

## CHAPTER 34

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**INSURANCE**

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**SENATE BILL 13-032**

BY SENATOR(S) Jahn, Tochtrop;

also REPRESENTATIVE(S) Williams, Exum, Fields, Ginal, Hullinghorst, Melton, Pettersen, Schafer, Young.

**AN ACT****CONCERNING THE LIFE AND HEALTH INSURANCE PROTECTION ASSOCIATION.***Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** In Colorado Revised Statutes, 10-20-103, **amend** (6), (9), (11), (12), (13), and (14); **add** (2.5), (3.5), (6.5), (6.7), (12.5), (12.7), and (13.3) as follows:

**10-20-103. Definitions.** As used in this article, unless the context otherwise requires:

(2.5) "AUTHORIZED ASSESSMENT" OR "AUTHORIZED" WHEN USED IN THE CONTEXT OF ASSESSMENTS MEANS A RESOLUTION PASSED BY THE BOARD IN WHICH AN ASSESSMENT WILL BE CALLED IMMEDIATELY OR IN THE FUTURE FROM MEMBER INSURERS FOR A SPECIFIED AMOUNT. AN ASSESSMENT IS AUTHORIZED WHEN THE RESOLUTION PERTAINING TO THE ASSESSMENT IS PASSED.

(3.5) "CALLED ASSESSMENT" OR "CALLED" WHEN USED IN THE CONTEXT OF ASSESSMENTS MEANS THAT A NOTICE HAS BEEN ISSUED BY THE ASSOCIATION TO MEMBER INSURERS REQUIRING THAT AN AUTHORIZED ASSESSMENT BE PAID BY THE DATE SET IN THE NOTICE. AN AUTHORIZED ASSESSMENT BECOMES A CALLED ASSESSMENT WHEN NOTICE IS MAILED BY THE ASSOCIATION TO MEMBER INSURERS.

(6) "Covered policy" means ~~any~~ A policy or contract, ~~within the scope of this article~~ OR A PORTION OF A POLICY OR CONTRACT, FOR WHICH COVERAGE IS PROVIDED UNDER SECTION 10-20-104.

(6.5) "EXTRACTIONAL CLAIMS" INCLUDES CLAIMS RELATING TO BAD FAITH IN THE PAYMENT OF CLAIMS, CLAIMS FOR PUNITIVE OR EXEMPLARY DAMAGES, AND

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

## CLAIMS FOR ATTORNEY FEES AND COSTS.

(6.7) "IMPAIRED INSURER" MEANS A MEMBER INSURER THAT IS NOT AN INSOLVENT INSURER AND IS PLACED UNDER AN ORDER OF REHABILITATION OR CONSERVATION BY A COURT OF COMPETENT JURISDICTION.

(9) "Moody's CORPORATE BOND YIELD average" means ~~Moody's corporate bond yield average~~ THE monthly average corporates as published by Moody's Investors Service, Inc., or any successor thereto.

(11) "Person" means any individual, corporation, LIMITED LIABILITY COMPANY, partnership, association, or voluntary organization.

(12) "Premiums" means amounts OF MONEY OR OTHER CONSIDERATION, HOWEVER DESIGNATED, received on covered policies or contracts less returned premiums, returned ~~considerations~~ CONSIDERATION, and returned deposits, and less dividends and experience credits thereon. "Premiums" does not include any amounts OF MONEY OR OTHER CONSIDERATION received for any policies or contracts or for the portions of any policies or contracts for which coverage is not provided under section 10-20-104 (2); except that assessable premiums shall not be reduced on account of section 10-20-104 (2) (b) (III) relating to interest limitations and section 10-20-104 (3) (b) relating to limitations with respect to any one life. "PREMIUMS" DOES NOT INCLUDE:

(a) PREMIUMS ON AN UNALLOCATED ANNUITY CONTRACT; OR

(b) PREMIUMS IN EXCESS OF FIVE MILLION DOLLARS WITH RESPECT TO MULTIPLE NONGROUP POLICIES OF LIFE INSURANCE OWNED BY ONE OWNER, REGARDLESS OF:

(I) WHETHER THE POLICY OWNER IS AN INDIVIDUAL, FIRM, CORPORATION, OR OTHER PERSON;

(II) WHETHER THE PERSONS INSURED ARE OFFICERS, MANAGERS, EMPLOYEES, OR OTHER PERSONS; OR

(III) THE NUMBER OF POLICIES OR CONTRACTS HELD BY THE OWNER.

(12.5) (a) "PRINCIPAL PLACE OF BUSINESS" OF A PERSON OTHER THAN AN INDIVIDUAL MEANS THE SINGLE STATE IN WHICH THE INDIVIDUALS WHO ESTABLISH POLICY FOR THE DIRECTION, CONTROL, AND COORDINATION OF THE OPERATION OF THE ENTITY AS A WHOLE PRIMARILY EXERCISE THAT FUNCTION, AS DETERMINED BY THE ASSOCIATION IN ITS REASONABLE JUDGMENT BY CONSIDERING THE FOLLOWING FACTORS:

(I) THE STATE IN WHICH THE PRIMARY EXECUTIVE AND ADMINISTRATIVE HEADQUARTERS OF THE ENTITY IS LOCATED;

(II) THE STATE IN WHICH THE PRINCIPAL OFFICE OF THE CHIEF EXECUTIVE OFFICER OF THE ENTITY IS LOCATED;

(III) THE STATE IN WHICH THE BOARD OF DIRECTORS OR SIMILAR GOVERNING

PERSON OR PERSONS OF THE ENTITY CONDUCTS THE MAJORITY OF ITS MEETINGS;

(IV) THE STATE IN WHICH THE EXECUTIVE OR MANAGEMENT COMMITTEE OF THE BOARD OF DIRECTORS OR SIMILAR GOVERNING PERSON OR PERSONS OF THE ENTITY CONDUCTS THE MAJORITY OF ITS MEETINGS; AND

(V) THE STATE FROM WHICH THE OVERALL OPERATION OF THE ENTITY IS DIRECTED.

(b) IN THE CASE OF PLAN SPONSORS, IF MORE THAN FIFTY PERCENT OF THE PARTICIPANTS IN THE BENEFIT PLAN ARE EMPLOYED IN A SINGLE STATE, THAT STATE IS THE PRINCIPAL PLACE OF BUSINESS FOR THE PLAN SPONSOR.

(c) THE PRINCIPAL PLACE OF BUSINESS OF A PLAN SPONSOR OF A BENEFIT PLAN IS THE PRINCIPAL PLACE OF BUSINESS OF THE ASSOCIATION, COMMITTEE, JOINT BOARD OF TRUSTEES, OR SIMILAR GROUP OF REPRESENTATIVES OF THE PARTIES WHO ESTABLISH OR MAINTAIN THE BENEFIT PLAN THAT, IN LIEU OF A SPECIFIC OR CLEAR DESIGNATION OF A PRINCIPAL PLACE OF BUSINESS, IS THE PRINCIPAL PLACE OF BUSINESS OF THE EMPLOYER OR EMPLOYEE ORGANIZATION THAT HAS THE LARGEST INVESTMENT IN THE BENEFIT PLAN.

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

(13) "Resident" means any person to whom a contractual obligation is owed and who resides in this state on the date of entry of a COURT ORDER THAT DETERMINES A MEMBER INSURER TO BE AN IMPAIRED INSURER OR a court order that determines a member insurer to be an insolvent insurer. A person may be a resident of only one state, which in the case of a person other than a natural person shall be its principal place of business. Citizens of the United States who are residents of a foreign country, United States possession, United States territory, or United States protectorate, which country, possession, territory, or protectorate does not have an association similar to the association created by this article, shall be deemed residents of the state of domicile of the insurer that issued the policies or contracts.

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

(14) "Supplemental contract" means any WRITTEN agreement entered into for the distribution of ~~policy or contract~~ proceeds UNDER A LIFE, HEALTH, OR ANNUITY POLICY OR A LIFE, HEALTH, OR ANNUITY CONTRACT.

**SECTION 2.** In Colorado Revised Statutes, 10-20-104, **amend** (2) (a), (2) (b) introductory portion, (2) (b) (I), (2) (b) (II), (2) (b) (III), (2) (b) (IV) introductory portion, (2) (b) (IV) (A), (2) (b) (V), (2) (b) (XIV), (3), and (4); **repeal** (2) (b) (XI), (2) (b) (XIII), and (2) (b) (XV); and **add** (2) (b) (XVI), (2) (b) (XVII), (2) (b) (XVIII), and (2) (b) (XIX) as follows:

**10-20-104. Coverage and limitations - coordination of benefits.** (2) (a) This article ~~shall provide~~ PROVIDES coverage to the persons specified in ~~subsection~~

SUBSECTIONS (1) AND (1.3) OF THIS SECTION FOR DIRECT, NONGROUP LIFE, HEALTH, ANNUITY, AND SUPPLEMENTAL POLICIES OR CONTRACTS AND FOR CERTIFICATES UNDER DIRECT GROUP LIFE, HEALTH, ANNUITY POLICIES OR CONTRACTS, AND SUPPLEMENTAL POLICIES AND CONTRACTS TO ANY OF THESE ISSUED BY MEMBER INSURERS PURSUANT TO ARTICLES 7 AND 8 AND PARTS 1 AND 2 OF ARTICLE 16 OF THIS TITLE, EXCEPT AS LIMITED BY THIS ARTICLE. ANNUITY CONTRACTS AND CERTIFICATES UNDER GROUP ANNUITY CONTRACTS INCLUDE ALLOCATED FUNDING AGREEMENTS, STRUCTURED SETTLEMENT ANNUITIES, AND ANY IMMEDIATE OR DEFERRED ANNUITY CONTRACTS.

(b) This article ~~shall~~ DOES NOT provide coverage for:

(I) Any portion of a policy or contract not guaranteed by the member insurer, or under which the risk is borne by the policy or contract ~~holder~~ OWNER;

(II) Any policy or contract of reinsurance, unless assumption certificates have been issued UNDER THE REINSURANCE POLICY OR CONTRACT;

(III) Any portion of a policy or contract to the extent that the rate of interest on which it is based, or the interest rate, crediting rate, or other factor ~~employed in calculating returns or changes in value which may include, without limitation,~~ DETERMINED BY USE OF AN INDEX OR OTHER EXTERNAL REFERENCE STATED IN THE POLICY OR CONTRACT EMPLOYED IN CALCULATING RETURNS AND CHANGES IN VALUE:

(A) When averaged over the period of four years prior to the date ~~that the member insurer becomes an insolvent insurer under this article,~~ ON WHICH THE ASSOCIATION BECAME OBLIGATED WITH RESPECT TO THE POLICY OR CONTRACT, exceeds a rate of interest determined by subtracting two percentage points from Moody's CORPORATE BOND YIELD average, averaged for that same four-year period, or for such lesser period if the policy or contract was issued less than four years before ~~the member insurer becomes an insolvent insurer under this article~~ THE ASSOCIATION BECAME OBLIGATED; and

(B) On and after the date ~~that the member insurer becomes an insolvent insurer under this article,~~ ON WHICH THE ASSOCIATION BECAME OBLIGATED WITH RESPECT TO THE POLICY OR CONTRACT exceeds the rate of interest determined by subtracting three percentage points from Moody's CORPORATE BOND YIELD average as most recently available;

(IV) Any PORTION OF A POLICY, CONTRACT, plan or program of an employer, association, or ~~similar entity~~ OTHER PERSON to provide life, health, or annuity benefits to its employees, or members, OR OTHERS, to the extent that such plan or program is self-funded or uninsured, including but not limited to benefits payable by an employer, association, or ~~similar entity~~ OTHER PERSON under:

(A) A multiple employer welfare arrangement, as defined in ~~section 514 of the federal "Employee Retirement Income Security Act of 1974", as amended~~ SECTION 1002 OF TITLE 29 OF THE UNITED STATES CODE;

(V) Any portion of a policy or contract to the extent that it provides dividends or experience rating credits, VOTING RIGHTS, or provides that any fees or allowances be paid to any person, including the policy or contract holder, in connection with the

service to or administration of such policy or contract;

~~(XI) Any unallocated annuity contract issued to an employee benefit plan protected under the federal pension benefit guaranty corporation;~~

~~(XIII) Any policy or contract covering persons who are not citizens of the United States;~~

(XIV) Any portion of a policy or contract to the extent it provides for interest or other changes in value to be determined by the use of an index or other external reference stated in the policy or contract but such changes have not been credited to the policy or contract, or to the extent the policy or contract owner's rights are subject to forfeiture, as of the date the member insurer becomes an IMPAIRED OR insolvent insurer under ~~to~~ this article. If a policy's or contract's interest or changes in value are credited less frequently than annually, then for purposes of determining the values that have been credited and are not subject to forfeiture under this section, the interest or change in value determined by using the procedures defined in the policy or contract shall be credited as if the contractual date of crediting interest or changing values was the date of insolvency, and such interest or changes shall not be subject to forfeiture.

~~(XV) Any kind of insurance or annuity, the benefits of which are exclusively payable or determined by a separate account required by the terms of such insurance policy to be maintained by the insurer or a separate entity.~~

(XVI) ANY POLICY OR CONTRACT PROVIDING HOSPITAL, MEDICAL, PRESCRIPTION DRUG, OR OTHER HEALTH CARE BENEFITS UNDER PART C OR PART D OF SUBCHAPTER XVIII, CHAPTER 7 OF TITLE 42, UNITED STATES CODE, OR ANY REGULATION ISSUED UNDER THESE PARTS;

(XVII) ANY PORTION OF A POLICY OR CONTRACT TO THE EXTENT THAT THE ASSESSMENT REQUIRED BY THIS ARTICLE WITH RESPECT TO THE POLICY OR CONTRACT ARE PREEMPTED OR OTHERWISE NOT ALLOWED BY FEDERAL OR STATE LAW;

(XVIII) ANY OBLIGATION THAT DOES NOT ARISE UNDER THE EXPRESSED WRITTEN TERMS OF THE POLICY OR CONTRACT ISSUED BY THE INSURER TO THE CONTRACT OWNER OR TO THE POLICY OWNER, INCLUDING AND WITHOUT LIMITATION:

(A) CLAIMS BASED ON MARKETING MATERIALS, BROCHURES, ILLUSTRATIONS, ADVERTISEMENTS, OR ORAL STATEMENTS BY AGENTS, BROKERS, OR OTHERS USED OR MADE IN CONNECTION WITH THE SALE OF COVERED POLICIES AND CONTRACTS;

(B) CLAIMS BASED ON SIDE LETTERS, RIDERS, OR OTHER DOCUMENTS THAT WERE ISSUED BY THE INSURER WITHOUT MEETING APPLICABLE POLICY FORM FILING OR APPROVAL REQUIREMENTS;

(C) MISREPRESENTATIONS OF, OR REGARDING, POLICY BENEFITS;

(D) EXTRACTIONAL CLAIMS; AND

(E) CLAIMS FOR PENALTIES, INTEREST, OR CONSEQUENTIAL OR INCIDENTAL DAMAGES;

(XIX) ANY CONTRACTUAL AGREEMENT THAT ESTABLISHES THE MEMBER INSURER'S OBLIGATIONS TO PROVIDE A BOOK VALUE ACCOUNTING GUARANTY FOR DEFINED CONTRIBUTION BENEFIT PLAN PARTICIPANTS BY REFERENCE TO A PORTFOLIO OF ASSETS THAT IS OWNED BY A BENEFIT PLAN OR TRUSTEE, THAT NOT AN AFFILIATE OF THE MEMBER INSURER.

(3) The benefits for which the association may become liable shall not exceed the lesser of:

(a) The contractual obligations for which the insurer is liable or would have been liable if it were not an IMPAIRED OR insolvent insurer; or

(b) (I) With respect to any one life, regardless of the number of policies or contracts with that insurer:

(A) Three hundred thousand dollars in net life insurance death benefits, and no more than one hundred thousand dollars in net cash surrender and net cash withdrawal values for life insurance;

(B) For health insurance benefits: One hundred thousand dollars for coverages not defined as disability, basic hospital, medical and surgical, or major medical insurance OR LONG-TERM CARE INSURANCE, including any net cash surrender and net cash withdrawal values; three hundred thousand dollars for disability insurance; THREE HUNDRED THOUSAND DOLLARS FOR LONG-TERM CARE INSURANCE; or five hundred thousand dollars for basic hospital, medical and surgical, or major medical insurance;

(C) Two hundred fifty thousand dollars in the present value of annuity benefits, including net cash surrender and net cash withdrawal values; OR

(D) With respect to each payee of a structured settlement annuity, two hundred fifty thousand dollars in present-value annuity benefits, in the aggregate, including net cash surrender and net cash withdrawal values. ~~or~~

(E) ~~Three hundred thousand dollars for long-term care benefits.~~

(II) The association ~~shall~~ IS NOT BE LIABLE TO EXPEND OBLIGATED TO COVER:

(A) More than three hundred thousand dollars IN BENEFITS, in the aggregate, with respect to any one life under sub-subparagraphs (A) to ~~(E)~~ (D) of subparagraph (I) of this paragraph (b); except that, with respect to benefits for basic hospital, medical and surgical, and major medical insurance under sub-subparagraph (B) of subparagraph (I) of this paragraph (b), the aggregate liability of the association shall not exceed five hundred thousand dollars with respect to any one individual; OR

(B) MORE THAN FIVE MILLION DOLLARS IN BENEFITS WITH RESPECT TO AN OWNER OF MULTIPLE NONGROUP POLICIES OF LIFE INSURANCE, REGARDLESS OF WHETHER THE POLICY OWNER IS AN INDIVIDUAL, FIRM, CORPORATION, OR OTHER PERSON;

WHETHER THE PERSONS INSURED ARE OFFICERS, MANAGERS, EMPLOYEES, OR OTHER PERSONS; OR THE NUMBER OF POLICIES AND CONTRACTS HELD BY THE OWNER.

(c) THE LIMITATIONS SET FORTH IN THIS SUBSECTION (3) ARE LIMITATIONS ON THE BENEFITS FOR WHICH THE ASSOCIATION IS OBLIGATED BEFORE TAKING INTO ACCOUNT EITHER ITS SUBROGATION AND ASSIGNMENT RIGHTS OR THE EXTENT TO WHICH THOSE BENEFITS COULD BE PROVIDED OUT OF THE ASSETS OF THE IMPAIRED OR INSOLVENT INSURER ATTRIBUTABLE TO COVERED POLICIES. THE COSTS OF THE ASSOCIATION'S OBLIGATIONS UNDER THIS SUBSECTION (3) MAY BE MET BY THE USE OF ASSETS ATTRIBUTABLE TO COVERED POLICIES OR REIMBURSED TO THE ASSOCIATION UNDER ITS SUBROGATION AND ASSIGNMENT RIGHTS.

~~(4) The liability of the association is strictly limited by the express terms of such covered policies and contracts and by the provisions of this article and is not affected by the contents of any brochures, illustrations, advertisements, or oral statements by agents, brokers, or others, used or made in connection with the sale of such covered policies and contracts. The association is not liable for any extracontractual, exemplary, or punitive damages, attorney fees, or interest other than as provided for by the terms of such covered policies or contracts. In performing its obligations to provide coverage under section 10-20-108, the association is not required to guarantee, assume, reinsure, or perform, or cause to be guaranteed, assumed, reinsured, or performed, the contractual obligations of the impaired or insolvent insurer under a covered policy or contract that do not materially affect the economic values or economic benefits of the covered policy or contract.~~

**SECTION 3.** In Colorado Revised Statutes, 10-20-106, **amend** (2) as follows:

**10-20-106. Creation of the association.** (2) The association is under the supervision of the commissioner and is subject to the applicable provisions of the insurance laws of this state. Meetings or records of the association may be opened to the public consistent with the provisions of the insurance laws of Colorado UPON MAJORITY VOTE OF THE BOARD.

**SECTION 4.** In Colorado Revised Statutes, 10-20-108, **amend** (1), (2), (7) introductory portion, (7) (b), (8), (9), (10), (12) (b), (12) (c), (13) (e), (15), (16), (17), and (19); **repeal** (3) and (4); and **add** (6.5), (12) (d), (12) (e), (23), and (24) as follows:

**10-20-108. Powers and duties of the association.** (1) ~~In addition to any other powers and duties provided for in this article, the association has the following powers and duties~~ IF A MEMBER INSURER IS AN IMPAIRED INSURER, THE ASSOCIATION MAY, IN ITS DISCRETION AND SUBJECT TO ANY CONDITIONS IMPOSED BY THE ASSOCIATION THAT DO NOT IMPAIR THE CONTRACTUAL OBLIGATIONS OF THE IMPAIRED INSURER AND THAT ARE APPROVED BY THE COMMISSIONER:

(a) ~~If a domestic insurer is an insolvent insurer, the association shall, subject to the limitations of this article and subject to the approval of the commissioner~~ GUARANTEE, ASSUME, OR REINSURE OR CAUSE TO BE GUARANTEED, ASSUMED, OR REINSURED ANY OR ALL OF THE POLICIES OR CONTRACTS OF THE IMPAIRED INSURER;  
OR

~~(I) Guarantee, assume, or reinsure or cause to be guaranteed, assumed, or reinsured the covered policies of the insolvent insurer;~~

~~(II) Assure payment of the contractual obligations of the insolvent insurer; and~~

~~(III) Provide such moneys, pledges, notes, guarantees, or other means as are reasonably necessary to discharge such duties; or~~

~~(b) With respect to only life and health insurance policies provide benefits and coverages in accordance with subsection (3) of this section~~ PROVIDE SUCH MONEYS, PLEDGES, LOANS, NOTES, GUARANTEES, OR OTHER MEANS AS PROPER TO EFFECTUATE PARAGRAPH (a) OF THIS SUBSECTION (1) AND ASSURE PAYMENT OF THE CONTRACTUAL OBLIGATIONS OF THE IMPAIRED INSURER PENDING ACTION UNDER PARAGRAPH (a).

(2)(a) If a foreign or alien MEMBER insurer is an insolvent insurer, the association shall, subject to the approval of the commissioner IN ITS DISCRETION, EITHER:

~~(I) (a) Guarantee, assume, or reinsure or cause to be guaranteed, assumed, or reinsured the covered policies of residents~~ THE INSOLVENT INSURER AND PROVIDE SUCH MONEYS, PLEDGES, NOTES GUARANTEES, OR OTHER MEANS AS ARE REASONABLY NECESSARY TO DISCHARGE THOSE DUTIES; OR

~~(II) (b) Assure payment of the contractual obligations of the insolvent insurer to the residents~~ AND PROVIDE SUCH MONEYS, PLEDGES, NOTES, GUARANTEES, OR OTHER MEANS AS ARE REASONABLY NECESSARY TO DISCHARGE THOSE DUTIES; OR

~~(III) Provide such moneys, pledges, notes, guarantees, or other means as are reasonably necessary to discharge those duties; or~~

~~(IV) With respect to only life and health insurance policies, provide benefits and coverages in accordance with subsection (3) of this section.~~

~~(b)(c) This subsection (2) shall not apply if the commissioner has determined that the foreign or alien insurer's domiciliary jurisdiction or state of entry provides, by statute, protection substantially similar to that provided by this article for residents of the state.~~ PROVIDE BENEFITS AND COVERAGES IN ACCORDANCE WITH THE FOLLOWING PROVISIONS:

(I) WITH RESPECT ONLY TO LIFE AND HEALTH INSURANCE POLICIES AND ANNUITIES, 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 OF THE INSOLVENT INSURER FOR CLAIMS INCURRED:

(A) WITH RESPECT TO GROUP POLICIES AND CONTRACTS, NOT LATER THAN THE EARLIER OF THE NEXT RENEWAL DATE UNDER SUCH POLICIES OR CONTRACTS OR FORTY-FIVE DAYS, BUT IN NO EVENT LESS THAN THIRTY DAYS, AFTER THE DATE ON WHICH THE ASSOCIATION BECOMES OBLIGATED WITH RESPECT TO SUCH POLICIES OR CONTRACTS;



(B) WITH RESPECT TO NONGROUP POLICIES, CONTRACTS, AND ANNUITIES, NOT LATER THAN THE EARLIER OF THE NEXT RENEWAL DATE, IF ANY, UNDER SUCH POLICIES OR CONTRACTS, OR ONE YEAR, BUT IN NO EVENT LESS THAN THIRTY DAYS, AFTER THE DATE ON WHICH THE ASSOCIATION BECOMES OBLIGATED WITH RESPECT TO SUCH POLICIES OR CONTRACTS.

(II) MAKE DILIGENT EFFORTS TO PROVIDE TO ALL KNOWN INSURED OR ANNUITANTS FOR NONGROUP POLICIES AND CONTRACTS, OR TO GROUP POLICY OWNERS WITH RESPECT TO GROUP POLICIES AND CONTRACTS, THIRTY DAYS' NOTICE OF THE TERMINATION UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH (c) OF THE BENEFITS PROVIDED.

(III) WITH RESPECT TO NONGROUP LIFE AND HEALTH INSURANCE POLICIES AND ANNUITIES COVERED BY THE ASSOCIATION, MAKE AVAILABLE TO EACH KNOWN INSURED OR ANNUITANT, OR OWNER IF OTHER THAN THE INSURED OR ANNUITANT, AND WITH RESPECT TO AN INDIVIDUAL FORMERLY INSURED OR FORMERLY AN ANNUITANT UNDER A GROUP POLICY WHO IS NOT ELIGIBLE FOR REPLACEMENT GROUP COVERAGE, SUBSTITUTE COVERAGE ON AN INDIVIDUAL BASIS IN ACCORDANCE WITH THE PROVISIONS OF SUBPARAGRAPH (IV) OF PARAGRAPH (c) OF THIS SUBSECTION (2), IF THE INSURED OR ANNUITANTS HAD A RIGHT UNDER LAW OR THE TERMINATED POLICY OR ANNUITY TO CONVERT COVERAGE TO INDIVIDUAL COVERAGE OR TO CONTINUE AN INDIVIDUAL POLICY OR ANNUITY IN FORCE UNTIL A SPECIFIED AGE OR FOR A SPECIFIED TIME, DURING WHICH THE INSURER HAD NO RIGHT TO UNILATERALLY MAKE CHANGES IN ANY PROVISIONS OF THE POLICY OR ANNUITY OR HAD A RIGHT ONLY TO MAKE CHANGES IN PREMIUM BY CLASS.

(IV) (A) IN PROVIDING THE SUBSTITUTE COVERAGE REQUIRED UNDER SUBPARAGRAPH (III) OF PARAGRAPH (c) OF THIS SUBSECTION (2), THE ASSOCIATION MAY OFFER EITHER TO REISSUE THE TERMINATED COVERAGE OR TO ISSUE AN ALTERNATIVE POLICY.

(B) THE ASSOCIATION SHALL OFFER ALTERNATIVE OR REISSUED POLICIES WITHOUT REQUIRING EVIDENCE OF INSURABILITY, AND THE POLICIES MUST NOT PROVIDE FOR ANY WAITING PERIOD OR EXCLUSION THAT WOULD NOT HAVE APPLIED UNDER THE TERMINATED POLICY.

(C) THE ASSOCIATION MAY REINSURE ANY ALTERNATIVE OR REISSUED POLICY.

(V) (A) ALTERNATIVE POLICIES ADOPTED BY THE ASSOCIATION ARE SUBJECT TO THE APPROVAL OF THE DOMICILIARY COMMISSIONER AND THE RECEIVERSHIP COURT. THE ASSOCIATION MAY ADOPT ALTERNATIVE POLICIES OF VARIOUS TYPES FOR FUTURE ISSUANCE WITHOUT REGARD TO ANY PARTICULAR IMPAIRMENT OR INSOLVENCY.

(B) ALTERNATIVE POLICIES MUST CONTAIN AT LEAST THE MINIMUM STATUTORY PROVISIONS REQUIRED IN THIS STATE AND PROVIDE BENEFITS REASONABLY RELATED TO THE PREMIUM CHARGED. THE ASSOCIATION SHALL SET THE PREMIUM IN ACCORDANCE WITH A TABLE OF RATES WHICH IT SHALL ADOPT. THE PREMIUM MUST REFLECT THE AMOUNT OF INSURANCE TO BE PROVIDED AND THE AGE AND CLASS OF RISK OF EACH INSURED, BUT SHALL NOT REFLECT ANY CHANGES IN THE HEALTH OF THE INSURED AFTER THE ORIGINAL POLICY WAS LAST UNDERWRITTEN.

(C) ANY ALTERNATIVE POLICY ISSUED BY THE ASSOCIATION MUST PROVIDE COVERAGE OF A TYPE SIMILAR TO THAT OF THE POLICY ISSUED BY THE IMPAIRED OR INSOLVENT INSURER, AS DETERMINED BY THE ASSOCIATION.

(VI) IF THE ASSOCIATION ELECTS TO REISSUE TERMINATED COVERAGE AT A PREMIUM RATE DIFFERENT FROM THAT CHARGED UNDER THE TERMINATED POLICY, THE ASSOCIATION SHALL SET THE PREMIUM IN ACCORDANCE WITH THE AMOUNT OF INSURANCE PROVIDED AND THE AGE AND CLASS OF RISK, SUBJECT TO APPROVAL BY THE COMMISSIONER OR BY A COURT OF COMPETENT JURISDICTION.

(VII) THE OBLIGATIONS OF THE ASSOCIATION, WITH RESPECT TO COVERAGE UNDER ANY POLICY OF THE IMPAIRED OR INSOLVENT INSURER OR UNDER ANY REISSUED OR ALTERNATIVE POLICY, CEASE ON THE DATE SUCH COVERAGE OR POLICY IS REPLACED BY ANOTHER SIMILAR POLICY BY THE POLICY OWNER, THE INSURED, OR THE ASSOCIATION.

(VIII) WHEN PROCEEDING UNDER THIS PARAGRAPH (C), WITH RESPECT TO ANY POLICY OR CONTRACT CARRYING GUARANTEED MINIMUM INTEREST RATES, THE ASSOCIATION SHALL ASSURE THE PAYMENT OR CREDITING OF A RATE OF INTEREST CONSISTENT WITH SECTION 10-20-104 (2) (b) (III).

~~(3) (a) When proceeding under paragraph (b) of subsection (1) or subparagraph (IV) of paragraph (a) of subsection (2) of this section, the association shall, with respect to only life and health insurance policies:~~

~~(I) 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 of the insolvent insurer for claims incurred:~~

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

~~(B) With respect to individual policies, not later than the earlier of the next renewal date, if any, under such policies or one year, but in no event less than thirty days, after the date on which the association becomes obligated with respect to such policies;~~

~~(H) Make diligent efforts to provide all known insureds, or group policyholders with respect to group policies, thirty days notice of the termination of the benefits provided;~~

~~(III) With respect to individual policies, make available to each known insured or owner if other than the insured, and with respect to group policies, make available to each individual formerly insured who is not eligible for replacement group coverage, substitute coverage on an individual basis in accordance with the provisions of paragraph (b) of this subsection (3), if the insureds had a right under law or the terminated policy to convert coverage to individual coverage or to continue an individual policy in force until a specified age or for a specified time, during which the insurer had no right unilaterally to make changes in any provisions~~

of the policy or had a right only to make changes in premium by class:

~~(b) (I) In providing the substitute coverage required under subparagraph (III) of paragraph (a) of this subsection (3), the association may offer either to reissue the terminated coverage or to issue an alternative policy.~~

~~(II) Alternative or reissued policies shall be offered without requiring evidence of insurability and shall not provide for any waiting period or exclusion that would not have applied under the terminated policy.~~

~~(III) The association may reinsure any alternative or reissued policy.~~

~~(c) (I) Alternative policies adopted by the association shall be subject to the approval of the commissioner. The association may adopt alternative policies of various types for future issuance without regard to any particular insolvency.~~

~~(II) Alternative policies shall contain at least the minimum statutory provisions required in this state and provide benefits that shall be reasonably related to the premium charged. The association shall set the premium in accordance with a table of rates which it shall adopt as approved by the commissioner. The premium shall reflect the amount of insurance to be provided and the age and class of risk of each insured but shall not reflect any changes in the health of the insured after the original policy was last underwritten.~~

~~(III) Any alternative policy issued by the association shall provide coverage of a type similar to that of the policy issued by the insolvent insurer, as determined by the association.~~

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

~~(e) The obligations of the association, with respect to coverage under any policy of the insolvent insurer or under any reissued or alternative policy, shall cease on the date such coverage or policy is replaced by another similar policy by the policyholder, the insured, or the association.~~

~~(4) When proceeding pursuant to subsection (2) (a) (II) or (2) (b) of this section, with respect to any policy or contract carrying guaranteed minimum interest rates, the association shall assure the payment or crediting of a rate of interest consistent with section 10-20-104 (2) (b) (III) (A) and (2) (b) (III) (B).~~

~~(6.5) THE PROTECTION PROVIDED BY THIS ARTICLE DOES NOT APPLY WHEN GUARANTY PROTECTION IS PROVIDED TO RESIDENTS OF THIS STATE BY THE LAWS OF THE DOMICILIARY STATE OR JURISDICTION OF THE IMPAIRED OR INSOLVENT INSURER OTHER THAN THIS STATE.~~

~~(7) In carrying out its duties under subsections (1) and SUBSECTION (2) of this section, the association may, subject to approval by the A COURT OF COMPETENT~~

## JURISDICTION:

(b) Impose temporary moratoriums or liens on payments of cash values and policy loans, or any other right to withdraw funds held in conjunction with policies or contracts, in addition to any contractual provisions for deferral of cash or policy loan value. IN ADDITION, IN THE EVENT OF A TEMPORARY MORATORIUM OR MORATORIUM CHARGE IMPOSED BY THE RECEIVERSHIP COURT ON PAYMENT OF CASH VALUES OR POLICY LOANS OR ON ANY OTHER RIGHT TO WITHDRAW FUNDS HELD IN CONJUNCTION WITH POLICIES OR CONTRACTS OUT OF THE ASSETS OF THE IMPAIRED OR INSOLVENT INSURER, THE ASSOCIATION MAY DEFER ITS PAYMENT OF CASH VALUES, POLICY LOANS, OR OTHER RIGHTS OF THE ASSOCIATION FOR THE PERIOD OF THE MORATORIUM OR MORATORIUM CHARGE BY THE RECEIVERSHIP COURT, EXCEPT FOR CLAIMS COVERED BY THE ASSOCIATION TO BE PAID IN ACCORDANCE WITH A HARDSHIP PROCEDURE ESTABLISHED BY THE LIQUIDATOR OR REHABILITATOR AND APPROVED BY THE RECEIVERSHIP COURT.

(8) If the association fails to act within a reasonable period of time as provided in ~~subsections (1), (2), and (3)~~ SUBSECTION (2) of this section, the commissioner shall have the powers and duties of the association under this article with respect to insolvent insurers.

(9) There shall be no liability on the part of, and no cause of action shall arise against, the association, or ~~against~~ any transferee from the association in connection with the transfer by reinsurance or otherwise of all or any part of an IMPAIRED OR insolvent insurer's business by reason of any action taken or any failure to take any action by the IMPAIRED OR insolvent insurer at any time.

(10) The association may render assistance and advice to the commissioner, upon the commissioner's request, concerning REHABILITATION, payment of claims, continuance of coverage, OR the performance of other contractual obligations of any IMPAIRED OR insolvent insurer. ~~or any member insurer's performance of its contractual obligations.~~

(12) (b) The subrogation rights of the association under this subsection (12) shall have the same priority against the assets of the IMPAIRED OR insolvent insurer as that possessed by the person entitled to receive benefits under this article.

(c) In addition to paragraphs (a) and (b) of this subsection (12), the association shall have all common-law rights of subrogation and any other equitable or legal remedy which would have been available to the IMPAIRED OR insolvent insurer, owner, beneficiary, or payee of a policy or contract. ~~with respect to such policy or contract, including without limitation, in the case of a structured settlement annuity, any rights of the owner, beneficiary, or payee of the annuity, to the extent the benefits received pursuant to this article against a person originally or by succession responsible for the losses arising from the personal injury relating to the annuity or payment therefor, excepting any such person responsible solely by reason of serving as an assignee in respect of a qualified assignment under section 130 of the federal "Internal Revenue Code of 1986", as amended.~~

(d) IF ANY PROVISION OF PARAGRAPH (a), (b), OR (c) OF THIS SUBSECTION (12) IS INVALID OR INEFFECTIVE WITH RESPECT TO ANY PERSON OR CLAIM FOR ANY REASON,

THE AMOUNT PAYABLE BY THE ASSOCIATION WITH RESPECT TO THE RELATED COVERED OBLIGATIONS IS REDUCED BY THE AMOUNT REALIZED BY ANY OTHER PERSON WITH RESPECT TO THE PERSON OR CLAIM THAT IS ATTRIBUTABLE TO THE POLICIES OR PORTIONS OF THE POLICIES COVERED BY THE ASSOCIATION.

(e) IF THE ASSOCIATION HAS PROVIDED BENEFITS WITH RESPECT TO A COVERED OBLIGATION AND A PERSON RECOVERS AMOUNTS AS TO WHICH THE ASSOCIATION HAS RIGHTS AS DESCRIBED IN PARAGRAPHS (a) TO (d) OF THIS SUBSECTION (12), THE PERSON SHALL PAY TO THE ASSOCIATION THE PORTION OF THE RECOVERY ATTRIBUTABLE TO THE POLICIES, OR PORTIONS OF POLICIES, COVERED BY THE ASSOCIATION.

(13) The association may:

(e) Take such legal action as ~~may be~~ necessary to avoid payment of improper claims OR RECOVER PAYMENT OF IMPROPER CLAIMS;

(15) Every insured or claimant seeking the protection of this article shall cooperate with the association to the same extent the person or entity would have been required to cooperate with the IMPAIRED OR insolvent insurer. The association has no cause of action against the insured of the IMPAIRED OR insolvent insurer for any sums the association has paid out except those causes of action the IMPAIRED OR insolvent insurer would have had if the sums had been paid by the IMPAIRED OR insolvent insurer. If an IMPAIRED OR insolvent insurer operates on a plan with assessment liability, payments of claims by the association do not reduce the liability of the insured to the receiver, liquidator, REHABILITATOR, CONSERVATOR, or statutory successor for unpaid assessments.

(16) The receiver, liquidator, REHABILITATOR, CONSERVATOR, or statutory successor of an IMPAIRED OR insolvent insurer is bound by settlements of covered claims by the association or a similar organization in another state. The association has a claim against the estate of the IMPAIRED OR insolvent insurer to the extent of claims and expenses paid by the association in connection with the duties of the association as to the IMPAIRED OR insolvent insurer. The court having jurisdiction shall grant these settled claims in the priority to which the claimant would have been entitled in the absence of this article against the assets of the IMPAIRED OR insolvent insurer. The expenses, including legal fees of the association or similar organization in handling claims, shall be given the same priority as the expenses of the liquidator, REHABILITATOR, OR CONSERVATOR.

(17) The association shall periodically file with the liquidator, REHABILITATOR, OR CONSERVATOR of the IMPAIRED OR insolvent insurer statements of the covered claims and associated expenses paid by the association and estimates of anticipated claims against the association. This periodic filing preserves the rights of the association for claims against the assets of the IMPAIRED OR insolvent insurer.

(19) A person who has a claim against an insurer pursuant to a provision of an insurance policy, other than a policy of an IMPAIRED OR insolvent insurer, that also is a contractual obligation under this article, must first exhaust his OR HER right under that policy. The amount of an approved claim under this article shall be reduced by the policy limits of, or amount paid under, that insurance policy,

whichever amount is greater. If a claimant exhausts all rights under a policy other than a policy of an IMPAIRED OR insolvent insurer, the insurer issuing that policy is not entitled to sue or continue a suit against the insured of the IMPAIRED OR insolvent insurer to recover an amount paid to the claimant under the policy; except that a person having a contractual obligation, as defined by this article, under a life insurance policy or an annuity contract issued by an IMPAIRED OR insolvent insurer is not required to exhaust other coverage for that claim, and the amount of an approved claim under a life insurance policy or annuity contract issued by an IMPAIRED OR insolvent insurer may not be reduced because of that duplicate coverage.

(23) THE BOARD HAS DISCRETION AND MAY EXERCISE REASONABLE BUSINESS JUDGMENT TO DETERMINE THE MEANS BY WHICH THE ASSOCIATION IS TO PROVIDE THE BENEFITS OF THIS ARTICLE IN AN ECONOMICAL AND EFFICIENT MANNER.

(24) IN CARRYING OUT ITS DUTIES IN CONNECTION WITH GUARANTEEING, ASSUMING, OR REINSURING POLICIES OR CONTRACTS UNDER SUBSECTION (1) OR (2) OF THIS SECTION, THE ASSOCIATION MAY, SUBJECT TO APPROVAL BY THE RECEIVERSHIP COURT, ISSUE SUBSTITUTE COVERAGE FOR A POLICY OR CONTRACT THAT PROVIDES AN INTEREST RATE, CREDITING RATE, OR SIMILAR FACTOR, DETERMINED BY USE OF AN INDEX OR OTHER EXTERNAL REFERENCE STATED IN THE POLICY OR CONTRACT, EMPLOYED IN CALCULATING RETURNS OR CHANGES IN VALUE BY ISSUING AN ALTERNATIVE POLICY OR CONTRACT IN ACCORDANCE WITH THE FOLLOWING PROVISIONS:

(a) IN LIEU OF THE INDEX OR OTHER EXTERNAL REFERENCE PROVIDED FOR IN THE ORIGINAL POLICY OR CONTRACT, THE ALTERNATIVE POLICY OR CONTRACT PROVIDES FOR A FIXED INTEREST RATE, PAYMENT OF DIVIDENDS WITH MINIMUM GUARANTEES, OR A DIFFERENT METHOD FOR CALCULATING INTEREST OR CHANGES IN VALUE;

(b) THERE IS NO REQUIREMENT FOR EVIDENCE OF INSURABILITY, WAITING PERIOD, OR OTHER EXCLUSION THAT WOULD NOT HAVE APPLIED UNDER THE REPLACED POLICY OR CONTRACT; AND

(c) THE ALTERNATIVE POLICY OR CONTRACT IS SUBSTANTIALLY SIMILAR TO THE REPLACED POLICY OR CONTRACT IN ALL OTHER MATERIAL TERMS.

**SECTION 5.** In Colorado Revised Statutes, 10-20-109, **amend** (2), (3), (5), and (10); and **add** (11) as follows:

**10-20-109. Assessments.** (2) There shall be two assessments, as follows:

(a) Class A assessments ~~shall~~ **MUST be made** AUTHORIZED AND CALLED for the purpose of meeting administrative and legal costs and other expenses and examinations conducted under the authority of section 10-20-112 (5). Class A assessments may be ~~made~~ AUTHORIZED AND CALLED whether or not related to a particular IMPAIRED OR insolvent insurer.

(b) Class B assessments ~~shall~~ **MUST be made** AUTHORIZED AND CALLED to the extent necessary to carry out the powers and duties of the association under section 10-20-108 with regard to an IMPAIRED OR insolvent insurer.

(3) (a) The amount of any class A assessment ~~shall~~ MUST be determined by the board and may be ~~made~~ AUTHORIZED AND CALLED on a non-pro rata basis. ~~A non-pro rata assessment shall not exceed one hundred fifty dollars per member insurer in any one calendar year.~~ The amount of any class B assessment shall be allocated for assessment purposes among the accounts pursuant to an allocation formula which may be based on the premiums or reserves of the IMPAIRED OR insolvent insurer or any other standard deemed by the board in its sole discretion to be fair and reasonable under the circumstances.

(b) Class B assessments against member insurers for each account shall be in the proportion that the premiums received on business in this state by each assessed member insurer on policies or contracts covered by each account for the three most recent calendar years for which information is available preceding the year in which the insurer became IMPAIRED OR insolvent, bear to such premiums received on business in this state for such calendar years by all assessed member insurers.

(c) Assessments for funds to meet the requirements of the association with respect to an IMPAIRED OR insolvent insurer ~~shall~~ MUST not be ~~made~~ AUTHORIZED OR CALLED until necessary to implement the purposes of this article. Classification of assessments under subsection (2) of this section and computation of assessments under this subsection (3) shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible. THE ASSOCIATION SHALL NOTIFY EACH MEMBER INSURER OF ITS ANTICIPATED PRO RATA SHARE OF AN AUTHORIZED ASSESSMENT NOT YET CALLED WITHIN ONE HUNDRED EIGHTY DAYS AFTER THE ASSESSMENT IS AUTHORIZED.

(5) (a) ~~The~~ SUBJECT TO PARAGRAPH (b) OF THIS SUBSECTION (5), THE total of all assessments ~~upon~~ AUTHORIZED BY THE ASSOCIATION WITH RESPECT TO a member insurer for each account ~~shall~~ MUST not EXCEED in any one calendar year, ~~exceed one~~ TWO percent of the average premiums received by ~~such~~ THE insurer in this state on the policies and contracts covered by the account during the three calendar years preceding the year in which the insurer became IMPAIRED OR insolvent.

(b) IF TWO OR MORE ASSESSMENTS ARE AUTHORIZED IN ONE CALENDAR YEAR WITH RESPECT TO INSURERS WHO BECOME IMPAIRED OR INSOLVENT IN DIFFERENT CALENDAR YEARS, THE AVERAGE ANNUAL PREMIUMS FOR PURPOSES OF THE AGGREGATE ASSESSMENT PERCENTAGE LIMITATION REFERENCED IN PARAGRAPH (a) OF THIS SUBSECTION (5) IS EQUAL AND LIMITED TO THE HIGHEST OF THE THREE-YEAR AVERAGE ANNUAL PREMIUMS FOR THE APPLICABLE ACCOUNT AS CALCULATED UNDER THIS SECTION.

(c) If the maximum assessment, together with the other assets of the association in any account, does not provide in any one year in any of the accounts an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed as soon thereafter as permitted by this article.

(d) The board shall provide in the plan of operation a method of allocating funds among claims, whether relating to one or more IMPAIRED OR insolvent insurers, when the maximum assessment will be insufficient to cover anticipated claims.

(10) (a) ~~An assessment is deemed to occur on the date upon which the board~~

~~votes such assessment. The board may defer calling the payment of the assessment or may call for payment in one or more installments~~ A MEMBER INSURER THAT INTENDS TO PROTEST ALL OR PART OF AN ASSESSMENT SHALL PAY, WHEN DUE, THE FULL AMOUNT OF THE ASSESSMENT IN THE NOTICE PROVIDED BY THE ASSOCIATION. THE PAYMENT MUST BE AVAILABLE TO MEET ASSOCIATION OBLIGATIONS DURING THE PENDENCY OF THE PROTEST OR ANY SUBSEQUENT APPEAL. PAYMENTS MUST BE ACCOMPANIED BY A STATEMENT IN WRITING THAT THE PAYMENT IS MADE UNDER PROTEST AND A BRIEF STATEMENT OF THE GROUNDS FOR THE PROTEST.

(b) WITHIN SIXTY DAYS FOLLOWING THE PAYMENT OF AN ASSESSMENT UNDER PROTEST BY A MEMBER INSURER, THE ASSOCIATION SHALL NOTIFY THE MEMBER INSURER IN WRITING OF ITS DETERMINATION WITH RESPECT TO THE PROTEST UNLESS THE ASSOCIATION NOTIFIES THE MEMBER INSURER THAT ADDITIONAL TIME IS REQUIRED TO RESOLVE THE ISSUES RAISED BY THE PROTEST.

(c) WITHIN THIRTY DAYS AFTER A FINAL DECISION, THE ASSOCIATION SHALL NOTIFY THE PROTESTING MEMBER INSURER IN WRITING OF THE FINAL DECISION. WITHIN SIXTY DAYS AFTER RECEIVING NOTICE OF THE FINAL DECISION, THE PROTESTING MEMBER INSURER MAY APPEAL THE FINAL DECISION TO THE COMMISSIONER.

(d) IN ALTERNATIVE TO RENDERING A FINAL DECISION WITH RESPECT TO A PROTEST BASED ON A QUESTION REGARDING THE ASSESSMENT BASE, THE ASSOCIATION MAY REFER PROTESTS DIRECTLY TO THE COMMISSIONER FOR A FINAL DECISION, WITH OR WITHOUT A RECOMMENDATION FROM THE ASSOCIATION.

(e) IF THE PROTEST OR APPEAL ON THE ASSESSMENT IS UPHeld, THE ASSOCIATION MUST RETURN THE AMOUNT PAID IN ERROR OR EXCESS TO THE MEMBER INSURER. INTEREST ON A REFUND DUE TO A PROTESTING MEMBER INSURER MUST BE PAID AT THE RATE ACTUALLY EARNED BY THE ASSOCIATION.

(11) THE ASSOCIATION MAY REQUEST INFORMATION OF MEMBER INSURERS IN ORDER TO AID IN THE EXERCISE OF ITS POWER UNDER THIS SECTION. MEMBER INSURERS SHALL PROMPTLY REPLY TO ANY REQUEST FOR INFORMATION FROM THE ASSOCIATION.

**SECTION 6.** In Colorado Revised Statutes, 10-20-110, **amend** (3) introductory portion; **repeal** (5); and **add** (3) (h) and (3) (i) as follows:

**10-20-110. Plan of operation.** (3) The plan of operation ~~shall~~ MUST, in addition to any other provisions specified in this article:

(h) ESTABLISH PROCEDURES WHEREBY A DIRECTOR MAY BE REMOVED FOR CAUSE, INCLUDING A DIRECTOR OR MEMBER INSURER THAT BECOMES AN IMPAIRED OR INSOLVENT INSURER;

(i) REQUIRE THE BOARD OF DIRECTORS TO ESTABLISH A POLICY AND PROCEDURES TO ADDRESS CONFLICTS OF INTEREST.

~~(5) The plan of operation shall establish a procedure for protest by a member insurer of assessments made by the association pursuant to section 10-20-109. Such~~



procedure shall require that:

~~(a) Any member insurer that wishes to protest all or any part of an assessment for any year shall first pay the full amount of the assessment as set forth in the notice provided by the association. Such payments shall be accompanied by a statement in writing that the payment is made under protest, setting forth a brief statement of the ground for the protest. The association shall hold such payments in a separate interest-bearing account.~~

~~(b) Within thirty days following the payment of an assessment under protest by any protesting member insurer, the association shall notify the member insurer in writing of its determination with respect to the protest unless the association notifies the member that additional time is required to resolve the issues raised by the protest.~~

~~(c) In the event the association determines that the protesting member insurer is entitled to a refund, such refund shall be made within thirty days following the date upon which the association makes its determination.~~

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

~~(e) Interest on any refund due a protesting member insurer shall be paid at the rate actually earned by the association.~~

**SECTION 7.** In Colorado Revised Statutes, 10-20-111, **amend** (1) (b) and (3) as follows:

**10-20-111. Powers and duties of the commissioner.** (1) In addition to any other powers and duties specified in this article, the commissioner shall:

(b) Notify the board of the existence of an **IMPAIRED OR insolvent insurer** not later than three days after a determination of **IMPAIRMENT OR insolvency** is made by the commissioner, irrespective of limitations imposed upon the commissioner in section 10-3-401;

(3) The **CONSERVATOR, REHABILITATOR, OR liquidator** of any **IMPAIRED OR insolvent insurer** shall notify all interested persons of the effect of this article.

**SECTION 8.** In Colorado Revised Statutes, 10-20-112, **amend** (1) (c) and (4); and **repeal** (5) and (7) as follows:

**10-20-112. Prevention of insolvencies.** (1) To aid in the detection and prevention of insurer insolvencies, it shall be the duty of the commissioner:

(c) To report to the board when the commissioner has reasonable cause to believe from an examination, whether completed or in process, of a member company that such member company may be an **IMPAIRED OR insolvent insurer**;

~~(4) The board shall notify the commissioner when the board has actual knowledge that an insurer may be insolvent.~~ THE BOARD OF DIRECTORS MAY, UPON A MAJORITY VOTE, NOTIFY THE COMMISSIONER OF ANY INFORMATION INDICATING THAT A MEMBER INSURER MAY BE IMPAIRED OR INSOLVENT.

~~(5) The board shall request that the commissioner order an examination of any member insurer which the board in good faith believes may be insolvent. Within thirty days after the receipt of such request, the commissioner shall begin such examination. The examination may be conducted as an NAIC examination or may be conducted by such persons as the commissioner designates. The cost of such examination shall be paid by the association, and the examination report shall be treated confidentially. In no event shall such examination report be released to the board prior to its release to the public, but this shall not preclude the commissioner from complying with subsection (1) of this section. The commissioner shall notify the board when the examination is completed. The request for an examination shall be kept on file by the commissioner, but it shall not be open to public inspection prior to the release of the examination report to the public. For purposes of this subsection (5), a "request" is not a report or recommendation.~~

~~(7) The board may, at the conclusion of any insurer insolvency in which the association was obligated to pay covered claims, prepare a report to the commissioner containing such information as it may have in its possession bearing on the history and causes of such insolvency. The board may cooperate with the boards of directors of guaranty associations in other states in preparing a report on the history and causes of insolvency of a particular insurer and may adopt by reference any report prepared by such other associations.~~

**SECTION 9.** In Colorado Revised Statutes, 10-20-114, **amend** (1), (2), (3), (4), (5) (a), and (5) (d); and **add** (3.5) as follows:

**10-20-114. Miscellaneous provisions.** (1) Nothing in this article ~~shall be construed to reduce~~ REDUCES the liability for unpaid assessments of the insureds of an IMPAIRED OR insolvent insurer operating under a plan with assessment liability.

~~(2) Records shall be kept of all negotiations and meetings in which the association or its representatives are involved.~~ THE ASSOCIATION MUST KEEP RECORDS OF ALL MEETINGS OF THE BOARD OF DIRECTORS to discuss the activities of the association in carrying out its powers and duties pursuant to section 10-20-108. Records of such ~~negotiations or meetings shall~~ MAY be made public only upon the termination of a liquidation, REHABILITATION, OR CONSERVATION proceeding involving the IMPAIRED OR insolvent insurer, upon the termination of the IMPAIRMENT OR insolvency of the insurer, or upon the order of a court of competent jurisdiction. Nothing in this subsection (2) ~~shall limit~~ LIMITS the duty of the association to render a report of its activities under section 10-20-115.

(3) For the purpose of carrying out its obligations under this article, the association ~~shall be~~ IS deemed to be a creditor of the IMPAIRED OR insolvent insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled as assignee or subrogee pursuant to section 10-20-108 ~~(11)~~ (12). Assets of the IMPAIRED OR insolvent insurer attributable to covered policies shall be used to continue all covered policies and pay all

contractual obligations of the IMPAIRED OR insolvent insurer as required by this article. "Assets attributable to covered policies", as used in this subsection (3), are that proportion of the assets which the reserves that should have been established for such policies bear to the reserves that should have been established for all policies of insurance written by the IMPAIRED OR insolvent insurer.

(3.5) AS A CREDITOR OF AN IMPAIRED OR INSOLVENT INSURER AS ESTABLISHED IN THIS SECTION AND CONSISTENT WITH SECTION 10-3-533, 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 THE ASSOCIATION, AS A CREDIT AGAINST CONTRACTUAL OBLIGATIONS UNDER THIS ARTICLE. IF THE LIQUIDATOR HAS NOT MADE AN APPLICATION TO THE RECEIVERSHIP COURT FOR APPROVAL OF A PROPOSAL TO DISBURSE ASSETS OUT OF MARSHALED ASSETS TO GUARANTY ASSOCIATIONS HAVING OBLIGATIONS BECAUSE OF THE INSOLVENCY WITHIN ONE HUNDRED TWENTY DAYS AFTER A FINAL DETERMINATION OF INSOLVENCY OF AN INSURER BY THE RECEIVERSHIP COURT, THE ASSOCIATION MAY APPLY TO THE RECEIVERSHIP COURT FOR APPROVAL OF ITS OWN PROPOSAL TO DISBURSE THESE ASSETS.

(4) (a) Prior to the termination of any REHABILITATION, CONSERVATION, OR liquidation proceeding, the court may take into consideration the contributions of the respective parties, including the association, the shareholders, and policyholders of the IMPAIRED OR insolvent insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of ~~such~~ THE insolvent insurer. In such a determination, consideration shall be given to the welfare of the policyholders of the continuing or successor insurer.

(b) No distribution to stockholders, if any, of an IMPAIRED OR insolvent insurer shall be made until and unless the total amount of valid claims of the association with interest thereon for funds expended in carrying out its powers and duties pursuant to section 10-20-108 with respect to ~~such~~ THE insurer have been fully recovered by the association.

(5) (a) If an order for REHABILITATION OR liquidation of an insurer domiciled in this state has been entered, the receiver appointed under such order shall have a right to recover on behalf of the insurer, from any affiliate that controlled it, the amount of distributions, other than stock dividends paid by the insurer on its capital stock, made at any time during the five years preceding the petition for liquidation subject to the limitations of paragraphs (b) to (d) of this subsection (5).

(d) The maximum amount recoverable under this subsection (5) ~~shall be~~ is the amount needed, in excess of all other available assets of the IMPAIRED OR insolvent insurer, to pay the contractual obligations of the IMPAIRED OR insolvent insurer.

**SECTION 10.** In Colorado Revised Statutes, **amend** 10-20-118 as follows:

**10-20-118. Stay of proceedings - reopening default judgments.** All proceedings in which the IMPAIRED OR insolvent insurer is a party in any court in this state shall be stayed for ~~sixty~~ ONE HUNDRED EIGHTY days after the date an order of CONSERVATION, REHABILITATION, OR liquidation is final to permit proper legal action by the association on any matters germane to its powers or duties. As to

judgment under any decision, order, verdict, or finding based on default, the association may apply to have ~~such~~ THE judgment set aside by the same court that issued ~~such~~ THE judgment and shall be permitted to defend against such suit on the merits.

**SECTION 11. Applicability.** This act applies to any member insurer that has been placed under an order of liquidation with a finding of insolvency after the effective date of this act and any impairment of a member insurer existing on the effective date of this act.

**SECTION 12. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: March 15, 2013