUFFICIENT TO CARRY OUT THE
2 RESPONSIBILITIES OF THE ASSOCIATION, THE NECESSARY ADDITIONAL FUNDS
3 SHALL BE ASSESSED AS SOON THEREAFTER AS PERMITTED BY THIS CHAPTER.

4 (9) The board may provide in the plan of operation a method of
5 allocating funds among claims, whether relating to 1 or more
6 impaired **INSURERS** or insolvent insurers, when the maximum
7 assessment will be insufficient to cover anticipated claims.

8 (10) If the maximum assessment ~~under subsection (1) in 2~~
9 ~~successive years for any subaccount in the life and annuity account~~
10 ~~does not provide an amount sufficient to carry out the~~
11 ~~responsibilities of the association, then pursuant to subsection~~
12 ~~(5), the board shall allocate the necessary additional amount among~~
13 ~~the other subaccounts, in the following sequence: from the life~~
14 ~~insurance subaccount to the annuity subaccount to the unallocated~~
15 ~~annuity subaccount; from the annuity subaccount to the unallocated~~
16 ~~annuity subaccount to the life insurance subaccount; from the~~
17 ~~unallocated annuity subaccount to the annuity subaccount to the~~
18 ~~life insurance subaccount; however no amount shall be allocated to~~
19 ~~a subaccount for assessment until the maximum amount has been~~
20 ~~allocated to the preceding subaccount~~ **FOR A SUBACCOUNT OF THE LIFE**
21 **INSURANCE AND ANNUITY ACCOUNT IN ANY 1 YEAR DOES NOT PROVIDE AN**
22 **AMOUNT SUFFICIENT TO CARRY OUT THE RESPONSIBILITIES OF THE**
23 **ASSOCIATION, THEN, PURSUANT TO SUBSECTION (5), THE BOARD SHALL**
24 **ACCESS THE OTHER SUBACCOUNTS OF THE LIFE INSURANCE AND ANNUITY**
25 **ACCOUNT FOR THE NECESSARY ADDITIONAL AMOUNT, SUBJECT TO THE MAXIMUM**
26 **STATED IN SUBSECTION (8).**

27 (11) The board may refund to member insurers, by an equitable

1 method as established in the plan of operation and in proportion to
2 the contribution of each insurer to that account, the amount by
3 which the assets of the account exceed the amount the board finds
4 is necessary to carry out ~~during the coming year the~~ **FUTURE**
5 obligations of the association with regard to that account,
6 including assets accruing from net realized gains and income from
7 investments. A reasonable amount may be retained in an account to
8 provide funds for the continuing expenses of the association and
9 for future ~~losses~~ **CLAIMS. INSTEAD OF A CLASS A ASSESSMENT, THE**
10 **BOARD MAY TRANSFER ON AN EQUITABLE PRO RATA BASIS EXCESS AMOUNTS**
11 **FROM CLASS B ACCOUNTS TO THE CLASS A ACCOUNT.**

12 (12) In determining premium rates and policy owner dividends
13 as to any kind of insurance within the scope of this chapter, a
14 member insurer may consider the amount reasonably necessary to meet
15 assessment obligations under this chapter.

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

25 (14) **A MEMBER INSURER THAT WISHES TO PROTEST ALL OR PART OF AN**
26 **ASSESSMENT SHALL PAY WHEN DUE THE FULL AMOUNT OF THE ASSESSMENT AS**
27 **STATED IN THE NOTICE PROVIDED BY THE ASSOCIATION. THE PAYMENT SHALL**

1 BE AVAILABLE TO MEET ASSOCIATION OBLIGATIONS DURING THE PENDENCY OF
2 THE PROTEST OR ANY SUBSEQUENT APPEAL. PAYMENT SHALL BE ACCOMPANIED
3 BY A STATEMENT IN WRITING THAT THE PAYMENT IS MADE UNDER PROTEST
4 AND SETTING FORTH A BRIEF STATEMENT OF THE GROUNDS FOR THE PROTEST.
5 WITHIN 60 DAYS FOLLOWING THE PAYMENT OF AN ASSESSMENT UNDER PROTEST
6 BY A MEMBER INSURER, THE ASSOCIATION SHALL NOTIFY THE MEMBER
7 INSURER IN WRITING OF ITS DETERMINATION WITH RESPECT TO THE PROTEST
8 UNLESS THE ASSOCIATION NOTIFIES THE MEMBER INSURER THAT ADDITIONAL
9 TIME IS REQUIRED TO RESOLVE THE ISSUES RAISED BY THE PROTEST.

10 WITHIN 30 DAYS AFTER A FINAL DECISION HAS BEEN MADE, THE
11 ASSOCIATION SHALL NOTIFY THE PROTESTING MEMBER INSURER IN WRITING
12 OF THAT FINAL DECISION. WITHIN 60 DAYS OF RECEIPT OF NOTICE OF THE
13 FINAL DECISION, THE PROTESTING MEMBER INSURER MAY APPEAL THAT FINAL
14 ACTION TO THE COMMISSIONER. INSTEAD OF RENDERING A FINAL DECISION
15 ON A PROTEST BASED ON A QUESTION REGARDING THE ASSESSMENT BASE, THE
16 ASSOCIATION MAY REFER PROTESTS TO THE COMMISSIONER FOR A FINAL
17 DECISION, WITH OR WITHOUT A RECOMMENDATION FROM THE ASSOCIATION. IF
18 THE PROTEST OR APPEAL IS RESOLVED IN THE MEMBER INSURER'S FAVOR,
19 THE AMOUNT PAID IN ERROR OR EXCESS SHALL BE RETURNED TO THE MEMBER
20 INSURER. INTEREST ON A REFUND DUE A PROTESTING MEMBER INSURER SHALL
21 BE PAID AT THE RATE ACTUALLY EARNED BY THE ASSOCIATION.

22 (15) THE ASSOCIATION MAY REQUEST INFORMATION OF MEMBER
23 INSURERS IN ORDER TO AID IN THE EXERCISE OF ITS POWER UNDER THIS
24 SECTION, AND MEMBER INSURERS SHALL PROMPTLY COMPLY WITH THIS
25 REQUEST.

26 Sec. 7711. (1) In addition to the duties enumerated elsewhere
27 in this chapter, the commissioner shall:

1 (a) Upon request of the board of directors, provide the
 2 association with a statement of the premiums in the appropriate
 3 states for each member insurer.

4 (b) When an impairment is declared and the amount of the
 5 impairment is determined, serve a demand upon the impaired insurer
 6 to make good the impairment within a reasonable time. Notice to the
 7 impaired insurer ~~shall constitute~~ **CONSTITUTES** notice to that
 8 insurer's shareholders, if any. The failure of the insurer to
 9 promptly comply with the demand ~~shall~~ **DOES** not excuse the
 10 association from the performance of the association's powers and
 11 duties under this chapter.

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

14 (2) In addition to the powers enumerated elsewhere in this
 15 chapter, the commissioner may suspend or revoke, after notice and
 16 hearing, the certificate of authority to transact insurance in this
 17 state of a member insurer ~~which~~ **THAT** fails to pay an assessment
 18 when due or fails to comply with the plan of operation. As an
 19 alternative the commissioner may levy a forfeiture on a member
 20 insurer ~~which~~ **THAT** fails to pay an assessment when due. The
 21 forfeiture shall not exceed 5% of the unpaid assessment per month,
 22 but forfeiture shall not be less than \$100.00 per month.

23 (3) ~~An~~ **A FINAL** action by the board of directors or the
 24 association may be appealed to the commissioner by a member insurer
 25 if the appeal is taken within 60 days **OF ITS RECEIPT OF NOTICE** of
 26 the final action being appealed. ~~If a member company is appealing~~
 27 ~~an assessment, the amount assessed shall be paid to the association~~

1 ~~and available to meet association obligations during the pendency~~
2 ~~of an appeal. If the appeal on the assessment is upheld, the amount~~
3 ~~paid in error or excess shall be returned to the member company. A~~
4 final action or order of the commissioner ~~shall be~~ **IS** subject to
5 judicial review in a court of competent jurisdiction **IN ACCORDANCE**
6 **WITH THIS STATE'S LAWS APPLYING TO ACTIONS OR ORDERS OF THE**
7 **COMMISSIONER.**

8 (4) The liquidator, rehabilitator, or conservator of an
9 impaired insurer may notify all interested persons of the effect of
10 this chapter.

11 Sec. 7712. (1) To aid in the detection and prevention of
12 insurer insolvencies or impairments, the commissioner shall do the
13 following:

14 (a) Notify the commissioners of all the other states,
15 territories of the United States, and the District of Columbia when
16 he or she takes any of the following actions against a member
17 insurer:

18 (i) Revokes a certificate of authority.

19 (ii) Suspends a certificate of authority.

20 (iii) Makes a formal order that the company restricts its
21 premium writing, obtains additional contributions to surplus,
22 withdraws from the state, reinsures all or a part of its business,
23 or increases capital, surplus, or any other account for the
24 security of policyholders or creditors.

25 (b) Mail the notice under subdivision (a) to all commissioners
26 within 30 days following the action taken.

27 (c) Report to the board of directors when he or she has taken

1 any of the actions set forth in subdivision (a) or has received a
2 report from any other commissioner indicating that such action has
3 been taken in another state. The report to the board of directors
4 shall contain all significant details of the action taken or the
5 report received from another commissioner.

6 (d) Report to the board of directors when the commissioner has
7 reasonable cause to believe from an examination, whether completed
8 or in process, of a member ~~company~~ **INSURER** that the ~~company~~
9 **INSURER** may be an impaired **INSURER** or insolvent insurer.

10 (e) Furnish to the board of directors the NAIC insurance
11 regulatory information system (IRIS) ratios and listings of
12 companies not included in the ratios developed by the national
13 association of insurance commissioners. The board may use that
14 information in carrying out its duties and responsibilities under
15 this section.

16 (f) The report and the information furnished pursuant to this
17 subsection shall be kept confidential by the board of directors
18 until made public by the commissioner or other lawful authority.

19 (2) The commissioner may seek the advice and recommendations
20 of the board of directors concerning a matter affecting his or her
21 duties and responsibilities regarding the financial condition of a
22 member company seeking to transact insurance business in this
23 state.

24 (3) The board of directors, upon majority vote, may make
25 reports and recommendations to the commissioner upon a matter
26 germane to the solvency, liquidation, rehabilitation, or
27 conservation of a member insurer or germane to the solvency of a

1 company seeking to transact insurance business in this state. The
2 reports and recommendations shall not be considered public
3 documents.

4 (4) The board of directors, upon majority vote, ~~shall~~ **MAY**
5 notify the commissioner of information indicating that a member
6 insurer may be an impaired **INSURER** or insolvent insurer.

7 (5) The board of directors, upon majority vote, may request
8 that the commissioner order an examination of a member insurer
9 ~~which~~ **THAT** the board in good faith believes may be an impaired
10 **INSURER** or insolvent insurer. Within 30 days after the receipt of
11 the request, the commissioner shall begin the examination. The
12 examination may be conducted as a national association of insurance
13 commissioners examination or may be conducted by a person whom the
14 commissioner designates. The cost of the examination shall be paid
15 by the association, and the examination report shall be treated in
16 the same manner as other examination reports. An examination report
17 shall not be released to the board of directors before release to
18 the public, but this ~~shall~~ **DOES** not preclude the commissioner
19 from complying with subsection (1). The commissioner shall notify
20 the board of directors when the examination is completed. The
21 request for an examination shall be kept on file by the
22 commissioner but shall not be open to public inspection before
23 release of the examination report to the public.

24 (6) The board of directors, upon majority vote, may make
25 recommendations to the commissioner for the detection and
26 prevention of insurer insolvencies.

27 (7) At the conclusion of an insurer insolvency in which the

1 association was obligated to pay covered claims, the board of
2 directors shall prepare a report to the commissioner containing
3 information in the board's possession bearing on the history and
4 causes of the insolvency. The board shall cooperate with the boards
5 of directors of guaranty associations in other states in preparing
6 a report on the history and causes for insolvency of a particular
7 insurer and may adopt by reference a report prepared by such other
8 associations.

9 Sec. 7714. (1) This chapter shall not be construed to reduce
10 the liability for unpaid assessments of the insureds on an impaired
11 **INSURER** or insolvent insurer operating under a plan with assessment
12 liability.

13 (2) Records shall be kept of all ~~negotiations and meetings in~~
14 ~~which the association or the association's representatives are~~
15 ~~involved~~ **MEETINGS OF THE BOARD OF DIRECTORS** to discuss the
16 activities of the association in carrying out powers and duties
17 under section 7708. ~~Records of such negotiations or meetings shall~~
18 ~~be made public only upon~~ **ASSOCIATION RECORDS CONCERNING AN**
19 **IMPAIRED INSURER OR AN INSOLVENT INSURER SHALL NOT BE DISCLOSED**
20 **BEFORE** the termination of a liquidation, rehabilitation, or
21 conservation proceeding involving an impaired **INSURER** or insolvent
22 insurer, ~~upon~~ **OR BEFORE** the termination of the impairment or
23 insolvency of the insurer, or upon the order of a court of
24 competent jurisdiction. This subsection ~~shall~~ **DOES** not limit the
25 duty of the association to render a report of association
26 activities under section 7715.

27 (3) For the purpose of carrying out obligations under this

chapter, the association shall be considered a creditor of the impaired **INSURER** or insolvent insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled as subrogee pursuant to section ~~7708(15)~~ **7708(16)**. Assets of the impaired **INSURER** or insolvent insurer attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the impaired **INSURER** or insolvent insurer as required by this chapter. As used in this subsection, "assets attributable to covered policies" means that proportion of the assets which the reserves that should have been established for the covered policies bear to the reserves that should have been established for all policies of insurance written by the impaired **INSURER** or insolvent insurer.

(4) AS A CREDITOR OF AN IMPAIRED INSURER OR INSOLVENT INSURER AS PROVIDED IN SUBSECTION (3) AND CONSISTENT WITH CHAPTER 81, THE ASSOCIATION AND OTHER SIMILAR ASSOCIATIONS ARE ENTITLED TO RECEIVE A DISBURSEMENT OF ASSETS OUT OF THE MARSHALED ASSETS, FROM TIME TO TIME AS THE ASSETS BECOME AVAILABLE TO REIMBURSE IT, AS A CREDIT AGAINST CONTRACTUAL OBLIGATIONS UNDER THIS ACT. IF THE LIQUIDATOR HAS NOT, WITHIN 120 DAYS OF A FINAL DETERMINATION OF INSOLVENCY OF AN INSURER BY THE RECEIVERSHIP COURT, MADE AN APPLICATION TO THE COURT FOR THE APPROVAL OF A PROPOSAL TO DISBURSE ASSETS OUT OF MARSHALED ASSETS TO GUARANTY ASSOCIATIONS HAVING OBLIGATIONS BECAUSE OF THE INSOLVENCY, THEN THE ASSOCIATION MAY MAKE APPLICATION TO THE RECEIVERSHIP COURT FOR APPROVAL OF ITS OWN PROPOSAL TO DISBURSE ASSETS.

Sec. 7717. There ~~shall be~~ **IS** no liability on the part of and

1 a cause of action ~~shall~~ **DOES** not arise against a member insurer
2 or an insurer's agents or employees, the association or the
3 association's agents or employees, members of the board of
4 directors, or the commissioner or his or her representatives for
5 any action or omission by them in the performance of powers and
6 duties under this ~~chapter~~ **ACT**. This immunity shall extend to the
7 participation in an organization of 1 or more other state
8 associations of similar purposes and to the organization and its
9 agents or employees.

10 Enacting section 1. (1) Sections 7702, 7704, 7705, 7706, 7707,
11 7708, 7709, 7711, 7712, 7714, and 7717 of the insurance code of
12 1956, 1956 PA 218, MCL 500.7702, 500.7704, 500.7705, 500.7706,
13 500.7707, 500.7708, 500.7709, 500.7711, 500.7712, 500.7714, and
14 500.7717, as amended by this amendatory act, apply to an insurer
15 impairment or insurer insolvency proceeding commenced on or after
16 the effective date of this amendatory act for which guaranty
17 association coverage obligations are incurred.

18 (2) Section 838a of the insurance code of 1956, 1956 PA 218,
19 MCL 500.838a, as added by this amendatory act, applies on and after
20 January 1, 2007.