
SENATE BILL 5958

State of Washington

57th Legislature

2001 Regular Session

By Senators Prentice and Winsley

Read first time 02/09/2001. Referred to Committee on Labor, Commerce & Financial Institutions.

1 AN ACT Relating to the Washington life and disability insurance
2 guaranty association act; adding new sections to chapter 48.32A RCW;
3 and repealing RCW 48.32A.010, 48.32A.020, 48.32A.030, 48.32A.040,
4 48.32A.050, 48.32A.060, 48.32A.070, 48.32A.080, 48.32A.090, 48.32A.100,
5 48.32A.110, 48.32A.120, 48.32A.900, 48.32A.910, 48.32A.920, 48.32A.930,
6 and 48.32A.931.

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

8 NEW SECTION. **Sec. 1.** SHORT TITLE. This chapter may be known and
9 cited as the Washington life and disability insurance guaranty
10 association act.

11 NEW SECTION. **Sec. 2.** PURPOSE. (1) The purpose of this chapter is
12 to protect, subject to certain limitations, the persons specified in
13 section 3(1) of this act against failure in the performance of
14 contractual obligations, under life and disability insurance policies
15 and annuity contracts specified in section 3(2) of this act, because of
16 the impairment or insolvency of the member insurer that issued the
17 policies or contracts.

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

5 NEW SECTION. **Sec. 3.** COVERAGE AND LIMITATIONS. (1) This chapter
6 provides coverage for the policies and contracts specified in
7 subsection (2) of this section as follows:

8 (a) To persons who, regardless of where they reside, except for
9 nonresident certificate holders under group policies or contracts, are
10 the beneficiaries, assignees, or payees of the persons covered under
11 (b) of this subsection;

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

15 (i) Are residents; or

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

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

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

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

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

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

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

37 (d) For structured settlement annuities specified in subsection (2)
38 of this section, (a) and (b) of this subsection do not apply, and this

1 chapter, except as provided in (e) and (f) of this subsection, does
2 provide coverage to a person who is a payee under a structured
3 settlement annuity, or beneficiary of a payee if the payee is deceased,
4 if the payee:

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

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

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

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

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

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

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

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

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

36 (2)(a) This chapter provides coverage to the persons specified in
37 subsection (1) of this section for direct, nongroup life, disability,
38 or annuity policies or contracts and supplemental contracts to any of
39 these, for certificates under direct group policies and contracts, and

1 for unallocated annuity contracts issued by member insurers, except as
2 limited by this chapter. Annuity contracts and certificates under
3 group annuity contracts include but are not limited to guaranteed
4 investment contracts, deposit administration contracts, unallocated
5 funding agreements, allocated funding agreements, structured settlement
6 annuities, annuities issued to or in connection with government
7 lotteries, and any immediate or deferred annuity contracts.

8 (b) This chapter does not provide coverage for:

9 (i) A portion of a policy or contract not guaranteed by the
10 insurer, or under which the risk is borne by the policy or contract
11 owner;

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

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

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

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

33 (iv) A portion of a policy or contract issued to a plan or program
34 of an employer, association, or other person to provide life,
35 disability, or annuity benefits to its employees, members, or others,
36 to the extent that the plan or program is self-funded or uninsured,
37 including but not limited to benefits payable by an employer,
38 association, or other person under:

1 (A) A multiple employer welfare arrangement as defined in 29 U.S.C.
2 Sec. 1144;
3 (B) A minimum premium group insurance plan;
4 (C) A stop-loss group insurance plan; or
5 (D) An administrative services only contract;
6 (v) A portion of a policy or contract to the extent that it
7 provides for:
8 (A) Dividends or experience rating credits;
9 (B) Voting rights; or
10 (C) Payment of any fees or allowances to any person, including the
11 policy or contract owner, in connection with the service to or
12 administration of the policy or contract;
13 (vi) A policy or contract issued in this state by a member insurer
14 at a time when it was not licensed or did not have a certificate of
15 authority to issue the policy or contract in this state;
16 (vii) An unallocated annuity contract issued to or in connection
17 with a benefit plan protected under the federal pension benefit
18 guaranty corporation, regardless of whether the federal pension benefit
19 guaranty corporation has yet become liable to make any payments with
20 respect to the benefit plan;
21 (viii) A portion of an unallocated annuity contract that is not
22 issued to or in connection with a specific employee, union, or
23 association of natural persons benefit plan or a government lottery;
24 (ix) A portion of a policy or contract to the extent that the
25 assessments required by section 9 of this act with respect to the
26 policy or contract are preempted by federal or state law;
27 (x) An obligation that does not arise under the express written
28 terms of the policy or contract issued by the insurer to the contract
29 owner or policy owner, including without limitation:
30 (A) Claims based on marketing materials;
31 (B) Claims based on side letters, riders, or other documents that
32 were issued by the insurer without meeting applicable policy form
33 filing or approval requirements;
34 (C) Misrepresentations of or regarding policy benefits;
35 (D) Extra-contractual claims; or
36 (E) A claim for penalties or consequential or incidental damages;
37 (xi) A contractual agreement that establishes the member insurer's
38 obligations to provide a book value accounting guaranty for defined
39 contribution benefit plan participants by reference to a portfolio of

1 assets that is owned by the benefit plan or its trustee, which in each
2 case is not an affiliate of the member insurer; or

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

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

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

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

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

28 (B) In disability insurance benefits:

29 (I) Five hundred thousand dollars for coverages not defined as
30 disability income insurance or basic hospital, medical, and surgical
31 insurance or major medical insurance including any net cash surrender
32 and net cash withdrawal values;

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

34 (III) Five hundred thousand dollars for basic hospital medical and
35 surgical insurance or major medical insurance; or

36 (C) Five hundred thousand dollars in the present value of annuity
37 benefits, including net cash surrender and net cash withdrawal values;

38 (ii) With respect to each individual participating in a
39 governmental retirement benefit plan established under section 401,

1 403(b), or 457 of the United States Internal Revenue Code covered by an
2 unallocated annuity contract or the beneficiaries of each such
3 individual if deceased, in the aggregate, one hundred thousand dollars
4 in present value annuity benefits, including net cash surrender and net
5 cash withdrawal values;

6 (iii) With respect to each payee of a structured settlement
7 annuity, or beneficiary or beneficiaries of the payee if deceased, five
8 hundred thousand dollars in present value annuity benefits, in the
9 aggregate, including net cash surrender and net cash withdrawal values,
10 if any;

11 (iv) However, in no event shall the association be obligated to
12 cover more than: (A) An aggregate of five hundred thousand dollars in
13 benefits with respect to any one life under (i), (ii), and (iii) of
14 this subsection (3)(b) except with respect to benefits for basic
15 hospital, medical, and surgical insurance and major medical insurance
16 under (i)(B) of this subsection (3)(b), in which case the aggregate
17 liability of the association shall not exceed five hundred thousand
18 dollars with respect to any one individual; or (B) with respect to one
19 owner of multiple nongroup policies of life insurance, whether the
20 policy owner is an individual, firm, corporation, or other person, and
21 whether the persons insured are officers, managers, employees, or other
22 persons, more than five million dollars in benefits, regardless of the
23 number of policies and contracts held by the owner;

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

38 (vi) The limitations set forth in this subsection are limitations
39 on the benefits for which the association is obligated before taking

1 into account either its subrogation and assignment rights or the extent
2 to which those benefits could be provided out of the assets of the
3 impaired or insolvent insurer attributable to covered policies. The
4 costs of the association's obligations under this chapter may be met by
5 the use of assets attributable to covered policies or reimbursed to the
6 association pursuant to its subrogation and assignment rights.

7 (4) In performing its obligations to provide coverage under section
8 8 of this act, the association is not required to guarantee, assume,
9 reinsure, or perform, or cause to be guaranteed, assumed, reinsured, or
10 performed, the contractual obligations of the insolvent or impaired
11 insurer under a covered policy or contract that do not materially
12 affect the economic values or economic benefits of the covered policy
13 or contract.

14 NEW SECTION. **Sec. 4.** CONSTRUCTION. This chapter shall be
15 construed to effect the purpose under section 2 of this act.

16 NEW SECTION. **Sec. 5.** DEFINITIONS. The definitions in this
17 section apply throughout this chapter unless the context clearly
18 requires otherwise.

19 (1) "Account" means either of the two accounts created under
20 section 6 of this act.

21 (2) "Association" means the Washington life and disability
22 insurance guaranty association created under section 6 of this act.

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

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

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

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

1 (7) "Contractual obligation" means an obligation under a policy or
2 contract or certificate under a group policy or contract, or portion
3 thereof for which coverage is provided under section 3 of this act.

4 (8) "Covered policy" means a policy or contract or portion of a
5 policy or contract for which coverage is provided under section 3 of
6 this act.

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

10 (10) "Impaired insurer" means a member insurer which, after the
11 effective date of this section, is not an insolvent insurer, and is
12 placed under an order of rehabilitation or conservation by a court of
13 competent jurisdiction.

14 (11) "Insolvent insurer" means a member insurer which, after the
15 effective date of this section, is placed under an order of liquidation
16 by a court of competent jurisdiction with a finding of insolvency.

17 (12) "Member insurer" means an insurer licensed, or that holds a
18 certificate of authority, to transact in this state any kind of
19 insurance for which coverage is provided under section 3 of this act,
20 and includes an insurer whose license or certificate of authority in
21 this state may have been suspended, revoked, not renewed, or
22 voluntarily withdrawn, but does not include:

23 (a) A hospital or medical service organization, whether profit or
24 nonprofit;

25 (b) A health maintenance organization;

26 (c) A fraternal benefit society;

27 (d) A mandatory state pooling plan;

28 (e) A mutual assessment company or other person that operates on an
29 assessment basis;

30 (f) An insurance exchange;

31 (g) An organization that has a certificate or license limited to
32 the issuance of charitable gift annuities under RCW 48.38.010; or

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

34 (13) "Moody's corporate bond yield average" means the monthly
35 average corporates as published by Moody's investors service, inc., or
36 any successor thereto.

37 (14) "Owner" of a policy or contract and "policy owner" and
38 "contract owner" mean the person who is identified as the legal owner
39 under the terms of the policy or contract or who is otherwise vested

1 with legal title to the policy or contract through a valid assignment
2 completed in accordance with the terms of the policy or contract and
3 properly recorded as the owner on the books of the insurer. "Owner,"
4 "contract owner," and "policy owner" do not include persons with a mere
5 beneficial interest in a policy or contract.

6 (15) "Person" means an individual, corporation, limited liability
7 company, partnership, association, governmental body or entity, or
8 voluntary organization.

9 (16) "Plan sponsor" means:

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

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

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

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

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

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

1 (18)(a) "Principal place of business" of a plan sponsor or a person
2 other than a natural person means the single state in which the natural
3 persons who establish policy for the direction, control, and
4 coordination of the operations of the entity as a whole primarily
5 exercise that function, determined by the association in its reasonable
6 judgment by considering the following factors:

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

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

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

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

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

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

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

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

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

38 (20) "Resident" means a person to whom a contractual obligation is
39 owed and who resides in this state on the date of entry of a court

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

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

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

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

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

24 NEW SECTION. **Sec. 6.** CREATION OF THE ASSOCIATION. (1) There is
25 created a nonprofit unincorporated legal entity to be known as the
26 Washington life and disability insurance guaranty association which is
27 composed of the commissioner ex officio and each member insurer. All
28 member insurers must be and remain members of the association as a
29 condition of their authority to transact insurance in this state. The
30 association shall perform its functions under the plan of operation
31 established and approved under section 10 of this act and shall
32 exercise its powers through a board of directors established under
33 section 7 of this act. For purposes of administration and assessment,
34 the association shall maintain two accounts:

35 (a) The life insurance and annuity account which includes the
36 following subaccounts:

37 (i) Life insurance account;

1 (ii) Annuity account which includes annuity contracts owned by a
2 governmental retirement plan, or its trustee, established under section
3 401, 403(b), or 457 of the United States Internal Revenue Code, but
4 otherwise excludes unallocated annuities; and

5 (iii) Unallocated annuity account, which excludes contracts owned
6 by a governmental retirement benefit plan, or its trustee, established
7 under section 401, 403(b), or 457 of the United States Internal Revenue
8 Code; and

9 (b) The disability insurance account.

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

15 NEW SECTION. **Sec. 7.** BOARD OF DIRECTORS. (1) The board of
16 directors of the association consists of the commissioner ex officio
17 and not less than five nor more than nine member insurers serving terms
18 as established in the plan of operation. The insurer members of the
19 board are selected by member insurers subject to the approval of the
20 commissioner.

21 Vacancies on the board are filled for the remaining period of the
22 term by a majority vote of the remaining board members, subject to the
23 approval of the commissioner.

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

27 (3) Members of the board may be reimbursed from the assets of the
28 association for expenses incurred by them as members of the board of
29 directors but members of the board are not otherwise compensated by the
30 association for their services.

31 NEW SECTION. **Sec. 8.** POWERS AND DUTIES OF THE ASSOCIATION. (1)
32 If a member insurer is an impaired insurer, the association may, in its
33 discretion, and subject to any conditions imposed by the association
34 that do not impair the contractual obligations of the impaired insurer
35 and that are approved by the commissioner:

1 (a) Guarantee, assume, or reinsure, or cause to be guaranteed,
2 assumed, or reinsured, any or all of the policies or contracts of the
3 impaired insurer; or

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

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

10 (a)(i)(A) Guaranty, assume, or reinsure, or cause to be guaranteed,
11 assumed, or reinsured, the policies or contracts of the insolvent
12 insurer; or

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

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

17 (b) Provide benefits and coverages in accordance with the following
18 provisions:

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

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

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

34 (ii) Make diligent efforts to provide all known insureds or
35 annuitants, for nongroup policies and contracts, or group policy owners
36 with respect to group policies and contracts, thirty days notice of the
37 termination of the benefits provided;

38 (iii) With respect to nongroup life and disability insurance
39 policies and annuities covered by the association, make available to

1 each known insured or annuitant, or owner if other than the insured or
2 annuitant, and with respect to an individual formerly insured or
3 formerly an annuitant under a group policy who is not eligible for
4 replacement group coverage, make available substitute coverage on an
5 individual basis in accordance with the provisions of (b)(iv) of this
6 subsection, if the insureds or annuitants had a right under law or the
7 terminated policy or annuity to convert coverage to individual coverage
8 or to continue an individual policy or annuity in force until a
9 specified age or for a specified time, during which the insurer had no
10 right unilaterally to make changes in any provision of the policy or
11 annuity or had a right only to make changes in premium by class;

12 (iv)(A) In providing the substitute coverage required under
13 (b)(iii) of this subsection, the association may offer either to
14 reissue the terminated coverage or to issue an alternative policy;

15 (B) Alternative or reissued policies must be offered without
16 requiring evidence of insurability, and may not provide for any waiting
17 period or exclusion that would not have applied under the terminated
18 policy;

19 (C) The association may reinsure any alternative or reissued
20 policy;

21 (v)(A) Alternative policies adopted by the association are subject
22 to the approval of the domiciliary insurance commissioner and the
23 receivership court. The association may adopt alternative policies of
24 various types for future issuance without regard to any particular
25 impairment or insolvency;

26 (B) Alternative policies must contain at least the minimum
27 statutory provisions required in this state and provide benefits that
28 are not unreasonable in relation to the premium charged. The
29 association shall set the premium in accordance with a table of rates
30 that it adopts. The premium must reflect the amount of insurance to be
31 provided and the age and class of risk of each insured, but may not
32 reflect any changes in the health of the insured after the original
33 policy was last underwritten;

34 (C) Any alternative policy issued by the association must provide
35 coverage of a type similar to that of the policy issued by the impaired
36 or insolvent insurer, as determined by the association;

37 (vi) If the association elects to reissue terminated coverage at a
38 premium rate different from that charged under the terminated policy,
39 the premium must be set by the association in accordance with the

1 amount of insurance provided and the age and class of risk, subject to
2 approval of the domiciliary insurance commissioner and the receivership
3 court;

4 (vii) The association's obligations with respect to coverage under
5 any policy of the impaired or insolvent insurer or under any reissued
6 or alternative policy cease on the date the coverage or policy is
7 replaced by another similar policy by the policy owner, the insured, or
8 the association; or

9 (viii) When proceeding under this subsection (2)(b) with respect to
10 a policy or contract carrying guaranteed minimum interest rates, the
11 association shall assure the payment or crediting of a rate of interest
12 consistent with section 3(2)(b)(iii) of this act.

13 (3) Nonpayment of premiums within thirty-one days after the date
14 required under the terms of any guaranteed, assumed, alternative, or
15 reissued policy or contract or substitute coverage terminates the
16 association's obligations under the policy or coverage under this
17 chapter with respect to the policy or coverage, except with respect to
18 any claims incurred or any net cash surrender value which may be due in
19 accordance with the provisions of this chapter.

20 (4) Premiums due for coverage after entry of an order of
21 liquidation of an insolvent insurer belong to and are payable at the
22 direction of the association, and the association is liable for
23 unearned premiums due to policy or contract owners arising after the
24 entry of the order.

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

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

31 (a) Subject to approval by a court in this state, impose permanent
32 policy or contract liens in connection with a guarantee, assumption, or
33 reinsurance agreement, if the association finds that the amounts which
34 can be assessed under this chapter are less than the amounts needed to
35 assure full and prompt performance of the association's duties under
36 this chapter, or that the economic or financial conditions as they
37 affect member insurers are sufficiently adverse to render the
38 imposition of such permanent policy or contract liens, are in the
39 public interest; and

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

16 (7) A deposit in this state, held pursuant to law or required by
17 the commissioner for the benefit of creditors, including policy owners,
18 not turned over to the domiciliary liquidator upon the entry of a final
19 order of liquidation or order approving a rehabilitation plan of an
20 insurer domiciled in this state or in a reciprocal state, under RCW
21 48.31.171, shall be promptly paid to the association. The association
22 is entitled to retain a portion of any amount so paid to it equal to
23 the percentage determined by dividing the aggregate amount of policy
24 owners claims related to that insolvency for which the association has
25 provided statutory benefits by the aggregate amount of all policy
26 owners' claims in this state related to that insolvency and shall remit
27 to the domiciliary receiver the amount so paid to the association and
28 retained under this subsection. Any amount so paid to the association
29 less the amount retained by it shall be treated as a distribution of
30 estate assets under RCW 48.31.185 or similar provision of the state of
31 domicile of the impaired or insolvent insurer.

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

36 (9) The association may render assistance and advice to the
37 commissioner, upon the commissioner's request, concerning
38 rehabilitation, payment of claims, continuance of coverage, or the

1 performance of other contractual obligations of an impaired or
2 insolvent insurer.

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

18 (11)(a) A person receiving benefits under this chapter has assigned
19 the rights under, and any causes of action against any person for
20 losses arising under, resulting from, or otherwise relating to, the
21 covered policy or contract to the association to the extent of the
22 benefits received because of this chapter, whether the benefits are
23 payments of or on account of contractual obligations, continuation of
24 coverage, or provision of substitute or alternative coverages. The
25 association may require an assignment to it of such rights and cause of
26 action by any payee, policy or contract owner, beneficiary, insured, or
27 annuitant as a condition precedent to the receipt of any right or
28 benefits conferred by this chapter upon the person.

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

33 (c) In addition to (a) and (b) of this subsection, the association
34 has all common law rights of subrogation and any other equitable or
35 legal remedy that would have been available to the impaired or
36 insolvent insurer or owner, beneficiary, or payee of a policy or
37 contract with respect to the policy or contracts, including without
38 limitation, in the case of a structured settlement annuity, any rights
39 of the owner, beneficiary, or payee of the annuity, to the extent of

1 benefits received under this chapter, against a person originally or by
2 succession responsible for the losses arising from the personal injury
3 relating to the annuity or payment therefor, excepting any such person
4 responsible solely by reason of serving as an assignee in respect of a
5 qualified assignment under section 130 of the United States Internal
6 Revenue Code.

7 (d) If (a) through (c) of this subsection are invalid or
8 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 shall be reduced by the amount realized by any other person
11 with respect to the person or claim that is attributable to the
12 policies, or portion thereof, covered by the association.

13 (e) If the association has provided benefits with respect to a
14 covered obligation and a person recovers amounts as to which the
15 association has rights as described in this subsection, the person
16 shall pay to the association the portion of the recovery attributable
17 to the policies, or portion thereof, covered by the association.

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

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

22 (b) Sue or be sued, including taking any legal actions necessary or
23 proper to recover any unpaid assessments under section 9 of this act
24 and to settle claims or potential claims against it;

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

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

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

34 (f) Exercise, for the purposes of this chapter and to the extent
35 approved by the commissioner, the powers of a domestic life or
36 disability insurer, but in no case may the association issue insurance
37 policies or annuity contracts other than those issued to perform its
38 obligations under this chapter;

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

3 (h) Request information from a person seeking coverage from the
4 association in order to aid the association in determining its
5 obligations under this chapter with respect to the person, and the
6 person shall promptly comply with the request; and

7 (i) Take other necessary or appropriate action to discharge its
8 duties and obligations under this chapter or to exercise its powers
9 under this chapter.

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

13 (14)(a) At any time within one year after the coverage date, which
14 is the date on which the association becomes responsible for the
15 obligations of a member insurer, the association may elect to succeed
16 to the rights and obligations of the member insurer, that accrue on or
17 after the coverage date and that relate to contracts covered, in whole
18 or in part, by the association, under any one or more indemnity
19 reinsurance agreements entered into by the member insurer as a ceding
20 insurer and selected by the association. However, the association may
21 not exercise an election with respect to a reinsurance agreement if the
22 receiver, rehabilitator, or liquidator of the member insurer has
23 previously and expressly disaffirmed the reinsurance agreement. The
24 election is effective when notice is provided to the receiver,
25 rehabilitator, or liquidator and to the affected reinsurers. If the
26 association makes an election, the following provisions apply with
27 respect to the agreements selected by the association:

28 (i) The association is responsible for all unpaid premiums due
29 under the agreements, for periods both before and after the coverage
30 date, and is responsible for the performance of all other obligations
31 to be performed after the coverage date, in each case which relate to
32 contracts covered, in whole or in part, by the association. The
33 association may charge contracts covered in part by the association,
34 through reasonable allocation methods, the costs for reinsurance in
35 excess of the obligations of the association;

36 (ii) The association is entitled to any amounts payable by the
37 reinsurer under the agreements with respect to losses or events that
38 occur in periods after the coverage date and that relate to contracts
39 covered by the association, in whole or in part. However, upon receipt

1 of any such amounts, the association is obliged to pay to the
2 beneficiary under the policy or contract on account of which the
3 amounts were paid a portion of the amount equal to the excess of: The
4 amount received by the association, over the benefits paid by the
5 association on account of the policy or contract, less the retention of
6 the impaired or insolvent member insurer applicable to the loss or
7 event;

8 (iii) Within thirty days following the association's election, the
9 association and each indemnity reinsurer shall calculate the net
10 balance due to or from the association under each reinsurance agreement
11 as of the date of the association's election, giving full credit to all
12 items paid by either the member insurer, or its receiver,
13 rehabilitator, or liquidator, or the indemnity reinsurer during the
14 period between the coverage date and the date of the association's
15 election. Either the association or indemnity reinsurer shall pay the
16 net balance due the other within five days of the completion of this
17 calculation. If the receiver, rehabilitator, or liquidator has
18 received any amounts due the association pursuant to (a)(ii) of this
19 subsection, the receiver, rehabilitator, or liquidator shall remit the
20 same to the association as promptly as practicable; and

21 (iv) If the association, within sixty days of the election, pays
22 the premiums due for periods both before and after the coverage date
23 that relate to contracts covered by the association, in whole or in
24 part, the reinsurer is not entitled to terminate the reinsurance
25 agreements, insofar as the agreements relate to contracts covered by
26 the association, in whole or in part, and is not entitled to set off
27 any unpaid premium due for periods prior to the coverage date against
28 amounts due the association.

29 (b) In the event the association transfers its obligations to
30 another insurer, and if the association and the other insurer agree,
31 the other insurer succeeds to the rights and obligations of the
32 association under (a) of this subsection effective as of the date
33 agreed upon by the association and the other insurer and regardless of
34 whether the association has made the election referred to in (a) of
35 this subsection. However:

36 (i) The indemnity reinsurance agreements automatically terminate
37 for new reinsurance unless the indemnity reinsurer and the other
38 insurer agree to the contrary;

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

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

7 (c) The provisions of this subsection supersede the provisions of
8 any law of this state or of any affected reinsurance agreement that
9 provides for or requires any payment of reinsurance proceeds, on
10 account of losses or events that occur in periods after the coverage
11 date, to the receiver, liquidator, or rehabilitator of the insolvent
12 member insurer. The receiver, rehabilitator, or liquidator remains
13 entitled to any amounts payable by the reinsurer under the reinsurance
14 agreement with respect to losses or events that occur in periods prior
15 to the coverage date, subject to applicable setoff provisions; and

16 (d) Except as set forth under this subsection, this subsection does
17 not alter or modify the terms and conditions of the indemnity
18 reinsurance agreements of the insolvent member insurer. This
19 subsection does not abrogate or limit any rights of any reinsurer to
20 claim that it is entitled to rescind a reinsurance agreement. This
21 subsection does not give a policy owner or beneficiary an independent
22 cause of action against an indemnity reinsurer that is not otherwise
23 set forth in the indemnity reinsurance agreement.

24 (15) The board of directors of the association have discretion and
25 may exercise reasonable business judgment to determine the means by
26 which the association provides the benefits of this chapter in an
27 economical and efficient manner.

28 (16) When the association has arranged or offered to provide the
29 benefits of this chapter to a covered person under a plan or
30 arrangement that fulfills the association's obligations under this
31 chapter, the person is not entitled to benefits from the association in
32 addition to or other than those provided under the plan or arrangement.

33 (17) Venue in a suit against the association arising under this
34 chapter is in the county in which liquidation or rehabilitation
35 proceedings have been filed in the case of a domestic insurer. In
36 other cases, venue is in King county or Thurston county. The
37 association is not required to give an appeal bond in an appeal that
38 relates to a cause of action arising under this chapter.

1 (18) In carrying out its duties in connection with guaranteeing,
2 assuming, or reinsuring policies or contracts under subsection (1) or
3 (2) of this section, the association may, subject to approval of the
4 receivership court, issue substitute coverage for a policy or contract
5 that provides an interest rate, crediting rate, or similar factor
6 determined by use of an index or other external reference stated in the
7 policy or contract employed in calculating returns or changes in value
8 by issuing an alternative policy or contract in accordance with the
9 following provisions:

10 (a) In lieu of the index or other external reference provided for
11 in the original policy or contract, the alternative policy or contract
12 provides for: (i) A fixed interest rate; (ii) payment of dividends
13 with minimum guarantees; or (iii) a different method for calculating
14 interest or changes in value;

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

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

20 NEW SECTION. **Sec. 9.** ASSESSMENTS. (1) For the purpose of
21 providing the funds necessary to carry out the powers and duties of the
22 association, the board of directors shall assess the member insurers,
23 separately for each account, at such time and for such amounts as the
24 board finds necessary. Assessments are due not less than thirty days
25 after prior written notice to the member insurers and accrue interest
26 at twelve percent per annum on and after the due date.

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

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

32 (b) Class B assessments are authorized and called to the extent
33 necessary to carry out the powers and duties of the association under
34 section 8 of this act with regard to an impaired or an insolvent
35 insurer.

36 (3)(a) The amount of a class A assessment is determined by the
37 board and may be authorized and called on a pro rata or nonpro rata
38 basis. If pro rata, the board may provide that it be credited against

1 future class B assessments. The total of all nonpro rata assessments
2 may not exceed one hundred fifty dollars per member insurer in any one
3 calendar year. The amount of a class B assessment may be allocated for
4 assessment purposes among the accounts pursuant to an allocation
5 formula which may be based on the premiums or reserves of the impaired
6 or insolvent insurer or any other standard determined by the board to
7 be fair and reasonable under the circumstances.

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

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

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

1 (5)(a)(i) Subject to the provisions of (a)(ii) of this subsection,
2 the total of all assessments authorized by the association with respect
3 to a member insurer for each subaccount of the life insurance and
4 annuity account and for the health account may not in one calendar year
5 exceed two percent of that member insurer's average annual premiums
6 received in this state on the policies and contracts covered by the
7 subaccount or account during the three calendar years preceding the
8 year in which the insurer became an impaired or insolvent insurer.

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

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

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

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

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

1 the continuing expenses of the association and for future losses
2 claims.

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (a) Establish procedures for handling the assets of the
24 association;

25 (b) Establish the amount and method of reimbursing members of the
26 board of directors under section 7 of this act;

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

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

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

34 (f) Establish any additional procedures for assessments under
35 section 9 of this act; and

36 (g) Contain additional provisions necessary or proper for the
37 execution of the powers and duties of the association.

1 (4) The plan of operation may provide that any or all powers and
2 duties of the association, except those under sections 8(12)(c) and 9
3 of this act, are delegated to a corporation, association, or other
4 organization which performs or will perform functions similar to those
5 of this association, or its equivalent, in two or more states. Such a
6 corporation, association, or organization must be reimbursed for any
7 payments made on behalf of the association and must be paid for its
8 performance of any function of the association. A delegation under
9 this subsection takes effect only with the approval of both the board
10 of directors and the commissioner, and may be made only to a
11 corporation, association, or organization which extends protection not
12 substantially less favorable and effective than that provided by this
13 chapter.

14 NEW SECTION. **Sec. 11.** DUTIES AND POWERS OF THE COMMISSIONER. (1)
15 In addition to the duties and powers enumerated elsewhere in this
16 chapter, the commissioner shall:

17 (a) Upon request of the board of directors, provide the association
18 with a statement of the premiums in this and other appropriate states
19 for each member insurer;

20 (b) When an impairment is declared and the amount of the impairment
21 is determined, serve a demand upon the impaired insurer to make good
22 the impairment within a reasonable time; notice to the impaired insurer
23 constitutes notice to its shareholders, if any; the failure of the
24 insurer to promptly comply with such a demand does not excuse the
25 association from the performance of its powers and duties under this
26 chapter; and

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

29 (2) In addition to the duties and powers enumerated elsewhere in
30 this chapter, the commissioner may suspend or revoke, after notice and
31 hearing, the certificate of authority to transact insurance in this
32 state of any member insurer which fails to pay an assessment when due
33 or fails to comply with the plan of operation. As an alternative the
34 commissioner may levy a forfeiture on any member insurer that fails to
35 pay an assessment when due. The forfeiture may not exceed five percent
36 of the unpaid assessment per month, but no forfeiture may be less than
37 one hundred dollars per month.

1 (3) A final action by the board of directors of the association may
2 be appealed to the commissioner by a member insurer if the appeal is
3 taken within sixty days of the member insurer's receipt of notice of
4 the final action being appealed. A final action or order of the
5 commissioner is subject to judicial review in a court of competent
6 jurisdiction in accordance with the laws of this state that apply to
7 the actions or orders of the commissioner.

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

11 NEW SECTION. **Sec. 12.** PREVENTION OF INSOLVENCIES. The
12 commissioner shall aid in the detection and prevention of insurer
13 insolvencies or impairments.

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

15 (a) Notify the commissioners of all the other states, territories
16 of the United States, and the District of Columbia within thirty days
17 following the action taken or the date the action occurs, when the
18 commissioner takes any of the following actions against a member
19 insurer:

20 (i) Revocation of license;

21 (ii) Suspension of license; or

22 (iii) Makes a formal order that the company restrict its premium
23 writing, obtain additional contributions to surplus, withdraw from the
24 state, reinsure all or any part of its business, or increase capital,
25 surplus, or any other account for the security of policy owners or
26 creditors;

27 (b) Report to the board of directors when the commissioner has
28 taken any of the actions set forth in (a) of this subsection or has
29 received a report from any other commissioner indicating that any such
30 action has been taken in another state. The report to the board of
31 directors must contain all significant details of the action taken or
32 the report received from another commissioner;

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

37 (d) Furnish to the board of directors the national association of
38 insurance commissioners insurance regulatory information system ratios

1 and listings of companies not included in the ratios developed by the
2 national association of insurance commissioners, and the board may use
3 the information contained therein in carrying out its duties and
4 responsibilities under this section. The report and the information
5 must be kept confidential by the board of directors until such time as
6 made public by the commissioner or other lawful authority.

7 (2) The commissioner may seek the advice and recommendations of the
8 board of directors concerning any matter affecting the duties and
9 responsibilities of the commissioner regarding the financial condition
10 of member insurers and companies seeking admission to transact
11 insurance business in this state.

12 (3) The board of directors may, upon majority vote, make reports
13 and recommendations to the commissioner upon any matter germane to the
14 solvency, liquidation, rehabilitation, or conservation of any member
15 insurer or germane to the solvency of any company seeking to do an
16 insurance business in this state. The reports and recommendations are
17 not public documents.

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

21 (5) The board of directors may, upon majority vote, make
22 recommendations to the commissioner for the detection and prevention of
23 insurer insolvencies.

24 NEW SECTION. **Sec. 13.** CREDITS FOR ASSESSMENTS PAID--TAX OFFSETS.

25 (1) A member insurer may offset against its premium tax liability to
26 this state an assessment described in section 9(8) of this act to the
27 extent of twenty percent of the amount of the assessment for each of
28 the five calendar years following the year in which the assessment was
29 paid. In the event a member insurer ceases doing business, all
30 uncredited assessments may be credited against its premium tax
31 liability for the year it ceases doing business.

32 (2) Any sums that are acquired by refund, under section 9(6) of
33 this act, from the association by member insurers, and that have been
34 offset against premium taxes as provided in subsection (1) of this
35 section, must be paid by the insurers to the commissioner and then
36 deposited with the state treasurer for credit to the general fund of
37 the state of Washington. The association shall notify the commissioner
38 that refunds have been made.

1 NEW SECTION. **Sec. 14.** MISCELLANEOUS PROVISIONS. (1) This chapter

2 does not reduce the liability for unpaid assessments of the insureds of
3 an impaired or insolvent insurer operating under a plan with assessment
4 liability.

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

15 (3) For the purpose of carrying out its obligations under this
16 chapter, the association is a creditor of the impaired or insolvent
17 insurer to the extent of assets attributable to covered policies
18 reduced by any amounts to which the association is entitled as subrogee
19 under section 8(11) of this act. Assets of the impaired or insolvent
20 insurer attributable to covered policies must be used to continue all
21 covered policies and pay all contractual obligations of the impaired or
22 insolvent insurer as required by this chapter. Assets attributable to
23 covered policies, as used in this subsection, are that proportion of
24 the assets which the reserves that should have been established for
25 such policies bear to the reserves that should have been established
26 for all policies of insurance written by the impaired or insolvent
27 insurer.

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

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

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

11 (b) A distribution to stockholders, if any, of an impaired or
12 insolvent insurer shall not be made until and unless the total amount
13 of valid claims of the association with interest thereon for funds
14 expended in carrying out its powers and duties under section 8 of this
15 act with respect to the insurer have been fully recovered by the
16 association.

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

25 (b) A distribution is not recoverable if the insurer shows that
26 when paid the distribution was lawful and reasonable, and that the
27 insurer did not know and could not reasonably have known that the
28 distribution might adversely affect the ability of the insurer to
29 fulfill its contractual obligations.

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

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

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

8 NEW SECTION. **Sec. 15.** EXAMINATION OF THE ASSOCIATION--ANNUAL
9 REPORT. The association is subject to examination and regulation by
10 the commissioner. The board of directors shall submit to the
11 commissioner each year, not later than one hundred twenty days after
12 the association's fiscal year, a financial report in a form approved by
13 the commissioner and a report of its activities during the preceding
14 fiscal year. Upon the request of a member insurer, the association
15 shall provide the member insurer with a copy of the report.

16 NEW SECTION. **Sec. 16.** TAX EXEMPTIONS. The association is exempt
17 from payment of all fees and all taxes levied by this state or any of
18 its subdivisions, except taxes levied on real property.

19 NEW SECTION. **Sec. 17.** IMMUNITY. There is no liability on the
20 part of and no cause of action of any nature may arise against any
21 member insurer or its agents or employees, the association or its
22 agents or employees, members of the board of directors, or the
23 commissioner or the commissioner's representatives, for any action or
24 omission by them in the performance of their powers and duties under
25 this chapter. Immunity extends to the participation in any
26 organization of one or more other state associations of similar
27 purposes and to any such organization and its agents or employees.

28 NEW SECTION. **Sec. 18.** STAY OF PROCEEDINGS--REOPENING DEFAULT
29 JUDGMENTS. All proceedings in which the insolvent insurer is a party
30 in any court in this state is stayed sixty days from the date an order
31 of liquidation, rehabilitation, or conservation is final to permit
32 proper legal action by the association on any matters germane to its
33 powers or duties. As to judgment under any decision, order, verdict,
34 or finding based on default the association may apply to have such a

1 judgment set aside by the same court that made such a judgment and must
2 be permitted to defend against the suit on the merits.

3 NEW SECTION. **Sec. 19.** PROHIBITED ADVERTISEMENT OF INSURANCE
4 GUARANTY ASSOCIATION ACT IN INSURANCE SALES--NOTICE TO POLICY OWNERS.

5 (1) No person, including an insurer, agent, or affiliate of an insurer
6 may make, publish, disseminate, circulate, or place before the public,
7 or cause directly or indirectly, to be made, published, disseminated,
8 circulated, or placed before the public, in any newspaper, magazine, or
9 other publication, or in the form of a notice, circular, pamphlet,
10 letter, or poster, or over any radio station or television station, or
11 in any other way, any advertisement, announcement, or statement,
12 written or oral, which uses the existence of the insurance guaranty
13 association of this state for the purpose of sales, solicitation, or
14 inducement to purchase any form of insurance covered by the Washington
15 life and disability insurance guaranty association act. However, this
16 section does not apply to the Washington life and disability insurance
17 guaranty association or any other entity which does not sell or solicit
18 insurance.

19 (2) Within one hundred eighty days after the effective date of this
20 section, the association shall prepare a summary document describing
21 the general purposes and current limitations of this chapter and
22 complying with subsection (3) of this section. This document must be
23 submitted to the commissioner for approval. At the expiration of the
24 sixtieth day after the date on which the commissioner approves the
25 document, an insurer may not deliver a policy or contract to a policy
26 or contract owner unless the summary document is delivered to the
27 policy or contract owner at the time of delivery of the policy or
28 contract. The document must also be available upon request by a policy
29 owner. The distribution, delivery, contents, or interpretation of this
30 document does not guarantee that either the policy or the contract or
31 the owner of the policy or contract is covered in the event of the
32 impairment or insolvency of a member insurer. The description document
33 must be revised by the association as amendments to this chapter may
34 require. Failure to receive this document does not give the policy
35 owner, contract owner, certificate holder, or insured any greater
36 rights than those stated in this chapter.

37 (3) The document prepared under subsection (2) of this section must
38 contain a clear and conspicuous disclaimer on its face. The

1 commissioner shall establish the form and content of the disclaimer.

2 The disclaimer must:

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

5 (b) Prominently warn the policy or contract owner that the life and
6 disability insurance guaranty association may not cover the policy or,
7 if coverage is available, it is subject to substantial limitations and
8 exclusions and conditioned on continued residence in this state;

9 (c) State the types of policies for which guaranty funds provide
10 coverage;

11 (d) State that the insurer and its agents are prohibited by law
12 from using the existence of the life and disability insurance guaranty
13 association for the purpose of sales, solicitation, or inducement to
14 purchase any form of insurance;

15 (e) State that the policy or contract owner should not rely on
16 coverage under the life and disability insurance guaranty association
17 when selecting an insurer;

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

20 (g) Provide other information as directed by the commissioner
21 including but not limited to, sources for information about the
22 financial condition of insurers provided that the information is not
23 proprietary and is subject to disclosure under chapter 42.17 RCW.

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

27 NEW SECTION. **Sec. 20.** PROSPECTIVE APPLICATION. This chapter does
28 not apply to any insurer that is insolvent or unable to fulfill its
29 contractual obligations on the effective date of this section.

30 NEW SECTION. **Sec. 21.** Captions used in this act are not any part
31 of the law.

32 NEW SECTION. **Sec. 22.** Sections 1 through 21 of this act are each
33 added to chapter 48.32A RCW.

34 NEW SECTION. **Sec. 23.** The following acts or parts of acts are
35 each repealed:

- 1 (1) RCW 48.32A.010 (Purpose) and 1994 c 149 s 1, 1990 c 51 s 1, &
2 1971 ex.s. c 259 s 1;
- 3 (2) RCW 48.32A.020 (Scope--Obligations of association) and 1996 c
4 98 s 1, 1994 c 149 s 2, 1990 c 51 s 2, & 1971 ex.s. c 259 s 2;
- 5 (3) RCW 48.32A.030 (Definitions) and 1996 c 98 s 2, 1994 c 149 s 3,
6 1990 c 51 s 3, & 1971 ex.s. c 259 s 3;
- 7 (4) RCW 48.32A.040 (Guaranty association created) and 1996 c 98 s
8 3 & 1971 ex.s. c 259 s 4;
- 9 (5) RCW 48.32A.050 (Powers of the association) and 1994 c 149 s 4
10 & 1971 ex.s. c 259 s 5;
- 11 (6) RCW 48.32A.060 (Reinsurance--Guaranty of policies--Contracts)
12 and 1994 c 149 s 5, 1990 c 51 s 4, 1975 1st ex.s. c 133 s 2, & 1971
13 ex.s. c 259 s 6;
- 14 (7) RCW 48.32A.070 (Duplication of benefits prohibited) and 1994 c
15 149 s 6 & 1971 ex.s. c 259 s 7;
- 16 (8) RCW 48.32A.080 (Guaranty funds--Assessment of member insurers)
17 and 1994 c 149 s 7, 1990 c 51 s 5, 1975-'76 2nd ex.s. c 119 s 5, & 1971
18 ex.s. c 259 s 8;
- 19 (9) RCW 48.32A.090 (Certificates of contribution--Allowance as
20 asset--Offset against premium taxes) and 1997 c 300 s 2, 1993 sp.s. c
21 25 s 902, 1990 c 51 s 6, 1977 ex.s. c 183 s 2, 1975 1st ex.s. c 133 s
22 1, & 1971 ex.s. c 259 s 9;
- 23 (10) RCW 48.32A.100 (Taxation) and 1971 ex.s. c 259 s 10;
- 24 (11) RCW 48.32A.110 (Prohibited use of chapter) and 1971 ex.s. c
25 259 s 11;
- 26 (12) RCW 48.32A.120 (Recapture of excessive dividends to
27 affiliates) and 1994 c 149 s 8 & 1971 ex.s. c 259 s 12;
- 28 (13) RCW 48.32A.900 (Short title) and 1971 ex.s. c 259 s 13;
- 29 (14) RCW 48.32A.910 (Construction--1971 ex.s. c 259) and 1971 ex.s.
30 c 259 s 14;
- 31 (15) RCW 48.32A.920 (Section headings not part of law) and 1971
32 ex.s. c 259 s 15;
- 33 (16) RCW 48.32A.930 (Severability--1971 ex.s. c 259) and 1971 ex.s.
34 c 259 s 17; and
- 35 (17) RCW 48.32A.931 (Severability--1990 c 51) and 1990 c 51 s 7.

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