

**First Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 23-1015.01 Christy Chase x2008

HOUSE BILL 23-1303

HOUSE SPONSORSHIP

Brown and McCluskie,

SENATE SPONSORSHIP

(None),

House Committees

Public & Behavioral Health & Human Services

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING PROTECTIONS IN THE EVENT OF AN INSURANCE COMPANY**
102 **FAILURE.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill amends the priority of distribution of insurance claims paid from an insurer's estate in the event of the insurer's liquidation to include in the class 1 distribution priority payments that an impaired or insolvent insurer owes to the risk adjustment program that are necessary to prevent another insurer from becoming impaired or insolvent. This prioritization adjustment repeals on July 1, 2026.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

The bill also amends the "Life and Health Insurance Protection Association Act" (act) as follows:

- Adds health maintenance organizations (HMOs) as members of the association and subjects HMOs to assessments from the association;
- Allocates responsibility for long-term care insurance assessments between health insurance and life insurance association members; and
- Specifies that the act does not provide coverage to a person that acquires rights to receive, or to a payee or beneficiary that transfers its rights in, a structured settlement factoring transaction, as defined in federal law, regardless of when the transaction occurred.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 10-3-541, **amend**
3 (1)(a), (1)(c), and (3); and **add** (4) as follows:

4 **10-3-541. Priority of distribution - definitions - repeal.** (1) The
5 priority of distribution of claims from the insurer's estate shall be in
6 accordance with the order in which each class of claims is set forth in this
7 section. Every claim in each class shall be paid in full, or adequate funds
8 shall be retained for such payment, before the members of the next class
9 receive any payment. No subclasses shall be established within any class.
10 The order of distribution of claims shall be:

11 (a) **Class 1.** (I) The costs and expenses of administration during
12 rehabilitation and liquidation, including but not limited to the following:

13 ~~(H)~~ (A) The actual and necessary costs of preserving or recovering
14 the assets of the insurer;

15 ~~(H)~~ (B) Compensation for all authorized services rendered in the
16 rehabilitation and liquidation;

17 ~~(H)~~ (C) Any necessary filing fees;

18 ~~(H)~~ (D) The fees and mileage payable to witnesses;

1 ~~(V)~~ (E) Authorized reasonable attorney fees and fees for other
2 professional services rendered in the rehabilitation and liquidation; and

3 ~~(VI)~~ (F) The administrative expenses of guaranty associations;
4 AND

5 (II) CLAIMS BY MEMBER INSURERS FOR THEIR PRO RATA SHARE OF
6 THE RISK ADJUSTMENT PROGRAM PAYABLE BY AN IMPAIRED INSURER OR
7 INSOLVENT INSURER IF THE COMMISSIONER DETERMINES THAT THE
8 FAILURE OF THE IMPAIRED INSURER OR INSOLVENT INSURER TO PAY SUCH
9 RISK ADJUSTMENT PROGRAM PAYMENTS WOULD RESULT IN THE
10 IMPAIRMENT OR INSOLVENCY OF THE CLAIMANT MEMBER INSURER AND
11 THAT SUCH IMPAIRMENT OR INSOLVENCY WOULD BE AVOIDED BY
12 PAYMENT OF THE CLAIM. THE AMOUNT OF THE PAYMENT OF THE CLAIM
13 MUST NOT EXCEED THE LESSER OF:

14 (A) THE PRO RATA AMOUNT THE CLAIMANT MEMBER INSURER
15 WOULD BE ENTITLED TO FROM THE RISK ADJUSTMENT PROGRAM BUT DID
16 NOT RECEIVE BECAUSE THE ESTATE OF THE IMPAIRED OR INSOLVENT
17 INSURER HAS NOT MADE THE FULL PAYMENT; OR

18 (B) THE AMOUNT NEEDED TO AVOID THE CLAIMANT MEMBER
19 INSURER'S IMPAIRMENT OR INSOLVENCY.

20 (c) (I) **Class 3.** Claims of the federal government, except those
21 described in ~~paragraph (b) of this subsection (1)~~ SUBSECTION (1)(b) OF
22 THIS SECTION.

23 (II) ON AND AFTER THE EFFECTIVE DATE OF THIS SUBSECTION
24 (1)(c)(II) THROUGH JUNE 30, 2026, CLASS 3 CLAIMS INCLUDE ALL CLAIMS
25 OWED FOR THE RISK ADJUSTMENT PROGRAM.

26 (3) As used in this section:

27 (a) "IMPAIRED INSURER" HAS THE SAME MEANING AS SET FORTH IN

1 SECTION 10-20-103 (6.7).

2 (b) "INSOLVENT INSURER" HAS THE SAME MEANING AS SET FORTH
3 IN SECTION 10-20-103 (7).

4 ~~(a)~~ (c) "Insurer's estate" means the general assets of such insurer
5 less any assets held in separate accounts that, pursuant to section
6 10-7-402, are not chargeable with liabilities arising out of any other
7 business of the insurer. To the extent, if any, assets maintained in the
8 separate account are in excess of the amounts needed to satisfy claims
9 under the separate account contracts, the excess shall be treated as part of
10 the insurer's estate.

11 (d) "MEMBER INSURER" HAS THE SAME MEANING AS SET FORTH IN
12 SECTION 10-20-103 (8).

13 (e) "RISK ADJUSTMENT PROGRAM" MEANS THE PROGRAM
14 ESTABLISHED PURSUANT TO SECTION 1343 OF THE FEDERAL "PATIENT
15 PROTECTION AND AFFORDABLE CARE ACT", PUB.L. 111-148, AS
16 AMENDED BY THE FEDERAL "HEALTH CARE AND EDUCATION
17 RECONCILIATION ACT OF 2010", PUB.L. 111-152, AND AS MAY BE
18 FURTHER AMENDED, 42 U.S.C. SEC. 18063, TO PROVIDE PAYMENTS TO
19 HEALTH INSURANCE CARRIERS THAT COVER HIGH-RISK POPULATIONS AND
20 TO MORE EVENLY DISTRIBUTE THE FINANCIAL RISK BORNE BY CARRIERS.

21 ~~(b)~~ (f) "Separate account contract" means any life policy or
22 contract, annuity contract, funding agreement, or guaranteed investment
23 contract providing for the allocation of amounts received in connection
24 with such policy, contract, or agreement to a separate account authorized
25 by section 10-7-402.

26 (4) SUBSECTIONS (1)(a)(II), (1)(c)(II), (3)(a), (3)(b), (3)(d), AND
27 (3)(e) OF THIS SECTION AND THIS SUBSECTION (4) ARE REPEALED,

1 EFFECTIVE JULY 1, 2026.

2 **SECTION 2.** In Colorado Revised Statutes, **amend** 10-20-101 as
3 follows:

4 **10-20-101. Short title.** ~~This article shall be known and may be~~
5 ~~cited as~~ THE SHORT TITLE OF THIS ARTICLE 20 IS the "Life and Health
6 Insurance Protection Association Act".

7 **SECTION 3.** In Colorado Revised Statutes, **amend** 10-20-102 as
8 follows:

9 **10-20-102. Legislative declaration.** (1) The general assembly
10 finds and declares that the purpose of this ~~article~~ ARTICLE 20 is to protect,
11 subject to certain limitations, the persons specified in section 10-20-104
12 (1) against failure by member insurers in the performance of their
13 contractual obligations under life ~~and~~ INSURANCE POLICIES, health
14 insurance policies, HEALTH BENEFIT PLANS, and annuity POLICIES, PLANS,
15 OR contracts specified in section 10-20-104 (2) because of the insolvency
16 of the member insurer that issued the policies, PLANS, or contracts.

17 (2) To provide the protection specified in subsection (1) of this
18 section, an association of MEMBER insurers shall be created and shall exist
19 to pay benefits and to continue coverages as limited pursuant to this
20 ~~article. Members~~ ARTICLE 20. MEMBER INSURERS of the association are
21 subject to assessment to provide funds to carry out the purpose of this
22 ~~article~~ ARTICLE 20.

23 **SECTION 4.** In Colorado Revised Statutes, 10-20-103, **amend**
24 the introductory portion, (6), (8) introductory portion, (8)(i.5), (8)(j),
25 (10.5), (12), (12.7), and (13); **repeal** (8)(b); and **add** (6.6) as follows:

26 **10-20-103. Definitions.** As used in this ~~article~~ ARTICLE 20, unless
27 the context otherwise requires:

1 (6) "Covered policy", "COVERED CONTRACT", OR "COVERED
2 POLICY OR CONTRACT" means a policy or contract, or a portion of a policy
3 or contract, for which coverage is provided under section 10-20-104.

4 (6.6) (a) "HEALTH BENEFIT PLAN" MEANS ANY HOSPITAL OR
5 MEDICAL EXPENSE POLICY OR CERTIFICATE, HEALTH MAINTENANCE
6 ORGANIZATION SUBSCRIBER CONTRACT, OR OTHER SIMILAR HEALTH
7 CONTRACT THAT IS SUBJECT TO THE JURISDICTION OF THE COMMISSIONER
8 AND AVAILABLE FOR USE, OFFERED, OR SOLD IN COLORADO.

9 (b) "HEALTH BENEFIT PLAN" DOES NOT INCLUDE:

10 (I) AN ACCIDENT ONLY PLAN;

11 (II) CREDIT INSURANCE;

12 (III) DENTAL INSURANCE;

13 (IV) VISION INSURANCE;

14 (V) A MEDICARE SUPPLEMENT PLAN;

15 (VI) BENEFITS FOR LONG-TERM CARE, HOME HEALTH CARE,
16 COMMUNITY-BASED CARE, OR ANY COMBINATION OF SUCH BENEFITS;

17 (VII) DISABILITY INCOME INSURANCE;

18 (VIII) LIABILITY INSURANCE INCLUDING GENERAL LIABILITY
19 INSURANCE AND AUTOMOBILE LIABILITY INSURANCE;

20 (IX) COVERAGE FOR ON-SITE MEDICAL CLINICS;

21 (X) COVERAGE ISSUED AS A SUPPLEMENT TO LIABILITY
22 INSURANCE, WORKERS' COMPENSATION, OR SIMILAR INSURANCE;

23 (XI) AUTOMOBILE MEDICAL PAYMENT INSURANCE; OR

24 (XII) SPECIFIED DISEASE, HOSPITAL CONFINEMENT INDEMNITY, OR
25 LIMITED BENEFIT HEALTH INSURANCE IF THE TYPE OF COVERAGE DOES NOT
26 PROVIDE COORDINATION OF BENEFITS AND IS PROVIDED UNDER A
27 SEPARATE POLICY OR CERTIFICATE.

1 (8) "Member insurer" means any insurer OR HEALTH
2 MAINTENANCE ORGANIZATION THAT IS licensed or ~~who~~ holds a certificate
3 of authority in this state to write any kind of insurance OR HEALTH
4 MAINTENANCE ORGANIZATION BUSINESS for which coverage is provided
5 pursuant to section 10-20-104 and includes any insurer OR HEALTH
6 MAINTENANCE ORGANIZATION whose license or certificate of authority in
7 this state may have been suspended, revoked, not renewed, or voluntarily
8 withdrawn. ~~but~~ "Member insurer" does not include:

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

10 (i.5) A health-care coverage cooperative ~~and~~ WITH A CERTIFICATE
11 OF AUTHORITY ISSUED AND OPERATING UNDER PART 10 OF ARTICLE 16 OF
12 THIS TITLE 10; OR

13 (j) Any entity similar to those specified in ~~this subsection (8)~~
14 SUBSECTIONS (8)(a) TO (8)(i.5) OF THIS SECTION.

15 (10.5) "Owner" of a policy or contract, ~~for insurance, or~~ "policy
16 owner", "POLICYHOLDER", "CONTRACT HOLDER", or "contract owner"
17 means the person who is identified as the legal owner under the terms of
18 the policy or contract ~~for insurance~~ or who is otherwise vested with legal
19 title to the policy or contract ~~for insurance~~ through a valid assignment
20 completed in accordance with the terms of the policy or contract ~~for~~
21 ~~insurance~~ and properly recorded as the owner on the books of the
22 MEMBER insurer. The terms "owner", "contract owner", "POLICYHOLDER",
23 "CONTRACT HOLDER" and "policy owner" do not include persons with a
24 MERE beneficial interest in a policy or contract.

25 (12) (a) "Premiums" means ~~amounts~~ THE AMOUNT of money or
26 other consideration, however designated, received on covered policies or
27 contracts less returned premiums, returned consideration, and returned

1 deposits, and less dividends and experience credits. ~~thereon.~~

2 (b) "Premiums" does not include:

3 (I) Any ~~amounts~~ AMOUNT of money or other consideration
4 received for any policies or contracts or for the portions of any policies
5 or contracts for which coverage is not provided under section 10-20-104
6 (2); except that assessable premiums shall not be reduced on account of
7 section 10-20-104 (2)(b)(III) relating to interest limitations and section
8 10-20-104 (3)(b) relating to limitations with respect to any one life;
9 ~~"Premiums" does not include:~~

10 (a) (II) Premiums on an unallocated annuity contract; or

11 (b) (III) Premiums in excess of five million dollars with respect
12 to multiple nongroup policies of life insurance owned by one owner,
13 regardless of:

14 (H) (A) Whether the policy owner is an individual, firm,
15 corporation, or other person;

16 (H) (B) Whether the persons insured are officers, managers,
17 employees, or other persons; or

18 (H) (C) The number of policies or contracts held by the owner.

19 (12.7) "Receivership court" means the court in an impaired or
20 insolvent insurer's state having jurisdiction over the conservation,
21 rehabilitation, or liquidation of the MEMBER insurer.

22 (13) "Resident" means any person to whom a contractual
23 obligation is owed and who resides in this state on the date of entry of a
24 court order that determines a member insurer to be an impaired insurer or
25 a court order that determines a member insurer to be an insolvent insurer.
26 A person ~~may~~ MUST be a resident of only one state, which in the case of
27 a person other than a natural person ~~shall~~ MUST be its principal place of

1 business. Citizens of the United States who are residents of a foreign
2 country, United States possession, United States territory, or United States
3 protectorate, which country, possession, territory, or protectorate does not
4 have an association similar to the association created by this ~~article~~, shall
5 ~~be~~ ARTICLE 20, ARE deemed residents of the state of domicile of the
6 MEMBER insurer that issued the policies or contracts.

7 **SECTION 5.** In Colorado Revised Statutes, 10-20-104, **amend**
8 (1) introductory portion, (1)(a) introductory portion, (1)(a)(II)(A),
9 (1)(a)(II)(B), (1)(b), (1.5), (1.7), (2)(a), (2)(b) introductory portion,
10 (2)(b)(XII), (2)(b)(XVI), (2)(b)(XVIII) introductory portion,
11 (2)(b)(XVIII)(B), (2)(b)(XVIII)(C), (3) introductory portion, (3)(a),
12 (3)(b)(I) introductory portion, (3)(b)(I)(B), (3)(b)(II)(A), and (4); and **add**
13 (2)(b)(XX), (2)(c), and (3.5) as follows:

14 **10-20-104. Coverage and limitations - coordination of benefits.**

15 (1) This ~~article shall provide~~ ARTICLE 20 PROVIDES coverage for the
16 policies and contracts specified in subsection (2) of this section and to
17 persons:

18 (a) Who are owners of, ~~or~~ certificate holders under, ORENROLLEES
19 IN such policies or contracts, other than structured settlement annuities,
20 and who:

21 (II) Are not residents, but only under all of the following
22 conditions:

23 (A) The MEMBER insurer ~~which~~ THAT issued ~~such~~ THE policies or
24 contracts is domiciled in this state;

25 (B) ~~Such~~ THE MEMBER insurer never held a license or certificate
26 of authority in the states in which such persons reside;

27 (b) Regardless of where they reside, except for nonresident

1 certificate holders under group policies or contracts, who are the
2 beneficiaries, assignees, or payees, INCLUDING HEALTH-CARE PROVIDERS
3 RENDERING SERVICES UNDER A HEALTH INSURANCE OR HEALTH
4 MAINTENANCE ORGANIZATION POLICY, CONTRACT, OR CERTIFICATE, of the
5 persons covered under ~~paragraph (a) of this subsection (1)~~ SUBSECTION
6 (1)(a) OF THIS SECTION.

7 (1.5) This ~~article shall~~ ARTICLE 20 DOES not provide coverage to
8 a person ~~who~~ THAT:

9 (a) Is a payee or beneficiary of a ~~contract~~ AN owner OR ENROLLEE
10 who is a resident of this state if the payee or beneficiary is afforded any
11 coverage by the association of another state; OR

12 (b) ACQUIRES RIGHTS TO RECEIVE PAYMENTS THROUGH A
13 STRUCTURED SETTLEMENT FACTORING TRANSACTION, AS DEFINED IN 26
14 U.S.C. SEC. 5891 (c)(3)(A), REGARDLESS OF WHETHER THE TRANSACTION
15 OCCURRED BEFORE, ON, OR AFTER THE EFFECTIVE DATE OF 26 U.S.C. SEC.
16 5891 (c)(3)(A).

17 (1.7) This ~~article~~ ARTICLE 20 is intended to provide coverage to a
18 person who is a resident of this state and, in special circumstances, to a
19 nonresident. In order to avoid duplicate coverage, if a person who would
20 otherwise receive coverage under this ~~article~~ ARTICLE 20 is provided
21 coverage under the laws of any other state, the person shall not be
22 provided coverage under this ~~article~~ ARTICLE 20. In determining the
23 application of the provisions of this subsection (1.7) in situations where
24 a person could be covered by the association of more than one state,
25 whether as an owner, payee, beneficiary, ENROLLEE, or assignee, this
26 ~~article~~ ARTICLE 20 shall be construed in conjunction with other state laws
27 to result in coverage by only one association.

1 (2) (a) This ~~article~~ ARTICLE 20 provides coverage to the persons
2 specified in subsections (1) and (1.3) of this section for direct, nongroup
3 life INSURANCE, health INSURANCE, HEALTH MAINTENANCE
4 ORGANIZATION, annuity, and supplemental policies or contracts and for
5 certificates under direct group life INSURANCE, health INSURANCE,
6 HEALTH MAINTENANCE ORGANIZATION, OR annuity policies or contracts,
7 and FOR supplemental contracts to any of these, issued by member
8 insurers pursuant to ~~articles 7 and 8~~ ARTICLE 7 and parts 1, ~~and 2~~ 2, AND
9 4 of article 16 of this ~~title~~ TITLE 10, except as limited by this ~~article~~
10 ARTICLE 20. Annuity contracts and certificates under group annuity
11 contracts include allocated funding agreements, structured settlement
12 annuities, and any immediate or deferred annuity contracts.

13 (b) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2)(c) OF
14 THIS SECTION, this ~~article~~ ARTICLE 20 does not provide coverage for:

15 (XII) Any MEMBER insurer ~~which~~ THAT was insolvent or unable
16 to fulfill its contractual obligations as of July 1, 1991; except that an
17 annuity contract issued or assumed by such ~~an~~ A MEMBER insurer shall be
18 covered under this ~~article~~ ARTICLE 20 if ~~such~~ THE MEMBER insurer was
19 ordered into liquidation between July 1, 1991, and August 31, 1991;

20 (XVI) Any policy or contract providing hospital, medical,
21 prescription drug, or other health-care benefits under:

22 (A) Part C or part D of subchapter XVIII, chapter 7 of title 42,
23 United States Code, or any regulation issued under ~~these~~ THOSE parts C
24 OR D; OR

25 (B) SUBCHAPTER XIX, CHAPTER 7 OF TITLE 42, UNITED STATES
26 CODE, OR ANY REGULATION ISSUED UNDER TITLE XIX;

27 (XVIII) Any obligation that does not arise under the expressed

1 written terms of the policy or contract issued by the MEMBER insurer to
2 the ~~contract owner, or to the policy~~ owner, CERTIFICATE HOLDER, OR
3 ENROLLEE, including: ~~and without limitation:~~

4 (B) Claims based on side letters, riders, or other documents that
5 were issued by the MEMBER insurer without meeting applicable policy OR
6 CONTRACT form filing or approval requirements;

7 (C) Misrepresentations of, or regarding, policy OR CONTRACT
8 benefits;

9 (XX) STRUCTURED SETTLEMENT ANNUITY BENEFITS TO WHICH A
10 PAYEE OR BENEFICIARY HAS TRANSFERRED THE PAYEE'S OR BENEFICIARY'S
11 RIGHTS IN A STRUCTURED SETTLEMENT FACTORING TRANSACTION, AS
12 DEFINED IN 26 U.S.C. SEC. 5891 (c)(3)(A), REGARDLESS OF WHETHER THE
13 TRANSACTION OCCURRED BEFORE, ON, OR AFTER THE EFFECTIVE DATE OF
14 26 U.S.C. SEC. 5891 (c)(3)(A).

15 (c) THE EXCLUSIONS FROM COVERAGE SPECIFIED IN SUBSECTION
16 (2)(b)(III) OF THIS SECTION DO NOT APPLY TO ANY PORTION OF A POLICY
17 OR CONTRACT, INCLUDING A RIDER, THAT PROVIDES LONG-TERM CARE OR
18 ANY OTHER HEALTH INSURANCE BENEFITS.

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

21 (a) The contractual obligations for which the MEMBER insurer is
22 liable or would have been liable if it were not an impaired or insolvent
23 insurer; or

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

26 (B) For health insurance benefits OR COVERAGE RECEIVED UNDER
27 HEALTH MAINTENANCE ORGANIZATION CONTRACTS: One hundred

1 thousand dollars for coverages not defined as disability, ~~basic hospital,~~
2 ~~medical and surgical, or major medical insurance~~ COVERAGE OR SERVICES
3 UNDER HEALTH BENEFIT PLANS, or long-term care insurance, including
4 any net cash surrender and net cash withdrawal values; three hundred
5 thousand dollars for disability insurance; three hundred thousand dollars
6 for long-term care insurance; or five hundred thousand dollars for ~~basic~~
7 ~~hospital, medical and surgical, or major medical insurance~~ COVERAGE OR
8 SERVICES UNDER HEALTH BENEFIT PLANS;

9 (II) The association is not obligated to cover:

10 (A) More than three hundred thousand dollars in benefits, in the
11 aggregate, with respect to any one life under ~~sub-paragraphs (A) to~~
12 ~~(D) of subparagraph (I) of this paragraph (b)~~ SUBSECTION (3)(b)(I) OF
13 THIS SECTION; except that, with respect to benefits for ~~basic hospital,~~
14 ~~medical and surgical, and major medical insurance~~ COVERAGE OR
15 SERVICES UNDER HEALTH BENEFIT PLANS under ~~sub-paragraph (B) of~~
16 ~~subparagraph (I) of this paragraph (b)~~ SUBSECTION (3)(b)(I)(B) OF THIS
17 SECTION, the aggregate liability of the association ~~shall~~ MUST not exceed
18 five hundred thousand dollars with respect to any one ~~individual~~ LIFE; or

19 (3.5) FOR PURPOSES OF THIS ARTICLE 20, BENEFITS PROVIDED BY
20 A LONG-TERM CARE RIDER TO A LIFE INSURANCE POLICY OR ANNUITY ARE
21 CONSIDERED THE SAME TYPE OF BENEFITS AS THE BENEFITS PROVIDED BY
22 THE UNDERLYING LIFE INSURANCE POLICY OR ANNUITY CONTRACT TO
23 WHICH THE RIDER RELATES.

24 (4) In performing its obligations to provide coverage under section
25 10-20-108, the association is not required to guarantee, assume, reinsure,
26 REISSUE, or perform, or cause to be guaranteed, assumed, reinsured,
27 REISSUED, or performed, the contractual obligations of the impaired or

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

4 **SECTION 6.** In Colorado Revised Statutes, 10-20-106, **amend**
5 (1) introductory portion as follows:

6 **10-20-106. Creation of the association.** (1) There is hereby
7 created a private nonprofit legal entity to be known as the life and health
8 insurance protection association. All member insurers shall be and remain
9 members of the association as a condition of their authority to transact
10 insurance OR HEALTH MAINTENANCE ORGANIZATION BUSINESS in this
11 state. The association shall perform its functions pursuant to the plan of
12 operation specified in section 10-20-110 and shall exercise its powers
13 through the board of directors provided in section 10-20-107. For
14 purposes of administration and assessment, the association shall maintain
15 three accounts:

16 **SECTION 7.** In Colorado Revised Statutes, 10-20-107, **amend**
17 (1) and (2) as follows:

18 **10-20-107. Board of directors.** (1) The board of directors of the
19 association ~~shall consist of not less~~ CONSISTS OF NO FEWER than ~~five~~
20 SEVEN nor more than ~~nine~~ ELEVEN member insurers serving terms as
21 established in the plan of operation. ~~The members of the board~~ MEMBER
22 INSURERS shall ~~be selected by member insurers~~ SELECT MEMBERS OF THE
23 BOARD, subject to the approval of the commissioner. ~~Vacancies on the~~
24 ~~board shall be filled~~ IF A VACANCY OCCURS, THE REMAINING BOARD
25 MEMBERS SHALL FILL THE VACANCY for the remaining period of the term
26 by a majority vote, ~~of the remaining board members~~, subject to the
27 approval of the commissioner. To select the first board and initially

1 organize the association, the commissioner shall give notice to all
2 member insurers of the time and place of the organizational meeting. At
3 the organizational meeting, each member insurer ~~shall be~~ IS entitled to
4 one vote in person or by proxy. If the board is not selected within sixty
5 days after notice of the organizational meeting, the commissioner may
6 appoint the initial members.

7 (2) In approving selections or in appointing members to the board,
8 the commissioner shall ~~consider, among other things, whether~~ ENSURE
9 THAT all member insurers are fairly represented BETWEEN MEMBER
10 INSURERS THAT WRITE PRIMARILY LIFE INSURANCE OR ANNUITY
11 CONTRACTS AND MEMBER INSURERS THAT WRITE PRIMARILY HEALTH
12 BENEFIT PLANS.

13 **SECTION 8.** In Colorado Revised Statutes, 10-20-108, **amend**
14 (1)(a), (2)(a), (2)(c), (5), (6), (11), (12), (13)(c), (13)(f), (19), (22)
15 introductory portion, and (24) introductory portion; and **add** (13)(i) as
16 follows:

17 **10-20-108. Powers and duties of the association.** (1) If a
18 member insurer is an impaired insurer, the association may, in its
19 discretion and subject to any conditions imposed by the association that
20 do not impair the contractual obligations of the impaired insurer and that
21 are approved by the commissioner:

22 (a) Guarantee, assume, REISSUE, or reinsure or cause to be
23 guaranteed, assumed, REISSUED, or reinsured any or all of the policies or
24 contracts of the impaired insurer; or

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

27 (a) Guarantee, assume, REISSUE, or reinsure or cause to be

1 guaranteed, assumed, REISSUED, or reinsured the covered policies OR
2 CONTRACTS of the insolvent insurer and provide such ~~moneys~~ MONEY,
3 pledges, notes, guarantees, or other means as are reasonably necessary to
4 discharge those duties; or

5 (c) Provide benefits and coverages in accordance with the
6 following provisions:

7 (I) With respect only to life ~~and~~ INSURANCE, health insurance,
8 ~~policies~~ HEALTH BENEFIT PLANS, and annuities, assure payment of benefits
9 ~~for premiums identical to the premiums and benefits, except for terms of~~
10 ~~conversion and renewability~~, that would have been payable under the
11 policies OR CONTRACTS of the insolvent insurer for claims incurred:

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

17 (B) With respect to nongroup policies, contracts, and annuities,
18 not later than the earlier of the next renewal date, if any, under ~~such~~ THE
19 policies or contracts or one year, but in no event less than thirty days,
20 after the date on which the association becomes obligated with respect to
21 ~~such~~ THE policies or contracts.

22 (II) Make diligent efforts to provide to all known insureds,
23 ENROLLEES, or annuitants for nongroup policies and contracts, or to group
24 policy OR CONTRACT owners with respect to group policies and contracts,
25 thirty days' notice of the termination under ~~subparagraph (I) of this~~
26 ~~paragraph (c)~~ SUBSECTION (2)(c)(I) OF THIS SECTION of the benefits
27 provided.

1 (III) With respect to nongroup life ~~and~~ INSURANCE, health
2 insurance, ~~policies~~ HEALTH BENEFIT PLANS, and annuities covered by the
3 association, make available to each known insured, ENROLLEE, or
4 annuitant, or TO THE owner if other than the insured, ENROLLEE, or
5 annuitant, and with respect to an individual formerly insured OR
6 ENROLLED or formerly an annuitant under a group policy OR CONTRACT
7 who is not eligible for replacement group coverage, substitute coverage
8 on an individual basis in accordance with ~~the provisions of subparagraph~~
9 ~~(IV) of this paragraph (c)~~ SUBSECTION (2)(c)(IV) OF THIS SECTION, if the
10 insureds, ENROLLEES, or annuitants had a right under law or the
11 terminated policy, CONTRACT, or annuity to convert coverage to
12 individual coverage or to continue an individual policy, CONTRACT, or
13 annuity in force until a specified age or for a specified time, during which
14 the insurer OR HEALTH MAINTENANCE ORGANIZATION had no right to
15 unilaterally make changes in any provisions of the policy, CONTRACT, or
16 annuity or had a right only to make changes in premium by class.

17 (IV) (A) In providing the substitute coverage required under
18 ~~subparagraph (III) of this paragraph (c)~~ SUBSECTION (2)(c)(III) OF THIS
19 SECTION, the association may offer either to reissue the terminated
20 coverage or to issue an alternative policy OR CONTRACT AT ACTUARIALLY
21 JUSTIFIED RATES APPROVED BY THE COMMISSIONER.

22 (B) The association shall offer alternative or reissued policies OR
23 CONTRACTS without requiring evidence of insurability, and the policies
24 OR CONTRACTS must not provide for any waiting period or exclusion that
25 would not have applied under the terminated policy OR CONTRACT.

26 (C) The association may reinsure any alternative or reissued
27 policy OR CONTRACT.

1 (V) (A) Alternative policies OR CONTRACTS adopted by the
2 association are subject to the approval of the ~~domiciliary~~ commissioner.
3 ~~and the receivership court.~~ The association may adopt alternative policies
4 OR CONTRACTS of various types for future issuance without regard to any
5 particular impairment or insolvency.

6 (B) Alternative policies OR CONTRACTS must contain at least the
7 minimum statutory provisions required in this state and provide benefits
8 reasonably related to the premium charged. The association shall set the
9 premium in accordance with a table of rates ~~which it shall adopt~~ THAT
10 THE ASSOCIATION ADOPTS. The premium must reflect the amount of
11 insurance OR COVERAGE to be provided and the age and class of risk of
12 each insured but ~~shall~~ MUST not reflect any changes in the health of the
13 insured after the original policy OR CONTRACT was last underwritten.

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

18 (VI) If the association elects to reissue terminated coverage at a
19 premium rate different from that charged under the terminated policy OR
20 CONTRACT, the association shall set ~~the~~ AN ACTUARIALLY JUSTIFIED
21 premium in accordance with the amount of insurance OR COVERAGE
22 provided and the age and class of risk, subject to approval by the
23 commissioner. ~~or by a court of competent jurisdiction.~~

24 (VII) The obligations of the association, with respect to coverage
25 under any policy OR CONTRACT of the impaired or insolvent insurer or
26 under any reissued or alternative policy OR CONTRACT, cease on the date
27 ~~such~~ THE coverage, ~~or~~ policy, OR CONTRACT is replaced by another similar

1 policy OR CONTRACT by the policy owner, ~~the~~ insured, ENROLLEE, or ~~the~~
2 association.

3 (VIII) When proceeding under this ~~paragraph (c)~~ SUBSECTION
4 (2)(c), with respect to any policy or contract carrying guaranteed
5 minimum interest rates, the association shall assure the payment or
6 crediting of a rate of interest consistent with section 10-20-104 (2)(b)(III).

7 (5) Nonpayment of premiums within thirty-one days after the date
8 required under the terms of any guaranteed, assumed, alternative, or
9 reissued policy or contract or substitute coverage ~~shall terminate~~
10 TERMINATES the obligations of the association under ~~such~~ THE policy,
11 CONTRACT, or coverage under this ~~article~~ ARTICLE 20 with respect to ~~such~~
12 THE policy, CONTRACT, or coverage, except with respect to any claims
13 incurred or any net cash surrender value ~~which~~ THAT may be due in
14 accordance with ~~the provisions of this article~~ ARTICLE 20.

15 (6) Premiums due for coverage after entry of an order of
16 liquidation of an insolvent insurer ~~shall~~ belong to and ~~be~~ ARE payable at
17 the direction of the association, and the association ~~shall be~~ IS liable for
18 unearned premiums due to policy OR contract owners arising after the
19 entry of ~~such~~ THE order.

20 (11) The association ~~shall have~~ HAS standing to appear or
21 intervene before any court or agency in this state ~~which~~ THAT has
22 jurisdiction over a member insurer for which the association is or may
23 become obligated under this ~~article~~ ARTICLE 20, or with jurisdiction over
24 any person or property against which the association may have rights
25 through subrogation or otherwise. ~~Such~~ THE ASSOCIATION'S standing ~~shall~~
26 ~~extend~~ EXTENDS to all matters germane to the powers and duties of the
27 association, including ~~but not limited to~~ proposals for reinsuring,

1 REISSUING, modifying, or guaranteeing the policies or contracts of the
2 member insurer and the determination of the policies or contracts and
3 contractual obligations. The association ~~shall also have~~ HAS the right to
4 appear or intervene before a court or agency in another state with
5 jurisdiction over a member insurer for which the association is or may
6 become obligated or with jurisdiction over any person or property against
7 whom the association may have rights through subrogation or otherwise.

8 (12) (a) Any person receiving benefits under this ~~article shall be~~
9 ARTICLE 20 IS deemed to have assigned the rights under, and any causes
10 of action against any person for losses arising under, resulting from, or
11 otherwise relating to, the covered policy or contract to the association to
12 the extent of the benefits received because of this ~~article~~ ARTICLE 20,
13 whether the benefits are payments of or on account of contractual
14 obligations, continuation of coverage, or the provision of substitute or
15 alternative POLICIES, CONTRACTS, OR coverage. The association may
16 require ~~an assignment to it of such rights and causes of action by any~~
17 payee, policy, or contract owner, beneficiary, insured, ENROLLEE, or
18 annuitant TO ASSIGN THE PERSON'S RIGHTS UNDER, AND CAUSES OF ACTION
19 AGAINST ANY PERSON FOR LOSSES ARISING UNDER, RESULTING FROM, OR
20 OTHERWISE RELATING TO, THE COVERED POLICY OR CONTRACT TO THE
21 ASSOCIATION as a condition precedent to the receipt of any right or
22 benefits conferred by this ~~article~~ ARTICLE 20 upon ~~such~~ THE person.

23 (b) The subrogation rights of the association under this subsection
24 (12) ~~shall~~ have the same priority against the assets of the impaired or
25 insolvent insurer as ~~that~~ THE RIGHTS possessed by the person entitled to
26 receive benefits under this ~~article~~ ARTICLE 20.

27 (c) In addition to ~~paragraphs (a) and (b) of this subsection (12)~~

1 SUBSECTIONS (12)(a) AND (12)(b) OF THIS SECTION, the association ~~shall~~
2 ~~have~~ HAS all common-law rights of subrogation and any other equitable
3 or legal remedy ~~which~~ THAT would have been available to the impaired
4 or insolvent insurer, owner, beneficiary, ENROLLEE, or payee of a policy
5 or contract.

6 (d) If any provision of ~~paragraph (a), (b), or (c) of this subsection~~
7 ~~(12)~~ SUBSECTION (12)(a), (12)(b), OR (12)(c) OF THIS SECTION is invalid
8 or ineffective with respect to any person or claim for any reason, the
9 amount payable by the association with respect to the related covered
10 obligations is reduced by the amount realized by any other person with
11 respect to the person or claim that is attributable to the policies OR
12 CONTRACTS or portions of the policies OR CONTRACTS covered by the
13 association.

14 (e) If the association has provided benefits with respect to a
15 covered obligation and a person recovers amounts as to which the
16 association has rights as described in ~~paragraphs (a) to (d) of this~~
17 ~~subsection (12)~~ SUBSECTIONS (12)(a) TO (12)(d) OF THIS SECTION, the
18 person shall pay to the association the portion of the recovery attributable
19 to the policies OR CONTRACTS, or portions of policies OR CONTRACTS,
20 covered by the association.

21 (13) The association may:

22 (c) Borrow money to effect the purposes of this ~~article~~ ARTICLE
23 20, and any notes or other evidence of indebtedness of the association not
24 in default ~~shall be~~ ARE legal investments for domestic MEMBER insurers
25 and may be carried as admitted assets;

26 (f) Exercise, for the purposes of this ~~article~~ ARTICLE 20 and to the
27 extent approved by the commissioner, the powers of a domestic life ~~or~~

1 INSURER, health insurer, OR HEALTH MAINTENANCE ORGANIZATION, but
2 the association shall not issue ~~insurance~~ policies or ~~annuity~~ contracts
3 other than those issued to perform its obligations under this ~~article~~
4 ARTICLE 20;

5 (i) FILE FOR AN ACTUARIALLY JUSTIFIED RATE OR PREMIUM
6 INCREASE FOR ANY POLICY OR CONTRACT THAT IT GUARANTEES, ASSUMES,
7 REINSURES, REISSUES, OR OTHERWISE PROVIDES COVERAGE UNDER THIS
8 SECTION IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE
9 POLICY OR CONTRACT AND IN ACCORDANCE WITH OTHER APPLICABLE
10 PROVISIONS OF STATE LAW.

11 (19) A person who has a claim against ~~an~~ A MEMBER insurer
12 pursuant to a provision of ~~an insurance~~ A policy OR CONTRACT, other than
13 a policy OR CONTRACT of an impaired or insolvent insurer, that also is a
14 contractual obligation under this ~~article~~ ARTICLE 20, must first exhaust ~~his~~
15 ~~or her~~ THE PERSON'S right under that policy OR CONTRACT. The amount of
16 an approved claim under this ~~article shall~~ ARTICLE 20 MUST be reduced by
17 the policy OR CONTRACT limits of, or amount paid under, that ~~insurance~~
18 policy OR CONTRACT, whichever amount is greater. If a claimant exhausts
19 all rights under a policy OR CONTRACT, other than a policy OR CONTRACT
20 of an impaired or insolvent insurer, the MEMBER insurer issuing that
21 policy OR CONTRACT is not entitled to sue or continue a suit against the
22 insured of the impaired or insolvent insurer to recover an amount paid to
23 the claimant under the policy OR CONTRACT; except that a person having
24 a contractual obligation, as defined by this ~~article~~ ARTICLE 20, under a life
25 insurance policy or an annuity contract issued by an impaired or insolvent
26 insurer is not required to exhaust other coverage for that claim, and the
27 amount of an approved claim under a life insurance policy or annuity

1 contract issued by an impaired or insolvent insurer may not be reduced
2 because of that duplicate coverage.

3 (22) In carrying out its duties in connection with guaranteeing,
4 assuming, REISSUING, or reinsuring policies or contracts under this
5 section, the association may issue substitute coverage AT ACTUARIALLY
6 JUSTIFIED RATES for a policy or contract that provides for the calculation
7 of returns or changes in value OR BENEFITS by the use of an interest rate,
8 crediting rate, or similar factor determined by use of an index or other
9 external reference, by issuing an alternative policy or contract in
10 accordance with the following provisions:

11 (24) In carrying out its duties in connection with guaranteeing,
12 assuming, REISSUING, or reinsuring policies or contracts under subsection
13 (1) or (2) of this section, the association may ~~subject to approval by the~~
14 ~~receivership court,~~ issue substitute coverage for a policy or contract that
15 provides an interest rate, crediting rate, or similar factor, determined by
16 use of an index or other external reference stated in the policy or contract,
17 employed in calculating returns or changes in value by issuing an
18 alternative policy or contract in accordance with the following provisions:

19 **SECTION 9.** In Colorado Revised Statutes, 10-20-109, **amend**
20 (2) introductory portion, (2)(a), (3)(b), (5)(a), (5)(b), (6), (7), (8)
21 introductory portion, and (9) as follows:

22 **10-20-109. Assessments.** (2) ~~There~~ THE BOARD shall ~~be~~ IMPOSE
23 two assessments, as follows:

24 (a) Class A assessments must be authorized and called for the
25 purpose of meeting administrative and legal costs and other expenses and
26 examinations conducted under the authority of ~~section 10-20-112 (5)~~
27 SECTION 10-20-115. Class A assessments may be authorized and called

1 whether or not related to a particular impaired or insolvent insurer.

2 (3) (b) (I) THE BOARD SHALL DETERMINE class B assessments
3 against member insurers for each account ~~shall be in~~ BASED ON the
4 proportion that the premiums received on business in this state by each
5 assessed member insurer on policies or contracts covered by each account
6 for the three most recent calendar years for which information is available
7 preceding the year in which the MEMBER insurer became impaired or
8 insolvent, bear to ~~such~~ THE premiums received on business in this state
9 for ~~such~~ THOSE calendar years by all assessed member insurers.

10 (II) OF THE AMOUNT OF CLASS B ASSESSMENTS FOR LONG-TERM
11 CARE INSURANCE WRITTEN BY THE IMPAIRED OR INSOLVENT INSURER, THE
12 BOARD SHALL ALLOCATE:

13 (A) FIFTY PERCENT TO THE HEALTH INSURANCE ACCOUNT; AND

14 (B) FIFTY PERCENT, ON A PRO RATA BASIS, TO THE LIFE INSURANCE
15 ACCOUNT AND THE ANNUITY ACCOUNT.

16 (5) (a) Subject to ~~paragraph (b) of this subsection (5)~~ SUBSECTION
17 (5)(b) OF THIS SECTION, the total of all assessments authorized by the
18 association with respect to a member insurer for each account must not
19 exceed, in any one calendar year, two percent of the average premiums
20 received by the MEMBER insurer in this state on the policies and contracts
21 covered by the account during the three calendar years preceding the year
22 in which the MEMBER insurer became impaired or insolvent.

23 (b) If two or more assessments are authorized in one calendar year
24 with respect to MEMBER insurers ~~who~~ THAT become impaired or insolvent
25 in different calendar years, the average annual premiums for purposes of
26 the aggregate assessment percentage limitation referenced in ~~paragraph~~
27 ~~(a) of this subsection (5)~~ SUBSECTION (5)(a) OF THIS SECTION is equal and

1 limited to the highest of the three-year average annual premiums for the
2 applicable account as calculated under this section.

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

13 (7) ~~It shall be proper for any~~ A member insurer, in determining its
14 premium rates and policyholder dividends ~~as to~~ FOR any kind of insurance
15 OR HEALTH MAINTENANCE ORGANIZATION BUSINESS within the scope of
16 this ~~article, to~~ ARTICLE 20, MAY consider the amount reasonably necessary
17 to meet its assessment obligations under this ~~article~~ ARTICLE 20.

18 (8) The association shall issue to each MEMBER insurer paying an
19 assessment for the life and annuity accounts under this ~~article~~ ARTICLE 20,
20 other than a class A assessment, a certificate of contribution from the
21 association, in a form prescribed by the commissioner, for the amount of
22 the assessment so paid. All outstanding certificates shall be of equal
23 dignity and priority without reference to amounts or dates of issue. ~~Such~~
24 THE MEMBER INSURER MAY SHOW THE certificate of contribution ~~may be~~
25 ~~shown by the insurer~~ in its financial statement as an asset in such form
26 and for such amount, if any, and period of time as the commissioner may
27 approve; but the MEMBER insurer, ~~shall,~~ at its option, ~~have~~ HAS the right

1 in any event to show ~~such~~ THE certificate of contribution as an admitted
2 asset at percentages of the original face amount of the assessment for
3 calendar years as follows:

4 (9) Any member insurer whose certificate of authority OR LICENSE
5 has been terminated for any reason whatsoever ~~shall be~~ IS liable for any
6 assessment based on insolvencies arising prior to ~~such~~ termination OF A
7 MEMBER INSURER'S CERTIFICATE OF AUTHORITY OR LICENSE.

8 **SECTION 10.** In Colorado Revised Statutes, 10-20-110, **amend**
9 (1)(b) and (4) as follows:

10 **10-20-110. Plan of operation - rules.** (1) (b) If the association
11 fails to submit a suitable plan of operation or suitable amendments to the
12 plan ~~by January 1, 1992~~ WITHIN SIXTY DAYS AFTER THE EFFECTIVE DATE
13 OF THIS SUBSECTION (1)(b), AS AMENDED, the commissioner shall, after
14 notice and hearing, adopt and promulgate ~~such~~ reasonable rules as ~~are~~
15 necessary or advisable to effectuate ~~the provisions of this article. Such~~
16 ARTICLE 20. THE rules ~~shall~~ continue in ~~force~~ EFFECT until modified by
17 the commissioner or superseded by a plan submitted by the association
18 and approved by the commissioner.

19 (4) The plan of operation may provide that any or all powers and
20 duties of the association, except those established pursuant to sections
21 ~~10-20-108 (12)(c)~~ 10-20-108 (13)(c) and 10-20-109, are delegated to a
22 corporation, association, or other organization ~~which~~ THAT performs, or
23 will perform, functions similar to those of the association established
24 pursuant to this ~~article~~, ARTICLE 20 or its equivalent in two or more states.
25 ~~Such~~ THE ASSOCIATION SHALL REIMBURSE a corporation, association, or
26 organization ~~shall be reimbursed~~ TO WHICH THE ASSOCIATION HAS
27 DELEGATED ITS POWERS AND DUTIES for any payments made on behalf of

1 the association and shall ~~be paid~~ PAY THE CORPORATION, ASSOCIATION, OR
2 ORGANIZATION for its performance of any ASSOCIATION function. ~~of the~~
3 ~~association~~. A delegation pursuant to this subsection (4) ~~shall take~~ TAKES
4 effect only with the approval of both the board and the commissioner, and
5 THE ASSOCIATION may ~~be made~~ DELEGATE ITS POWERS AND DUTIES only
6 to a corporation, association, or organization ~~which~~ THAT extends
7 protection not substantially less favorable and effective than ~~that~~ THE
8 PROTECTION provided by this ~~article~~ ARTICLE 20.

9 **SECTION 11.** In Colorado Revised Statutes, 10-20-111, **amend**
10 (1) introductory portion, (1)(c), and (2) as follows:

11 **10-20-111. Powers and duties of the commissioner.** (1) In
12 addition to any other powers and duties specified in this ~~article~~ ARTICLE
13 20, the commissioner shall:

14 (c) In any liquidation proceeding involving a domestic MEMBER
15 insurer, be appointed as the liquidator.

16 (2) The commissioner may suspend or revoke, after notice and
17 hearing, the certificate of authority OR LICENSE to transact insurance OR
18 THE BUSINESS OF A HEALTH MAINTENANCE ORGANIZATION in this state of
19 any member insurer ~~which~~ THAT fails to pay an assessment when due or
20 fails to comply with the plan of operation. As an alternative, the
21 commissioner may levy a forfeiture on any member insurer ~~which~~ THAT
22 fails to pay an assessment when due. ~~Such~~ THE forfeiture ~~shall~~ MUST not
23 exceed five percent of the unpaid assessment per month, but ~~no~~ A
24 forfeiture ~~shall~~ MUST NOT be less than one hundred dollars per month.

25 **SECTION 12.** In Colorado Revised Statutes, 10-20-112, **amend**
26 (1) introductory portion, (1)(a)(III), (1)(c), (2), (3), and (6) as follows:

27 **10-20-112. Prevention of insolvencies.** (1) To aid in the

1 detection and prevention of MEMBER insurer insolvencies, it ~~shall be~~ IS the
2 duty of the commissioner:

3 (a) To notify the commissioners of all the other states, territories
4 of the United States, and the District of Columbia when action is taken in
5 any of the following matters against a member insurer:

6 (III) Issuance of a formal order that ~~such~~ THE member insurer
7 restrict its premium writing, obtain additional contributions to surplus,
8 withdraw from the state, reinsure all or any part of its business, or
9 increase capital, surplus, or any other account for the security of
10 ~~policyholders~~ OWNERS, CERTIFICATE HOLDERS, ENROLLEES, or creditors.
11 ~~Such~~ THE COMMISSIONER SHALL MAIL THE notice ~~shall be mailed~~ to all
12 commissioners within thirty days following the action taken or the date
13 on which ~~such~~ THE action occurs.

14 (c) To report to the board when the commissioner has reasonable
15 cause to believe from an examination, whether completed or in process,
16 of a member ~~company~~ INSURER that ~~such~~ THE member ~~company~~ INSURER
17 may be an impaired or insolvent insurer;

18 (2) The commissioner may seek the advice and recommendations
19 of the board concerning any matter affecting ~~said~~ THE commissioner's
20 duties and responsibilities regarding the financial condition of member
21 insurers and companies seeking admission to transact insurance OR
22 HEALTH MAINTENANCE ORGANIZATION business in this state.

23 (3) UPON THE COMMISSIONER'S REQUEST, the board shall ~~upon~~
24 ~~request of the commissioner~~, report and make recommendations to the
25 commissioner upon any matter germane to the solvency or liquidation of
26 any member insurer or germane to the solvency of any company seeking
27 to do ~~an~~ insurance OR HEALTH MAINTENANCE ORGANIZATION business in

1 this state. ~~Such~~ THE reports and recommendations ~~shall~~ ARE not be
2 considered public documents.

3 (6) The board may make recommendations to the commissioner
4 for the detection and prevention of MEMBER insurer insolvencies.

5 **SECTION 13.** In Colorado Revised Statutes, 10-20-113, **amend**
6 (1)(d) as follows:

7 **10-20-113. Credits for assessments paid - tax offsets.**

8 (1)(d)(I) Each member insurer writing health insurance ~~is required to~~ OR
9 HEALTH MAINTENANCE ORGANIZATION POLICIES OR CONTRACTS MAY
10 recoup over a reasonable length of time a sum reasonably calculated to
11 recoup the assessments paid by the member insurer under this ~~article~~
12 ARTICLE 20 by ~~way of~~ IMPOSING a surcharge on premiums charged for
13 health insurance OR HEALTH MAINTENANCE ORGANIZATION policies OR
14 CONTRACTS to which this ~~article~~ ARTICLE 20 applies. Amounts recouped
15 ~~shall~~ ARE not ~~be considered~~ premiums for any other purpose, including
16 the computation of gross premium tax or AN agent's commission.

17 (II) A MEMBER INSURER THAT IMPOSES A SURCHARGE UNDER
18 SUBSECTION (1)(d)(I) OF THIS SECTION SHALL INCLUDE the amount of the
19 surcharge ~~shall be filed~~ as part of ~~an~~ THE MEMBER insurer's rate filing
20 pursuant to section 10-16-107 (1). ~~Such~~ THE MEMBER INSURER MUST
21 SHOW THE surcharge ~~must be shown~~ in the rate filing as a separate
22 component of the rate and shall include supporting documentation.

23 (III) ~~Such member insurers who collect~~ A MEMBER INSURER THAT
24 COLLECTS surcharges in excess of assessments paid pursuant to this ~~article~~
25 ARTICLE 20 for an insolvent insurer shall remit the excess to the
26 association as an additional assessment within one hundred twenty days
27 after the end of the collection period as determined by the association.

1 The ASSOCIATION SHALL APPLY THE ~~excess shall be applied~~ AMOUNT to
2 reduce future assessments for that MEMBER insurer in the appropriate
3 category.

4 (IV) ~~Any such member insurer may omit the collection of the~~
5 ~~surcharge in any year from its insureds when the expense of collecting the~~
6 ~~surcharge in any such year would exceed the amount of the surcharge.~~
7 ~~However, nothing in this paragraph (d) shall relieve the member insurer~~
8 ~~of its ultimate obligation to recoup the amount of the surcharge otherwise~~
9 ~~collectible from any such previous year.~~

10 **SECTION 14.** In Colorado Revised Statutes, **amend** 10-20-114
11 as follows:

12 **10-20-114. Miscellaneous provisions - definition.** (1) Nothing
13 in this ~~article~~ ARTICLE 20 reduces the liability for unpaid assessments of
14 the insureds of an impaired or insolvent insurer operating under a plan
15 with assessment liability.

16 (2) The association must keep records of all meetings of the board
17 ~~of directors~~ to discuss the activities of the association in carrying out its
18 powers and duties pursuant to section 10-20-108. Records of ~~such~~ THE
19 meetings may be made public only upon the termination of a liquidation,
20 rehabilitation, or conservation proceeding involving the impaired or
21 insolvent insurer, upon the termination of the impairment or insolvency
22 of the MEMBER insurer, or upon the order of a court of competent
23 jurisdiction. Nothing in this subsection (2) limits the duty of the
24 association to render a report of its activities under section 10-20-115.

25 (3) For the purpose of carrying out its obligations under this
26 ~~article~~ ARTICLE 20, the association is deemed a creditor of the impaired
27 or insolvent insurer to the extent of assets attributable to covered policies

1 AND COVERED CONTRACTS, reduced by any amounts to which the
2 association is entitled as assignee or subrogee pursuant to section
3 10-20-108 (12). Assets of the impaired or insolvent insurer attributable
4 to covered policies AND COVERED CONTRACTS shall be used to continue
5 all covered policies AND COVERED CONTRACTS and pay all contractual
6 obligations of the impaired or insolvent insurer as required by this ~~article~~
7 ARTICLE 20. "Assets OF THE IMPAIRED OR INSOLVENT INSURER attributable
8 to covered policies AND COVERED CONTRACTS", as used in this subsection
9 (3), ~~are~~ MEANS that proportion of the assets ~~which~~ THAT the reserves that
10 should have been established for ~~such~~ THE policies OR CONTRACTS bear
11 to the reserves that should have been established for all policies ~~of~~
12 ~~insurance~~ OR CONTRACTS written by the impaired or insolvent insurer.

13 (3.5) As a creditor of an impaired or insolvent insurer as
14 established in this section and consistent with section 10-3-533, the
15 association and other similar associations are entitled to receive a
16 disbursement of assets out of the marshaled assets from time to time as
17 the assets become available to reimburse the association, as a credit
18 against contractual obligations under this ~~article~~ ARTICLE 20. If the
19 liquidator has not made an application to the receivership court for
20 approval of a proposal to disburse assets out of marshaled assets to
21 guaranty associations having obligations because of the insolvency within
22 one hundred twenty days after a final determination of insolvency of ~~an~~
23 A MEMBER insurer by the receivership court, the association may apply to
24 the receivership court for approval of its own proposal to disburse these
25 assets.

26 (4) (a) Prior to the termination of any rehabilitation, conservation,
27 or liquidation proceeding, the court may take into consideration the

1 contributions of the respective parties, including the association,
2 shareholders, ~~and policyholders~~ OWNERS, CERTIFICATE HOLDERS, OR
3 ENROLLEES of the impaired or insolvent insurer, and any other party with
4 a bona fide interest, in making an equitable distribution of the ownership
5 rights of the insolvent insurer. In ~~such~~ MAKING a determination
6 ~~consideration~~ UNDER THIS SUBSECTION (4)(a), THE COURT shall ~~be given~~
7 ~~to~~ CONSIDER the welfare of the ~~policyholders~~ OWNERS, CERTIFICATE
8 HOLDERS, OR ENROLLEES of the continuing or successor MEMBER insurer.

9 (b) ~~No~~ A distribution SHALL NOT BE MADE to stockholders, if any,
10 of an impaired or insolvent insurer ~~shall be made~~ until ~~and unless~~ the total
11 amount of valid claims of the association ~~with~~ FOR REIMBURSEMENT,
12 INCLUDING interest, ~~thereon for~~ OF funds expended in carrying out its
13 powers and duties pursuant to section 10-20-108 with respect to the
14 IMPAIRED OR INSOLVENT insurer, have been fully recovered by the
15 association.

16 (5) (a) If an order for rehabilitation or liquidation of ~~an~~ A MEMBER
17 insurer domiciled in this state has been entered, the receiver appointed
18 under ~~such~~ THE order ~~shall have~~ HAS a right to recover on behalf of the
19 MEMBER insurer, from any affiliate that controlled it, the amount of
20 distributions, other than stock dividends paid by the MEMBER insurer on
21 its capital stock, made at any time during the five years preceding the
22 petition for liquidation, subject to the limitations of ~~paragraphs (b) to (d)~~
23 ~~of this subsection (5)~~ SUBSECTIONS (5)(b) TO (5)(d) OF THIS SECTION.

24 (b) ~~No such~~ A distribution ~~shall be~~ DESCRIBED IN SUBSECTION
25 (5)(a) OF THIS SECTION IS NOT recoverable if the MEMBER insurer shows
26 that ~~when paid~~ the distribution, WHEN IT WAS PAID, was lawful and
27 reasonable and that the MEMBER insurer did not know, and could not

1 reasonably have known, that the distribution might adversely affect the
2 ability of the MEMBER insurer to fulfill its contractual obligations.

3 (c) Any person who was an affiliate ~~which~~ THAT controlled the
4 MEMBER insurer at the time the distributions were paid ~~shall be~~ IS liable
5 up to the amount of distributions ~~such~~ THE person received. Any person
6 who was an affiliate ~~which~~ THAT controlled the MEMBER insurer at the
7 time the distributions were declared ~~shall be~~ IS liable up to the amount of
8 the distributions ~~such~~ THE person would have received if ~~said~~ THE
9 distributions had been paid immediately. If two or more persons are liable
10 with respect to the same distributions, they ~~shall be~~ ARE jointly and
11 severally liable.

12 (d) The maximum amount recoverable under this subsection (5)
13 is the amount needed, in excess of all other available assets of the
14 impaired or insolvent insurer, to pay the contractual obligations of the
15 impaired or insolvent insurer.

16 (e) If any person liable pursuant to ~~paragraph (c) of this subsection~~
17 ~~(5)~~ SUBSECTION (5)(c) OF THIS SECTION is insolvent, all of its affiliates
18 ~~which~~ THAT controlled it at the time the distribution was paid ~~shall be~~ ARE
19 jointly and severally liable for any resulting deficiency in the amount
20 recovered from the insolvent affiliate.

21 (6) Nothing in this ~~article shall be construed to make~~ ARTICLE 20
22 IMPOSES ANY LIABILITY OR RESPONSIBILITY ON the state of Colorado ~~in~~
23 ~~any way liable~~ for the obligations of the life and health insurance
24 protection association or the unpaid claims of impaired or insolvent ~~life~~
25 ~~and health insurance companies~~ INSURERS.

26 **SECTION 15.** In Colorado Revised Statutes, **amend** 10-20-119
27 as follows:

1 **10-20-119. Prohibited advertisement of association article in**
2 **insurance sales - notice to owners, certificate holders, and enrollees.**

3 (1) ~~No~~ A person, including ~~an~~ A MEMBER insurer AND ANY agent or
4 affiliate of ~~an~~ A MEMBER insurer, shall NOT make, publish, disseminate,
5 circulate, or place before the public, or cause directly or indirectly to be
6 made, published, disseminated, circulated, or placed before the public, in
7 any newspaper, magazine, or other publication, or in the form of a notice,
8 circular, pamphlet, letter, or poster, or over any radio station or television
9 station, or in any other way, any advertisement, announcement, or
10 statement, written or oral, ~~which~~ THAT uses the existence of the life and
11 health insurance protection association for the purpose of sales,
12 solicitation, or inducement to purchase any form of insurance OR OTHER
13 COVERAGE covered by ~~the "Life and Health Insurance Protection~~
14 ~~Association Act"~~ THIS ARTICLE 20. However, this section ~~shall~~ DOES not
15 apply to the association or any other entity ~~which~~ THAT does not sell or
16 solicit insurance OR COVERAGE BY A HEALTH MAINTENANCE
17 ORGANIZATION.

18 (2) ~~By December 1, 1991,~~ The association shall prepare a
19 summary document, IN COMPLIANCE WITH SUBSECTION (3) OF THIS
20 SECTION, describing the general purposes and current limitations of this
21 ~~article, and such summary document shall be in compliance with~~
22 ~~subsection (3) of this section. Such~~ ARTICLE 20. THE ASSOCIATION SHALL
23 SUBMIT THE summary document ~~shall be submitted~~ to the commissioner
24 for approval. Sixty days after receiving ~~such~~ approval FROM THE
25 COMMISSIONER, each member ~~shall~~ INSURER, when delivering a policy or
26 contract as described in section 10-20-104 (2)(a) to a ~~policyholder or~~
27 ~~contract holder~~ AN OWNER, A CERTIFICATE HOLDER, OR AN ENROLLEE,

1 SHALL deliver ~~such~~ THE summary document concurrently WITH or ~~prior~~
2 ~~to the delivery of such~~ BEFORE DELIVERING THE policy or contract ~~except~~
3 ~~when~~ UNLESS subsection (4) of this section applies. The MEMBER INSURER
4 SHALL ALSO MAKE THE summary document ~~shall also be~~ available upon
5 request by a ~~policyholder~~ AN OWNER, A CERTIFICATE HOLDER, OR AN
6 ENROLLEE. The distribution, delivery, or contents or interpretation of the
7 summary document ~~shall~~ DOES not mean that either the policy or the
8 contract or the ~~holder thereof~~ OWNER, CERTIFICATE HOLDER, OR ENROLLEE
9 will be covered in the event of impairment or insolvency of a member
10 insurer. The ASSOCIATION SHALL REVISE THE summary document ~~shall be~~
11 ~~revised by the association pursuant to~~ AS NECESSARY BASED ON
12 amendments to this ~~article~~ ARTICLE 20 or as other circumstances may
13 require. Failure to receive this summary document does not give a
14 ~~policyholder, a contract holder, or~~ AN OWNER, A CERTIFICATE HOLDER, an
15 insured, OR AN ENROLLEE any rights other than those stated in this ~~article~~
16 ARTICLE 20.

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

21 (a) State the name and address of the association and the division
22 of insurance;

23 (b) Prominently warn the ~~policyholder or contract holder~~ OWNER,
24 CERTIFICATE HOLDER, OR ENROLLEE that the association may not cover the
25 policy OR CONTRACT or, if coverage is available, ~~such~~ THE policy OR
26 CONTRACT may be subject to substantial limitations and exclusions and
27 ~~shall be~~ IS conditioned on the continued residence in the state by the

1 ~~policyholder or contract holder~~ OWNER, INSURED, CERTIFICATE HOLDER,
2 OR ENROLLEE;

3 (c) State that the MEMBER insurer and its agents are prohibited by
4 law from using the existence of the association for the purpose of sales,
5 solicitation, or inducement to purchase any form of insurance OR HEALTH
6 MAINTENANCE ORGANIZATION COVERAGE;

7 (d) Emphasize that the ~~policyholder or contract holder~~ OWNER,
8 CERTIFICATE HOLDER, OR ENROLLEE should not rely on coverage by the
9 association when selecting ~~an~~ A MEMBER insurer; AND

10 (e) Provide other information as directed by the commissioner.

11 (4) ~~No~~ A MEMBER insurer or agent ~~may~~ OF A MEMBER INSURER
12 SHALL NOT deliver a policy or contract THAT IS described in section
13 10-20-104 (2)(a) but excluded under section 10-20-104 (2)(b)(I) from
14 coverage under this ~~article~~ ARTICLE 20, unless the MEMBER insurer or
15 agent, ~~prior to~~ BEFORE or at the time of delivery, gives the ~~policyholder~~
16 ~~or contract holder~~ OWNER, CERTIFICATE HOLDER, OR ENROLLEE a separate
17 written notice ~~which~~ THAT clearly and conspicuously discloses that the
18 policy or contract is not covered by the association. The commissioner
19 shall specify the form and content of the notice.

20 **SECTION 16.** In Colorado Revised Statutes, **amend** 10-20-120
21 as follows:

22 **10-20-120. Prospective application.** This ~~article shall~~ ARTICLE
23 20, AS AMENDED, DOES not apply to any MEMBER insurer ~~which~~ THAT is
24 declared insolvent ~~before July 1, 1991~~ ON OR BEFORE THE EFFECTIVE DATE
25 OF THIS SECTION, AS AMENDED.

26 **SECTION 17. Safety clause.** The general assembly hereby finds,

- 1 determines, and declares that this act is necessary for the immediate
- 2 preservation of the public peace, health, and safety.