

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

SENATE BILL 75

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

Carroll H. Leavell

AN ACT

RELATING TO INSURANCE; CHANGING THE NAME OF AND AMENDING THE  
LIFE AND HEALTH INSURANCE GUARANTY LAW; ADDING DEFINITIONS;  
EXPANDING THE COVERAGE AND LIMITATIONS ON THE PAYMENT OF CLAIMS  
UNDER CERTAIN INSURANCE POLICIES; EXPANDING THE POWERS AND  
DUTIES OF THE LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION;  
AMENDING THE TYPES OF ACCOUNTS AND ASSESSMENTS UNDER THE  
PURVIEW OF THAT ASSOCIATION; AMENDING, REPEALING AND ENACTING  
SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 59A-42-1 NMSA 1978 (being Laws 1984,  
Chapter 127, Section 750) is amended to read:

"59A-42-1. SHORT TITLE.--~~[This article]~~ Chapter 59A,  
Article 42 NMSA 1978 may be cited as the "Life and Health  
Insurance Guaranty ~~[Law]~~ Association Act."

underscoring material = new  
[bracketed material] = delete

underscored material = new  
[bracketed material] = delete

1           Section 2. Section 59A-42-2 NMSA 1978 (being Laws 1984,  
2 Chapter 127, Section 751) is amended to read:

3           "59A-42-2. PURPOSE.--The purpose of [~~this article~~] the  
4 Life and Health Insurance Guaranty Association Act is to  
5 provide a mechanism to facilitate continuation of coverage,  
6 payment of covered claims under certain insurance policies, to  
7 avoid excessive delay in payment and avoid financial loss to  
8 claimants or policyholders because of insolvency of an insurer,  
9 to assist in detection and prevention of insurer insolvencies  
10 and provide an association to assess the cost of such  
11 protection among insurers."

12           Section 3. Section 59A-42-3 NMSA 1978 (being Laws 1984,  
13 Chapter 127, Section 752, as amended) is repealed and a new  
14 Section 59A-42-3 NMSA 1978 is enacted to read:

15           "59A-42-3. [NEW MATERIAL] DEFINITIONS.--As used in the  
16 Life and Health Insurance Guaranty Association Act:

17           A. "account" means either of the two accounts  
18 maintained pursuant to Section 59A-42-5 NMSA 1978;

19           B. "association" means the life and health  
20 insurance guaranty association created pursuant to Section  
21 59A-42-5 NMSA 1978;

22           C. "authorized assessment", or the term  
23 "authorized" when used in the context of assessments, means  
24 that a resolution by the board has been passed whereby an  
25 assessment will be called immediately or in the future from

.174445.3

underscoring material = new  
[bracketed material] = delete

1 member insurers for a specified amount. An assessment is  
2 authorized when the resolution is passed;

3 D. "benefit plan" means a specific employee, a  
4 union or an association of natural persons benefit plan;

5 E. "board" means the board of directors organized  
6 pursuant to Section 59A-42-6 NMSA 1978;

7 F. "called assessment" or the term "called" when  
8 used in the context of assessments means that a notice has been  
9 issued by the association to member insurers requiring that an  
10 authorized assessment be paid within the time frame set forth  
11 within the notice. An authorized assessment becomes a called  
12 assessment when notice is mailed by the association to member  
13 insurers;

14 G. "contractual obligation" means an obligation  
15 under a policy or contract or a certificate under a group  
16 policy or contract, or portion thereof, for which coverage is  
17 provided pursuant to Section 59A-42-4 NMSA 1978;

18 H. "covered policy" means a policy or contract or  
19 portion of a policy or contract for which coverage is provided  
20 pursuant to Section 59A-42-4 NMSA 1978;

21 I. "domiciliary state" means the state in which an  
22 insurer is incorporated or organized or, as to an alien  
23 insurer, the state in which at commencement of delinquency  
24 proceedings the larger amount of the insurer's assets are held  
25 in trust or on deposit for the benefit of its policyholders and

.174445.3

underscoring material = new  
[bracketed material] = delete

1 creditors in the United States;

2 J. "extra-contractual claims" includes claims  
3 relating to bad faith in the payment of claims, punitive or  
4 exemplary damages or attorney fees and costs;

5 K. "impaired insurer" means a member insurer that,  
6 after the effective date of the Life and Health Insurance  
7 Guaranty Association Act, is not an insolvent insurer and is  
8 placed under an order of rehabilitation or conservation by a  
9 court of competent jurisdiction;

10 L. "insolvent insurer" means a member insurer that  
11 after the effective date of the Life and Health Insurance  
12 Guaranty Association Act, is placed under an order of  
13 liquidation by a court of competent jurisdiction with a finding  
14 of insolvency;

15 M. "member insurer" means an insurer that is  
16 licensed or that holds a certificate of authority to transact  
17 in this state insurance for which coverage is provided pursuant  
18 to Section 59A-42-4 NMSA 1978 and includes an insurer whose  
19 license or certificate of authority in this state may have been  
20 suspended, revoked, not renewed or voluntarily withdrawn, but  
21 does not include:

22 (1) a hospital or medical service  
23 organization, whether profit or nonprofit;

24 (2) a health maintenance organization;

25 (3) a fraternal benefit society;

.174445.3

underscoring material = new  
[bracketed material] = delete

1 (4) a mandatory state pooling plan;

2 (5) a mutual assessment company or other  
3 person that operates on an assessment basis;

4 (6) an insurance exchange;

5 (7) a charitable organization that is in good  
6 standing with the superintendent pursuant to Section 59A-1-16.1  
7 NMSA 1978; or

8 (8) an entity similar to any of the above;

9 N. "Moody's corporate bond yield average" means the  
10 monthly average corporates as published by Moody's investors  
11 service, incorporated, or its successor;

12 O. "owner" of a policy or contract, "policy owner"  
13 and "contract owner" means the person who is identified as the  
14 legal owner under the terms of the policy or contract or who is  
15 otherwise vested with legal title to the policy or contract  
16 through a valid assignment completed in accordance with the  
17 terms of the policy or contract and properly recorded as the  
18 owner on the books of the insurer. The terms "owner", "policy  
19 owner" and "contract owner" do not include persons with a mere  
20 beneficial interest in a policy or contract;

21 P. "plan sponsor" means:

22 (1) the employer in the case of a benefit plan  
23 established or maintained by a single employer;

24 (2) the employee organization in the case of a  
25 benefit plan established or maintained by an employee

.174445.3

underscoring material = new  
[bracketed material] = delete

1 organization; or

2 (3) the association, committee, joint board of  
3 trustees or other similar group of representatives of the  
4 parties who establish or maintain the benefit plan in the case  
5 of a benefit plan established or maintained by two or more  
6 employers or jointly by one or more employers and one or more  
7 employee organizations;

8 Q. "premiums" means amounts or considerations, by  
9 whatever name used, received on covered policies or contracts  
10 less returned premiums, considerations and deposits and less  
11 dividends and experience credits. "Premiums" does not include:

12 (1) amounts or considerations received for  
13 policies or contracts or for the portions of policies or  
14 contracts for which coverage is not provided pursuant to  
15 Subsection E of Section 59A-42-4 NMSA 1978, except that  
16 assessable premiums shall not be reduced on account of  
17 Paragraph (3) of Subsection E of Section 59A-42-4 NMSA 1978,  
18 relating to interest limitations, or Paragraph (2) of  
19 Subsection F of Section 59A-42-6 NMSA 1978, relating to  
20 limitations, with respect to one individual, one participant or  
21 one contract owner;

22 (2) premiums in excess of five million dollars  
23 (\$5,000,000) on an unallocated annuity contract not issued  
24 under a governmental retirement benefit plan, or its trustee,  
25 established pursuant to Section 401, 403(b) or 457 of the

.174445.3

1 Internal Revenue Code of 1986; or

2 (3) with respect to multiple non-group  
3 policies of life insurance owned by one owner, whether the  
4 policy owner is an individual, firm, corporation or other  
5 person, and whether the persons insured are officers, managers,  
6 employees or other persons, premiums in excess of five million  
7 dollars (\$5,000,000) with respect to these policies or  
8 contracts, regardless of the number of policies or contracts  
9 held by the owner;

10 R. "principal place of business" means:

11 (1) in the case of a plan sponsor or a person  
12 other than a natural person, the single state in which the  
13 natural person who establishes a policy for the direction,  
14 control and coordination of the operations of the entity as a  
15 whole primarily exercises that function, as determined by the  
16 association in its reasonable judgment by considering the  
17 following factors:

18 (a) the state in which the primary  
19 executive and administrative headquarters of the entity is  
20 located;

21 (b) the state in which the principal  
22 office of the chief executive officer of the entity is located;

23 (c) the state in which the board, or  
24 similar governing person or persons, of the entity conducts the  
25 majority of its meetings;

.174445.3

underscoring material = new  
[bracketed material] = delete

1 (d) the state in which the executive or  
2 management committee of the board, or similar governing person  
3 or persons, of the entity conducts the majority of its  
4 meetings;

5 (e) the state from which the management  
6 of the overall operations of the entity is directed; and

7 (f) in the case of a benefit plan  
8 sponsored by affiliated companies comprising a consolidated  
9 corporation, the state in which the holding company or  
10 controlling affiliate has its principal place of business as  
11 determined using the factors in this subsection; but

12 (g) in the case of a plan sponsor, if  
13 more than fifty percent of the participants in the benefit plan  
14 are employed in a single state, that state shall be deemed to  
15 be the principal place of business of the plan sponsor; and

16 (2) in the case of a plan sponsor of a benefit  
17 plan described in Paragraph (3) of Subsection P of this  
18 section, the principal place of business of the association,  
19 committee, joint board of trustees or other similar group of  
20 representatives of the parties who establish or maintain the  
21 benefit plan that, in lieu of a specific or clear designation  
22 of a principal place of business, shall be deemed to be the  
23 principal place of business of the employer or employee  
24 organization that has the largest investment in the benefit  
25 plan in question;

.174445.3



underscoring material = new  
[bracketed material] = delete

1           S. "receivership court" means the court in the  
2 insolvent or impaired insurer's state having jurisdiction over  
3 the conservation, rehabilitation or liquidation of the insurer;

4           T. "resident" means a person to whom a contractual  
5 obligation is owed and who resides in this state on the date of  
6 entry of a court order that determines a member insurer to be  
7 an impaired insurer or a court order that determines a member  
8 insurer to be an insolvent insurer, whichever occurs first. A  
9 person may be a resident of only one state, which, in the case  
10 of a person other than a natural person, shall be its principal  
11 place of business. Citizens of the United States that are  
12 either residents of foreign countries, or residents of United  
13 States possessions, territories or protectorates that do not  
14 have an association similar to the association created by the  
15 Life and Health Insurance Guaranty Association Act, shall be  
16 deemed residents of the state of domicile of the insurer that  
17 issued the policies or contracts;

18           U. "structured settlement annuity" means an annuity  
19 purchased in order to fund periodic payments for a plaintiff or  
20 other claimant in payment for or with respect to personal  
21 injury suffered by the plaintiff or other claimant;

22           V. "supplemental contract" means a written  
23 agreement entered into for the distribution of proceeds under a  
24 life, health or annuity policy or contract; and

25           W. "unallocated annuity contract" means an annuity

.174445.3

underscoring material = new  
[bracketed material] = delete

1 contract or group annuity certificate that is not issued to and  
2 owned by an individual, except to the extent of annuity  
3 benefits guaranteed to an individual by an insurer under the  
4 contract or certificate."

5 Section 4. Section 59A-42-4 NMSA 1978 (being Laws 1984,  
6 Chapter 127, Section 753, as amended) is repealed and a new  
7 Section 59A-42-4 NMSA 1978 is enacted to read:

8 "59A-42-4. [NEW MATERIAL] COVERAGE--LIMITATIONS.--

9 A. Coverage shall be provided for the policies and  
10 contracts specified in Subsection D of this section:

11 (1) to persons who, regardless of where they  
12 reside, except for nonresident certificate holders under group  
13 policies or contracts, are the beneficiaries, assignees or  
14 payees of the persons covered pursuant to Paragraph (2) of this  
15 subsection;

16 (2) to persons who are owners of or  
17 certificate holders under the policies or contracts, other than  
18 unallocated annuity contracts and structured settlement  
19 annuities, and in each case who:

20 (a) are residents; or

21 (b) are not residents, but only under  
22 the following conditions: 1) the insurer that issued the  
23 policies or contracts is domiciled in this state; 2) the states  
24 in which the persons reside have associations similar to this  
25 state's association; and 3) the persons are not eligible for

.174445.3

1 coverage by an association in another state due to the fact  
2 that the insurer was not licensed in that state at the time  
3 specified in that state's guaranty association law;

4 (3) for unallocated annuity contracts  
5 specified in Subsection D of this section, to which Paragraphs  
6 (1) and (2) of this subsection shall not apply, and except as  
7 provided in Subsections B and C of this section:

8 (a) to persons who are the owners of the  
9 unallocated annuity contracts if the contracts are issued to or  
10 in connection with a specific benefit plan whose plan sponsor  
11 has its principal place of business in this state; and

12 (b) to persons who are the owners of  
13 unallocated annuity contracts issued to or in connection with  
14 government lotteries if the owners are residents; and

15 (4) for structured settlement annuities  
16 specified in Subsection D of this section, to which Paragraphs  
17 (1) and (2) of this subsection shall not apply, and except as  
18 provided in Subsections B and C of this section, to a person  
19 who is a payee under a structured settlement annuity, or  
20 beneficiary of a payee if the payee is deceased, if the payee:

21 (a) is a resident, regardless of where  
22 the contract owner resides; or

23 (b) is not a resident, but only under  
24 the following conditions: 1) the contract owner of the  
25 structured settlement annuity is a resident or is not a

.174445.3

underscored material = new  
[bracketed material] = delete

1 resident, but the insurer that issued the structured settlement  
2 annuity is domiciled in this state and the state in which the  
3 contract owner resides has an association similar to this  
4 state's association; and 2) neither the payee, the payee's  
5 beneficiary or the contract owner is eligible for coverage by  
6 the association of the state in which the payee or contract  
7 owner resides.

8 B. Coverage shall not be provided to:

9 (1) a person who is a payee or beneficiary of  
10 a contract owner resident of this state, if the payee or  
11 beneficiary is afforded coverage by the association of another  
12 state; or

13 (2) a person covered pursuant to Paragraph (3)  
14 of Subsection A of this section, if coverage is provided by the  
15 association of another state to that person.

16 C. Coverage is intended to be provided to a person  
17 who is a resident of this state and, in special circumstances,  
18 to a nonresident. In order to avoid duplicate coverage, if a  
19 person who would otherwise receive coverage pursuant to the  
20 Life and Health Insurance Guaranty Association Act is provided  
21 coverage under the laws of another state, the person shall not  
22 be provided coverage in this state. In determining the  
23 application of the provisions of this subsection in situations  
24 where a person could be covered by the association of more than  
25 one state, whether as an owner, payee, beneficiary or assignee,

.174445.3

underscoring material = new  
[bracketed material] = delete

1 the Life and Health Insurance Guaranty Association Act shall be  
2 construed in conjunction with other state laws to result in  
3 coverage by only one association.

4 D. Coverage shall be provided to the persons  
5 specified in Subsection A of this section for direct, non-group  
6 life, health or annuity policies or contracts and supplemental  
7 contracts to any of these, for certificates under direct group  
8 policies and contracts and for unallocated annuity contracts  
9 issued by member insurers, except as limited by the Life and  
10 Health Insurance Guaranty Association Act. Annuity contracts  
11 and certificates under group annuity contracts include  
12 guaranteed investment contracts, deposit administration  
13 contracts, unallocated funding agreements, allocated funding  
14 agreements, structured settlement annuities, annuities issued  
15 to or in connection with government lotteries and immediate or  
16 deferred annuity contracts.

17 E. Coverage shall not be provided for:

18 (1) a portion of a policy or contract not  
19 guaranteed by the insurer or under which the risk is borne by  
20 the policy or contract owner;

21 (2) a policy or contract of reinsurance,  
22 unless assumption certificates have been issued pursuant to the  
23 reinsurance policy or contract;

24 (3) a portion of a policy or contract to the  
25 extent that the rate of interest on which it is based, or the

.174445.3

underscoring material = new  
[bracketed material] = delete

1 interest rate, crediting rate or similar factor determined by  
2 use of an index or other external reference stated in the  
3 policy or contract employed in calculating returns or changes  
4 in value:

5 (a) averaged over the period of four  
6 years prior to the date on which the member insurer becomes an  
7 impaired or insolvent insurer pursuant to the Life and Health  
8 Insurance Guaranty Association Act, whichever is earlier,  
9 exceeds the rate of interest determined by subtracting two  
10 percentage points from Moody's corporate bond yield average  
11 averaged for that same four-year period or for such lesser  
12 period if the policy or contract was issued less than four  
13 years before the member insurer becomes an impaired or  
14 insolvent insurer under the Life and Health Insurance Guaranty  
15 Association Act, whichever is earlier; and

16 (b) on and after the date on which the  
17 member insurer becomes an impaired or insolvent insurer  
18 pursuant to the Life and Health Insurance Guaranty Association  
19 Act, whichever is earlier, exceeds the rate of interest  
20 determined by subtracting three percentage points from Moody's  
21 corporate bond yield average as most recently available;

22 (4) a portion of a policy or contract issued  
23 to a plan or program of an employer, association or other  
24 person to provide life, health or annuity benefits to its  
25 employees, members or others, to the extent that the plan or

.174445.3

1 program is self-funded or uninsured, including but not limited  
2 to benefits payable by an employer, association or other person  
3 under:

4 (a) a multiple employer welfare  
5 arrangement as defined in 29 U.S.C. Section 1144;

6 (b) a minimum premium group insurance  
7 plan;

8 (c) a stop-loss group insurance plan; or

9 (d) an administrative services only  
10 contract;

11 (5) a portion of a policy or contract to the  
12 extent that it provides for:

13 (a) dividends or experience rating  
14 credits;

15 (b) voting rights; or

16 (c) payment of fees or allowances to a  
17 person, including the policy or contract owner, in connection  
18 with the service to or administration of the policy or  
19 contract;

20 (6) a policy or contract issued in this state  
21 by a member insurer at a time when it was not licensed or did  
22 not have a certificate of authority to issue the policy or  
23 contract in this state;

24 (7) an unallocated annuity contract issued to  
25 or in connection with a benefit plan protected under the

.174445.3

underscored material = new  
[bracketed material] = delete

1 federal pension benefit guaranty corporation, regardless of  
2 whether that corporation has yet become liable to make payments  
3 with respect to the benefit plan;

4 (8) a portion of an unallocated annuity  
5 contract that is not issued to or in connection with a specific  
6 employee, union or association of natural persons benefit plan  
7 or a government lottery;

8 (9) a portion of a policy or contract to the  
9 extent that the assessments required by Section 59-42-8 NMSA  
10 1978 with respect to the policy or contract are preempted by  
11 federal or state law;

12 (10) an obligation that does not arise under  
13 the express written terms of the policy or contract issued by  
14 the insurer to the contract owner or policy owner, including  
15 without limitation:

16 (a) claims based on marketing materials;

17 (b) claims based on side letters, riders  
18 or other documents that were issued by the insurer without  
19 meeting applicable policy form filing or approval requirements;

20 (c) misrepresentations of or regarding  
21 policy benefits;

22 (d) extra-contractual claims; or

23 (e) a claim for penalties or  
24 consequential or incidental damages;

25 (11) a contractual agreement that establishes

.174445.3



underscoring material = new  
[bracketed material] = delete

1 the member insurer's obligations to provide a book value  
2 accounting guaranty for defined contribution benefit plan  
3 participants by reference to a portfolio of assets that is  
4 owned by the benefit plan or its trustee, which in each case is  
5 not an affiliate of the member insurer;

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

24 (13) a policy or contract providing hospital,  
25 medical, prescription drug or other health care benefits

.174445.3

underscoring material = new  
[bracketed material] = delete

1 pursuant to Part C or Part D of Subchapter 18 of Chapter 7 of  
2 Title 42 of the United States Code or regulations promulgated  
3 pursuant to Part C or Part D.

4 F. The benefits that the association may become  
5 obligated to cover shall in no event exceed the lesser of:

6 (1) the contractual obligations for which the  
7 insurer is liable or would have been liable if it were not an  
8 impaired or insolvent insurer; or

9 (2) with respect to one person's life,  
10 regardless of the number of policies or contracts:

11 (a) for life insurance death benefits,  
12 three hundred thousand dollars (\$300,000), but not more than  
13 one hundred thousand dollars (\$100,000) in net cash surrender  
14 and net cash withdrawal values;

15 (b) for health insurance benefits: 1)  
16 one hundred thousand dollars (\$100,000) for coverages not  
17 constituting disability insurance or basic hospital, medical  
18 and surgical insurance or major medical insurance or long-term  
19 care insurance under the Insurance Code, including net cash  
20 surrender and net cash withdrawal values; 2) three hundred  
21 thousand dollars (\$300,000) for disability insurance under the  
22 Insurance Code; 3) three hundred thousand dollars (\$300,000)  
23 for long-term care insurance as defined in Section 59A-23A-4  
24 NMSA 1978; and 4) five hundred thousand dollars (\$500,000) for  
25 basic hospital, medical and surgical insurance or major medical

.174445.3

underscoring material = new  
[bracketed material] = delete

1 insurance under the Insurance Code; or

2 (c) for annuity benefits, two hundred  
3 fifty thousand dollars (\$250,000) in present value, including  
4 net cash surrender and net cash withdrawal values;

5 (3) with respect to each individual  
6 participating in a governmental retirement benefit plan  
7 established pursuant to Section 401, 403(b) or 457 of the  
8 Internal Revenue Code of 1986 covered by an unallocated annuity  
9 contract or the beneficiaries of each such individual if  
10 deceased, in the aggregate, two hundred fifty thousand dollars  
11 (\$250,000) in present value annuity benefits, including net  
12 cash surrender and net cash withdrawal values; or

13 (4) with respect to each payee of a structured  
14 settlement annuity, or beneficiary or beneficiaries of the  
15 payee if the payee is deceased, two hundred fifty thousand  
16 dollars (\$250,000) in present value annuity benefits, in the  
17 aggregate, including net cash surrender and net cash withdrawal  
18 values, if any.

19 G. In no event shall the association be obligated  
20 to cover more than:

21 (1) an aggregate of three hundred thousand  
22 dollars (\$300,000) in benefits with respect to one person's  
23 life pursuant to Paragraphs (2), (3) and (4) of Subsection F of  
24 this section, except with respect to benefits for basic  
25 hospital, medical and surgical insurance and major medical

.174445.3

underscoring material = new  
[bracketed material] = delete

1 insurance pursuant to Subparagraph (b) of Paragraph (2) of  
2 Subsection F of this section, in which case the aggregate  
3 liability of the association shall not exceed five hundred  
4 thousand dollars (\$500,000) with respect to one person's life;  
5 or

6 (2) with respect to one owner of multiple  
7 non-group policies of life insurance, whether the policy owner  
8 is an individual, firm, corporation or other person, and  
9 whether the persons insured are officers, managers, employees  
10 or other persons, more than five million dollars (\$5,000,000)  
11 in benefits, regardless of the number of policies and contracts  
12 held by the owner.

13 H. With respect to either one contract owner  
14 provided coverage pursuant to Subparagraph (b) of Paragraph (3)  
15 of Subsection A of this section or one plan sponsor whose plans  
16 own directly or in trust one or more unallocated annuity  
17 contracts not included in Paragraph (3) of Subsection F of this  
18 section, the benefits the association may become obligated to  
19 cover shall not exceed five million dollars (\$5,000,000)  
20 irrespective of the number of contracts with respect to the  
21 contract owner or plan sponsor. However, in the case where one  
22 or more unallocated annuity contracts are covered contracts  
23 pursuant to the Life and Health Insurance Guaranty Association  
24 Act and are owned by a trust or other entity for the benefit of  
25 two or more plan sponsors, coverage shall be afforded by the

.174445.3

underscoring material = new  
[bracketed material] = delete

1 association if the largest interest in the trust or entity  
2 owning the contract or contracts is held by a plan sponsor  
3 whose principal place of business is in this state. In no  
4 event shall the association be obligated to cover more than  
5 five million dollars (\$5,000,000) in benefits with respect to  
6 all these unallocated contracts.

7 I. The limitations set forth in Subsections F, G  
8 and H of this section are limitations on the benefits for which  
9 the association is obligated before taking into account either  
10 its subrogation and assignment rights or the extent to which  
11 those benefits could be provided out of the assets of the  
12 impaired or insolvent insurer attributable to covered policies.  
13 The costs of the association's obligations may be met by the  
14 use of assets attributable to covered policies or reimbursed to  
15 the association pursuant to its subrogation and assignment  
16 rights.

17 J. In performing its obligations to provide  
18 coverage pursuant to Sections 59A-42-4 and 59A-42-7 NMSA 1978,  
19 the association shall not be required to guarantee, assume,  
20 reinsure or perform, or cause to be guaranteed, assumed,  
21 reinsured or performed, the contractual obligations of the  
22 insolvent or impaired insurer under a covered policy or  
23 contract that do not materially affect the economic values or  
24 economic benefits of the covered policy or contract."

25 Section 5. Section 59A-42-5 NMSA 1978 (being Laws 1984,

.174445.3

underscoring material = new  
[bracketed material] = delete

1 Chapter 127, Section 754) is amended to read:

2 "59A-42-5. ORGANIZATION OF ASSOCIATION--PARTICIPATION.--

3 A. All insurers shall organize and remain members  
4 of the association as a condition of their authority to  
5 transact insurance business covered by Section ~~[752 of this~~  
6 ~~article]~~ 59A-42-4 NMSA 1978. The association may take any  
7 appropriate form of legal entity available under the laws of  
8 this state and approved by the superintendent. The association  
9 shall perform its functions under the plan of operation  
10 established and approved pursuant to ~~[this article]~~ Section  
11 59A-42-9 NMSA 1978 and shall exercise its powers through ~~[a~~  
12 ~~board of directors]~~ the board. For purposes of assessment and  
13 administration the association shall maintain ~~[three (3)]~~ two  
14 accounts:

- 15 ~~[A. the health insurance account;~~
- 16 ~~B. the life insurance account; and~~
- 17 ~~C. the annuity account]~~

18 (1) the life insurance and annuity account,  
19 which includes the following subaccounts:

- 20 (a) a life insurance account;
- 21 (b) an annuity account, which includes  
22 annuity contracts owned by a governmental retirement benefit  
23 plan, or its trustee, established pursuant to Section 401,  
24 403(b) or 457 of the Internal Revenue Code of 1986, but  
25 otherwise excludes unallocated annuities; and

.174445.3

underscored material = new  
[bracketed material] = delete

1                                   (c) an unallocated annuity account,  
2 which excludes contracts owned by a governmental retirement  
3 benefit plan, or its trustee, established pursuant to Section  
4 401, 403(b) or 457 of the Internal Revenue Code of 1986; and  
5                                   (2) the health insurance account.

6                                   B. The association shall be supervised by the  
7 superintendent and shall be subject to the applicable  
8 provisions of the insurance laws of New Mexico. Meetings or  
9 records of the association may be opened to the public upon  
10 majority vote of the board of the association."

11                                   Section 6. Section 59A-42-6 NMSA 1978 (being Laws 1984,  
12 Chapter 127, Section 755, as amended) is amended to read:

13                                   "59A-42-6. BOARD OF DIRECTORS.--

14                                   A. The board of directors of the association shall  
15 consist of not less than five nor more than nine persons  
16 serving terms as established in the plan of operation. The  
17 insurer members of the board shall be selected by member  
18 insurers subject to the approval of the superintendent. In  
19 addition, two persons who are public representatives shall be  
20 appointed by the superintendent to the board. A public  
21 representative shall not be an officer, director or employee of  
22 an insurance company or a person engaged in the business of  
23 insurance. Vacancies on the board shall be filled for the  
24 remaining period of the term by a majority vote of the  
25 remaining board members for member insurers, subject to

.174445.3

underscoring material = new  
[bracketed material] = delete

1 approval of the superintendent, and by the superintendent for  
2 public representatives.

3 B. In approving insurer member selections, the  
4 superintendent shall consider among other things whether all  
5 member insurers are fairly represented.

6 C. Members of the board may be reimbursed from the  
7 assets of the association for [~~any~~] reasonable and necessary  
8 expenses incurred by them as members of the board [~~of~~  
9 ~~directors~~], but the amount of [~~such~~] that reimbursement shall  
10 not exceed the guidelines provided by the approved plan of  
11 operation."

12 Section 7. Section 59A-42-7 NMSA 1978 (being Laws 1984,  
13 Chapter 127, Section 756) is repealed and a new Section  
14 59A-42-7 NMSA 1978 is enacted to read:

15 "59A-42-7. [NEW MATERIAL] POWERS AND DUTIES OF THE  
16 ASSOCIATION.--

17 A. If a member insurer is an impaired insurer, the  
18 association may, in its discretion, and subject to conditions  
19 imposed by the association that do not impair the contractual  
20 obligations of the impaired insurer and that are approved by  
21 the superintendent:

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

25 (2) provide such money, pledges, loans, notes,

.174445.3



underscoring material = new  
[bracketed material] = delete

1 guarantees or other means as are proper to effectuate Paragraph  
2 (1) of this subsection and assure payment of the contractual  
3 obligations of the impaired insurer pending action pursuant to  
4 Paragraph (1) of this subsection.

5 B. If a member insurer is an insolvent insurer, the  
6 association shall:

7 (1) guarantee, assume or reinsure, or cause to  
8 be guaranteed, assumed or reinsured, the policies or contracts  
9 of the insolvent insured, or assure payment of the contractual  
10 obligations of the insolvent insurer, and provide money,  
11 pledges, loans, notes, guarantees or other means reasonably  
12 necessary to discharge the association's duties; or

13 (2) provide benefits and coverages in  
14 accordance with the following provisions:

15 (a) with respect to life and health  
16 insurance policies and annuities, assure payment of benefits  
17 for premiums identical to the premiums and benefits, except for  
18 terms of conversion and renewability, that would have been  
19 payable under the policies or contracts of the insolvent  
20 insurer, for claims incurred: 1) with respect to group  
21 policies and contracts, not later than the earlier of the next  
22 renewal date under those policies or contracts or forty-five  
23 days, but in no event less than thirty days, after the date on  
24 which the association becomes obligated with respect to the  
25 policies and contracts; and 2) with respect to non-group

.174445.3

underscoring material = new  
[bracketed material] = delete

1 policies, contracts and annuities, not later than the earlier  
2 of the next renewal date, if any, under the policies or  
3 contracts or one year, but in no event less than thirty days,  
4 from the date on which the association becomes obligated with  
5 respect to the policies or contracts;

6 (b) make diligent efforts to provide all  
7 known insureds or annuitants, for non-group policies and  
8 contracts, or group policy owners with respect to group  
9 policies and contracts, thirty days' notice of the termination,  
10 pursuant to Subparagraph (a) of this paragraph, of the benefits  
11 provided;

12 (c) with respect to non-group life and  
13 health insurance policies and annuities covered by the  
14 association, and with respect to an individual formerly insured  
15 or formerly an annuitant under a group policy who is not  
16 eligible for replacement group coverage, make available to each  
17 known insured or annuitant, or owner if other than the insured  
18 or annuitant, substitute coverage on an individual basis in  
19 accordance with the provisions of Subparagraph (d) of this  
20 paragraph if the insureds or annuitants had a right under law  
21 or the terminated policy or annuity to convert coverage to  
22 individual coverage or to continue an individual policy or  
23 annuity in force until a specified age or for a specified time,  
24 during which the insurer had no right unilaterally to make  
25 changes in any provision of the policy or annuity or had a

.174445.3

underscoring material = new  
[bracketed material] = delete

1 right only to make changes in premium by class;

2 (d) in providing the substitute coverage  
3 required pursuant to Subparagraph (c) of this paragraph, the  
4 association may offer either to reissue the terminated coverage  
5 or to issue an alternative policy. Alternative or reissued  
6 policies shall be offered without requiring evidence of  
7 insurability and shall not provide for a waiting period or  
8 exclusion that would not have applied under the terminated  
9 policy. The association may reinsure an alternative or  
10 reissued policy;

11 (e) alternative policies adopted by the  
12 association shall be subject to the approval of the domiciliary  
13 insurance superintendent and the receivership court. The  
14 association may adopt alternative policies of various types for  
15 future issuance without regard to a particular impairment or  
16 insolvency. Alternative policies shall contain at least the  
17 minimum statutory provisions required in this state and provide  
18 benefits that shall not be unreasonable in relation to the  
19 premium charged. The association shall set the premium in  
20 accordance with a table of rates that it shall adopt. The  
21 premium shall reflect the amount of insurance to be provided  
22 and the age and class of risk of each insured but shall not  
23 reflect changes in the health of the insured after the original  
24 policy was last underwritten. An alternative policy issued by  
25 the association shall provide coverage of a type similar to

.174445.3

underscoring material = new  
[bracketed material] = delete

1 that of the policy issued by the impaired or insolvent insurer,  
2 as determined by the association;

3 (f) if the association elects to reissue  
4 terminated coverage at a premium rate different from that  
5 charged under the terminated policy, the premium shall be set  
6 by the association in accordance with the amount of insurance  
7 provided and the age and class of risk, subject to approval of  
8 the domiciliary insurance superintendent and the receivership  
9 court;

10 (g) the association's obligations with  
11 respect to coverage under a policy of the impaired or insolvent  
12 insurer or under a reissued or alternative policy shall cease  
13 on the date the coverage or policy is replaced by another  
14 similar policy by the policy owner, the insured or the  
15 association; and

16 (h) when proceeding under this  
17 subsection with respect to a policy or contract carrying  
18 guaranteed minimum interest rates, the association shall assure  
19 the payment or crediting of a rate of interest consistent with  
20 Paragraph (3) of Subsection E of Section 59A-42-4 NMSA 1978.

21 C. Nonpayment of premiums within thirty-one days  
22 after the date required under the terms of a guaranteed,  
23 assumed, alternative or reissued policy or contract or  
24 substitute coverage shall terminate the association's  
25 obligations under the policy or coverage pursuant to the Life

.174445.3

underscoring material = new  
[bracketed material] = delete

1 and Health Insurance Guaranty Association Act with respect to  
2 the policy or coverage, except with respect to claims incurred  
3 or net cash surrender value that may be due in accordance with  
4 the provisions of that act.

5 D. Premiums due for coverage after entry of an  
6 order of liquidation of an insolvent insurer shall belong to  
7 and be payable at the direction of the association. If the  
8 liquidator of an insolvent insurer requests, the association  
9 shall provide a report to the liquidator regarding such premium  
10 collected by the association. The association shall be liable  
11 for unearned premiums due to policy or contract owners arising  
12 after the entry of the order.

13 E. The protection provided by the Life and Health  
14 Insurance Guaranty Association Act shall not apply where  
15 guaranty protection is provided to residents of this state by  
16 the laws of the domiciliary state or jurisdiction of the  
17 impaired or insolvent insurer other than this state.

18 F. In carrying out its duties pursuant to  
19 Subsection B of this section, the association may:

20 (1) subject to approval by a court in this  
21 state, impose permanent policy or contract liens in connection  
22 with a guaranty, assumption or reinsurance agreement, if the  
23 association finds that the amounts that can be assessed are  
24 less than the amounts needed to assure full and prompt  
25 performance of the association's duties, or that the economic or

.174445.3

underscoring material = new  
[bracketed material] = delete

1 financial conditions as they affect member insurers are  
2 sufficiently adverse to render the imposition of such permanent  
3 policy or contract liens to be in the public interest; or

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

21 G. A deposit in this state, held pursuant to law or  
22 required by the superintendent for the benefit of creditors,  
23 including policy owners, not turned over to the domiciliary  
24 liquidator upon the entry of a final order of liquidation or  
25 order approving a rehabilitation plan of an insurer domiciled

.174445.3

underscoring material = new  
[bracketed material] = delete

1 in this state or in a reciprocal state, pursuant to Chapter  
2 59A, Article 10 NMSA 1978, shall be promptly paid to the  
3 association. The association is entitled to retain a portion  
4 of an amount paid to it equal to the percentage determined by  
5 dividing the aggregate amount of policy owners' claims related  
6 to that insolvency for which the association has provided  
7 statutory benefits by the aggregate amount of all policy  
8 owners' claims in this state related to that insolvency and  
9 shall remit to the domiciliary receiver the amount so paid to  
10 the association and less the amount retained pursuant to this  
11 subsection. An amount paid to the association and retained by  
12 it shall be treated as a distribution of estate assets pursuant  
13 to the Insurers Conservation, Rehabilitation and Liquidation  
14 Law or similar provision of the state of domicile of the  
15 impaired or insolvent insurer.

16 H. If the association fails to act within a  
17 reasonable period of time with respect to an insolvent insurer,  
18 as provided in Subsection B of this section, the superintendent  
19 shall have the powers and duties of the association with  
20 respect to the insolvent insurer.

21 I. The association may render assistance and advice  
22 to the superintendent, upon the superintendent's request,  
23 concerning rehabilitation, payment of claims, continuance of  
24 coverage or the performance of other contractual obligations of  
25 an impaired or insolvent insurer.

.174445.3

underscored material = new  
[bracketed material] = delete

1           J. The association shall have standing to appear or  
2     intervene before a court or agency in this state with  
3     jurisdiction over an impaired or insolvent insurer concerning  
4     which the association is or may become obligated pursuant to  
5     the Life and Health Insurance Guaranty Association Act or with  
6     jurisdiction over a person or property against which the  
7     association may have rights through subrogation or otherwise.  
8     Standing shall extend to all matters germane to the powers and  
9     duties of the association, including proposals for reinsuring,  
10    modifying or guaranteeing the policies or contracts of the  
11    impaired or insolvent insurer and the determination of the  
12    policies or contracts and contractual obligations. The  
13    association shall also have the right to appear or intervene  
14    before a court or agency in another state with jurisdiction  
15    over an impaired or insolvent insurer for which the association  
16    is or may become obligated or with jurisdiction over a person  
17    or property against whom the association may have rights  
18    through subrogation or otherwise.

19           K. The association shall have subrogation rights  
20    under the Life and Health Insurance Guaranty Association Act as  
21    follows:

22                   (1) a person receiving benefits pursuant to  
23    the Life and Health Insurance Guaranty Association Act shall be  
24    deemed to have assigned the rights under, and any causes of  
25    action against any person for losses arising pursuant to,

.174445.3



underscoring material = new  
[bracketed material] = delete

1 resulting from or otherwise relating to, the covered policy or  
2 contract to the association to the extent of the benefits  
3 received, whether the benefits are payments of or on account of  
4 contractual obligations, continuation of coverage or provision  
5 of substitute or alternative coverages. The association may  
6 require an assignment to it of those rights and causes of  
7 action by a payee, policy or contract owner, beneficiary,  
8 insured or annuitant as a condition precedent to the receipt of  
9 a right or benefit conferred upon the person;

10 (2) the subrogation rights of the association  
11 pursuant to this subsection shall have the same priority  
12 against the assets of the impaired or insolvent insurer as that  
13 possessed by the person entitled to receive benefits;

14 (3) in addition to Paragraphs (1) and (2) of  
15 this subsection, the association shall have all common law  
16 rights of subrogation and any other equitable or legal remedy  
17 that would have been available to the impaired or insolvent  
18 insurer or owner, beneficiary or payee of a policy or contract  
19 with respect to the policy or contracts, including, in the case  
20 of a structured settlement annuity, any rights of the owner,  
21 beneficiary or payee of the annuity, to the extent of benefits  
22 received, against a person originally or by succession  
23 responsible for the losses arising from the personal injury  
24 relating to those benefits, except against a person responsible  
25 solely by reason of serving as an assignee in respect of a

.174445.3

1 qualified assignment pursuant to Section 130 of the Internal  
2 Revenue Code of 1986;

3 (4) if Paragraphs (1), (2) or (3) of this  
4 subsection are invalid or ineffective with respect to a person  
5 or claim for any reason, the amount payable by the association  
6 with respect to the related covered obligations shall be  
7 reduced by the amount realized by another person with respect  
8 to the person or claim that is attributable to the policies, or  
9 portion of the policies covered by the association; and

10 (5) if the association has provided benefits  
11 with respect to a covered obligation and a person recovers  
12 amounts as to which the association has rights as described in  
13 this subsection, the person shall pay to the association the  
14 portion of the recovery attributable to the policies, or  
15 portion of the policies, covered by the association.

16 L. In addition to its other rights and powers, the  
17 association may:

18 (1) enter into contracts that are necessary or  
19 proper to carry out the provisions and purposes of the Life and  
20 Health Insurance Guaranty Association Act;

21 (2) sue or be sued, including taking legal  
22 actions necessary or proper to recover unpaid assessments  
23 pursuant to Section 59A-42-8 NMSA and to settle claims or  
24 potential claims against it;

25 (3) borrow money to effect the purposes of the

underscoring material = new  
[bracketed material] = delete

1 Life and Health Insurance Guaranty Association Act. Notes or  
2 other evidence of indebtedness of the association not in  
3 default shall be legal investments for domestic insurers and  
4 may be carried as admitted assets;

5 (4) employ or retain those persons necessary  
6 or appropriate to handle the financial transactions of the  
7 association and to perform other functions as become necessary  
8 or proper;

9 (5) take legal action that may be necessary or  
10 appropriate to avoid or recover payment of improper claims;

11 (6) exercise, to the extent approved by the  
12 superintendent, the powers of a domestic life or health  
13 insurer, but in no case may the association issue insurance  
14 policies or annuity contracts other than those issued to  
15 perform its obligations pursuant to the Life and Health  
16 Insurance Guaranty Association Act;

17 (7) organize itself as a corporation or in  
18 other legal form permitted by the laws of this state;

19 (8) request information from a person seeking  
20 coverage from the association in order to aid the association  
21 in determining its obligations with respect to that person, and  
22 that person shall promptly comply with the request; and

23 (9) take other necessary or appropriate action  
24 to discharge its duties and obligations or to exercise its  
25 powers.

.174445.3

underscoring material = new  
[bracketed material] = delete

1 M. The association may join an organization of one  
2 or more other state associations of similar purposes to further  
3 the purposes and administer the powers and duties of the  
4 association.

5 N. The association may succeed to the rights and  
6 obligations of an insolvent insurer as follows:

7 (1) at any time within one hundred eighty  
8 days of the date of the order of liquidation, the association  
9 may elect to succeed to the rights and obligations of the  
10 ceding member insurer that relate to policies or annuities  
11 covered, in whole or in part, by the association, in each case  
12 under one or more reinsurance contracts entered into by the  
13 insolvent insurer and its reinsurers and selected by the  
14 association. The assumption shall be effective as of the date  
15 of the order of liquidation. The election shall be effected by  
16 the association or the national organization of life and  
17 health insurance guaranty associations on its behalf sending  
18 written notice, return receipt requested, to the affected  
19 reinsurers;

20 (2) to facilitate the earliest practicable  
21 decision about whether to assume any of the contracts of  
22 reinsurance, and in order to protect the financial position of  
23 the estate, the receiver and each reinsurer of the ceding  
24 member insurer shall make available, upon request, to the  
25 association or to the national organization of life and health

.174445.3

underscoring material = new  
[bracketed material] = delete

1 insurance guaranty associations on its behalf, as soon as  
2 possible after commencement of formal delinquency proceedings:

3 (a) copies of in-force contracts of  
4 reinsurance and all related files and records relevant to the  
5 determination of whether those contracts should be assumed; and

6 (b) notices of defaults under the  
7 reinsurance contracts or a known event or condition that with  
8 the passage of time could become a default under the  
9 reinsurance contracts;

10 (3) the following shall apply to reinsurance  
11 contracts assumed by the association:

12 (a) the association shall be responsible  
13 for all unpaid premiums due under the reinsurance contracts for  
14 periods both before and after the date of the order of  
15 liquidation and shall be responsible for the performance of all  
16 other obligations to be performed after the date of the order  
17 of liquidation, in each case that relate to policies or  
18 annuities covered, in whole or in part, by the association.

19 The association may charge policies or annuities covered in  
20 part by the association, through reasonable allocation methods,  
21 the costs for reinsurance in excess of the obligations of the  
22 association and shall provide notice and an accounting of these  
23 charges to the liquidator;

24 (b) the association shall be entitled to  
25 amounts payable by the reinsurer under the reinsurance

.174445.3

underscoring material = new  
[bracketed material] = delete

1 contracts with respect to losses or events that occur in  
2 periods after the date of the order of liquidation and that  
3 relate to policies or annuities covered, in whole or in part,  
4 by the association, provided that, upon receipt of those  
5 amounts, the association shall be obliged to pay to the  
6 beneficiary under the policy or annuity on account of which the  
7 amounts were paid a portion of the amount equal to the lesser  
8 of: 1) the amount received by the association; or 2) the  
9 excess of the amount received by the association over the  
10 amount equal to the benefits paid by the association on account  
11 of the policy or annuity less the retention of the insurer  
12 applicable to the loss or event;

13 (c) within thirty days following the  
14 association's election, the association and each reinsurer  
15 under contracts assumed by the association shall calculate the  
16 net balance due to or from the association under each  
17 reinsurance contract as of the date of election with respect to  
18 policies or annuities covered, in whole or in part, by the  
19 association, which calculation shall give full credit to all  
20 items paid by either the insurer or its receiver or the  
21 reinsurer prior to the election date. The reinsurer shall pay  
22 the receiver amounts due for losses or events prior to the date  
23 of the order of liquidation, subject to a setoff for premiums  
24 unpaid for periods prior to that date, and the association or  
25 reinsurer shall pay any remaining balance due the other, in

.174445.3

underscoring material = new  
[bracketed material] = delete

1 each case within five days of the completion of the calculation  
2 described in this subparagraph. A dispute over the amounts due  
3 to either the association or the reinsurer shall be resolved by  
4 arbitration pursuant to the terms of the affected reinsurance  
5 contracts or, if the contract contains no arbitration clause,  
6 as otherwise provided by law. If the receiver has received  
7 amounts due the association pursuant to Subparagraph (b) of  
8 this paragraph, the receiver shall remit those amounts to the  
9 association as promptly as practicable; and

10 (d) if the association or receiver, on  
11 the association's behalf, within sixty days of the election  
12 described in Subparagraph (c) of this paragraph, pays the  
13 unpaid premiums due for periods both before and after the date  
14 of election that relate to policies or annuities covered, in  
15 whole or in part, by the association, the reinsurer shall not  
16 be entitled to terminate the reinsurance contracts for failure  
17 to pay premiums insofar as the reinsurance contracts relate to  
18 policies or annuities covered, in whole or in part, by the  
19 association, and shall not be entitled to set off unpaid  
20 amounts due under other contracts, or unpaid amounts due from  
21 parties other than the association, against amounts due the  
22 association;

23 (4) during the period from the date of the  
24 order of liquidation, until the election date or, if the  
25 election does not occur, until one hundred eighty days after

.174445.3

1 the date of the order of liquidation, neither the association  
2 nor the reinsurer shall have rights or obligations pursuant to  
3 reinsurance contracts that the association has the right to  
4 assume pursuant to Paragraphs (1), (2) and (3) of this  
5 subsection, whether for periods prior to or after the date of  
6 the order of liquidation, and the reinsurer, the receiver and  
7 the association shall, to the extent practicable, provide each  
8 other data and records reasonably requested; provided that once  
9 the association has elected to assume a reinsurance contract,  
10 the parties' rights and obligations shall be governed by  
11 Paragraphs (1), (2) and (3) of this subsection;

12 (5) if the association does not elect to  
13 assume a reinsurance contract by the election date pursuant to  
14 Paragraphs (1), (2) and (3) of this subsection, the association  
15 shall have no rights or obligations, in each case for periods  
16 both before and after the date of the order of liquidation,  
17 with respect to the reinsurance contract;

18 (6) when policies or annuities, or covered  
19 obligations with respect to those policies or annuities, are  
20 transferred to an assuming insurer, reinsurance on the policies  
21 or annuities may also be transferred by the association, in the  
22 case of contracts assumed pursuant to Paragraphs (1), (2) and  
23 (3) of this subsection, subject to the following:

24 (a) unless the reinsurer and the  
25 assuming insurer agree otherwise, the reinsurance contract



underscored material = new  
[bracketed material] = delete

1 transferred shall not cover new policies of insurance or  
2 annuities in addition to those transferred;

3 (b) the obligations described in  
4 Paragraphs (1), (2) and (3) of this subsection shall no longer  
5 apply with respect to matters arising after the effective date  
6 of the transfer; and

7 (c) notice shall be given in writing,  
8 return receipt requested, by the transferring party to the  
9 affected reinsurer not less than thirty days prior to the  
10 effective date of the transfer;

11 (7) the provisions of this subsection shall  
12 supersede the provisions of a law or of an affected reinsurance  
13 contract that provides for or requires a payment of reinsurance  
14 proceeds, on account of losses or events that occur in periods  
15 after the date of the order of liquidation, to the receiver of  
16 the insolvent insurer or another person. The receiver shall  
17 remain entitled to amounts payable by the reinsurer under the  
18 reinsurance contracts with respect to losses or events that  
19 occur in periods prior to the date of the order of liquidation,  
20 subject to applicable setoff provisions; and

21 (8) except as otherwise provided in this  
22 subsection, the provisions of this subsection shall not:

23 (a) alter or modify the terms and  
24 conditions of a reinsurance contract;

25 (b) abrogate or limit the rights of a

.174445.3

underscoring material = new  
[bracketed material] = delete

1 reinsurer to claim that it is entitled to rescind a reinsurance  
2 contract;

3 (c) give a policyholder or beneficiary  
4 an independent cause of action against a reinsurer that is not  
5 otherwise set forth in the reinsurance contract;

6 (d) limit or affect the association's  
7 rights as a creditor of the estate against the assets of the  
8 estate; or

9 (e) apply to reinsurance contracts  
10 covering property or casualty risks.

11 O. The board may exercise reasonable business  
12 judgment to determine the means by which the association is to  
13 provide the benefits of the Life and Health Insurance Guaranty  
14 Association Act in an economical and efficient manner.

15 P. Where the association has arranged or offered to  
16 provide benefits to a covered person under a plan or  
17 arrangement that fulfills the association's obligations, the  
18 person shall not be entitled to benefits from the association  
19 in addition to or other than those provided under the plan or  
20 arrangement.

21 Q. Venue in a suit against the association arising  
22 pursuant to the Life and Health Insurance Guaranty Association  
23 Act shall be in Santa Fe county. The association shall not be  
24 required to give an appeal bond in an appeal that relates to a  
25 cause of action arising pursuant to the Life and Health

.174445.3

underscored material = new  
[bracketed material] = delete

1 Insurance Guaranty Association Act.

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

12 (1) in lieu of the index or other external  
13 reference provided for in the original policy or contract, the  
14 alternative policy or contract provides for a fixed interest  
15 rate, payment of dividends with minimum guarantees or a  
16 different method for calculating interest or changes in value;

17 (2) there is no requirement for evidence of  
18 insurability, waiting period or other exclusion that would not  
19 have applied under the replaced policy or contract; and

20 (3) the alternative policy or contract is  
21 substantially similar to the replaced policy or contract in all  
22 other material terms."

23 Section 8. Section 59A-42-8 NMSA 1978 (being Laws 1984,  
24 Chapter 127, Section 757) is repealed and a new Section  
25 59A-42-8 NMSA 1978 is enacted to read:

.174445.3

1 "59A-42-8. [NEW MATERIAL] ASSESSMENTS.--

2 A. For the purpose of providing the funds necessary  
3 to carry out the powers and duties of the association, the  
4 board shall assess the member insurers, separately for each  
5 account, at a time and for amounts as the board finds  
6 necessary. Assessments shall be due not less than thirty days  
7 after prior written notice to the member insurers and shall  
8 accrue interest at six percent a year on and after the due  
9 date.

10 B. There shall be two classes of assessments as  
11 follows:

12 (1) class A assessments shall be authorized  
13 and called for the purpose of meeting administrative and legal  
14 costs and other expenses. Class A assessments may be  
15 authorized and called whether or not related to a particular  
16 impaired or insolvent insurer; and

17 (2) class B assessments shall be authorized  
18 and called to the extent necessary to carry out the powers and  
19 duties of the association with regard to an impaired or an  
20 insolvent insurer.

21 C. The amount of a class A assessment shall be  
22 determined by the board and may be authorized and called on a  
23 pro rata or non-pro rata basis. If the class A assessment is  
24 authorized and called on a pro rata basis, the board may  
25 provide that it be credited against future class B assessments.

.174445.3

underscoring material = new  
[bracketed material] = delete

1 The total of all non-pro rata assessments shall not exceed  
2 three hundred dollars (\$300) per member insurer in one calendar  
3 year. The amount of a class B assessment shall be allocated  
4 for assessment purposes among the accounts pursuant to an  
5 allocation formula that may be based on the premiums or  
6 reserves of the impaired or insolvent insurer or another  
7 standard deemed by the board in its sole discretion as being  
8 fair and reasonable under the circumstances.

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

21 E. Assessments for funds to meet the requirements  
22 of the association with respect to an impaired or insolvent  
23 insurer shall not be authorized or called until necessary to  
24 implement the purposes of the Life and Health Insurance  
25 Guaranty Association Act. Classification of assessments

.174445.3

underscoring material = new  
[bracketed material] = delete

1 pursuant to Subsection B of this section and computation of  
2 assessments pursuant to Subsections C and D of this section  
3 shall be made with a reasonable degree of accuracy, recognizing  
4 that exact determinations may not always be possible. The  
5 association shall notify each member insurer of its anticipated  
6 pro rata share of an authorized assessment not yet called  
7 within one hundred eighty days after the assessment is  
8 authorized.

9 F. The association may abate or defer, in whole or  
10 in part, the assessment of a member insurer if, in the opinion  
11 of the board, payment of the assessment would endanger the  
12 ability of the member insurer to fulfill its contractual  
13 obligations. In the event an assessment against a member  
14 insurer is abated, or deferred in whole or in part, the amount  
15 by which the assessment is abated or deferred may be assessed  
16 against the other member insurers in a manner consistent with  
17 the basis for assessments set forth in this section. Once the  
18 conditions that caused a deferral have been removed or  
19 rectified, the member insurer shall pay all assessments that  
20 were deferred pursuant to a repayment plan approved by the  
21 association.

22 G. Subject to the provisions of Subsection H of  
23 this section, the total of all assessments authorized by the  
24 association with respect to a member insurer for each  
25 subaccount of the life insurance and annuity account and for

.174445.3

underscoring material = new  
[bracketed material] = delete

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

7 H. If two or more assessments are authorized in one  
8 calendar year with respect to insurers that become impaired or  
9 insolvent in different calendar years, the average annual  
10 premiums for purposes of the aggregate assessment percentage  
11 limitation referenced in Subsection G of this section shall be  
12 equal and limited to the higher of the three-year average  
13 annual premiums for the applicable subaccount or account as  
14 calculated pursuant to this section.

15 I. If the maximum assessment, together with the  
16 other assets of the association in an account, does not provide  
17 in one year in either account an amount sufficient to carry out  
18 the responsibilities of the association, the necessary  
19 additional funds shall be assessed as soon thereafter as  
20 permitted by the Life and Health Insurance Guaranty Association  
21 Act.

22 J. The board may provide in the plan of operation a  
23 method of allocating funds among claims, whether relating to  
24 one or more impaired or insolvent insurers, when the maximum  
25 assessment will be insufficient to cover anticipated claims.

.174445.3

underscoring material = new  
[bracketed material] = delete

1           K. If the maximum assessment for a subaccount of  
2 the life and annuity account in one year does not provide an  
3 amount sufficient to carry out the responsibilities of the  
4 association, then pursuant to Subsection D of this section, the  
5 board shall access the other subaccounts of the life and  
6 annuity account for the necessary additional amount, subject to  
7 the maximum stated in Subsections G, H and I of this section.

8           L. The board may, by an equitable method as  
9 established in the plan of operation, refund to member  
10 insurers, in proportion to the contribution of each insurer to  
11 that account, the amount by which the assets of the account  
12 exceed the amount the board finds is necessary to carry out  
13 during the coming year the obligations of the association with  
14 regard to that account, including assets accruing from  
15 assignment, subrogation, net realized gains and income from  
16 investments. A reasonable amount may be retained in an account  
17 to provide funds for the continuing expenses of the association  
18 and for a future losses claim.

19           M. It shall be proper for a member insurer, in  
20 determining its premium rates and policyowner dividends as to  
21 any kind of insurance within the scope of the Life and Health  
22 Insurance Guaranty Association Act, to consider the amount  
23 reasonably necessary to meet its assessment obligations under  
24 that act.

25           N. The association shall issue to each insurer

.174445.3



underscoring material = new  
~~[bracketed material] = delete~~

1 paying an assessment, other than a class A assessment, a  
2 certificate of contribution, in a form prescribed by the  
3 superintendent, for the amount of the assessment paid. All  
4 outstanding certificates shall be of equal dignity and priority  
5 without reference to amounts or dates of issue. A certificate  
6 of contribution may be shown by the insurer in its financial  
7 statement as an asset in that form and for that amount, if any,  
8 and period of time as the superintendent may approve.

9 0. A protest to an assessment shall occur as  
10 follows:

11 (1) a member insurer that wishes to protest  
12 all or part of an assessment shall pay when due the full amount  
13 of the assessment as set forth in the notice provided by the  
14 association. The payment shall be available to meet  
15 association obligations during the pendency of the protest or a  
16 subsequent appeal. Payment shall be accompanied by a statement  
17 in writing that the payment is made under protest and setting  
18 forth a brief statement of the grounds for the protest;

19 (2) within sixty days following the payment of  
20 an assessment under protest by a member insurer, the  
21 association shall notify the member insurer in writing of its  
22 determination with respect to the protest unless the  
23 association notifies the member insurer that additional time is  
24 required to resolve the issues raised by the protest;

25 (3) within thirty days after a final decision

.174445.3

underscored material = new  
[bracketed material] = delete

1 has been made, the association shall notify the protesting  
2 member insurer in writing of that final decision. Within sixty  
3 days of receipt of notice of the final decision, the protesting  
4 member insurer may appeal that final action to the  
5 superintendent;

6 (4) in the alternative to rendering a final  
7 decision with respect to a protest based on a question  
8 regarding the assessment base, the association may refer  
9 protests to the superintendent for a final decision, with or  
10 without a recommendation from the association; and

11 (5) if the protest or appeal on the assessment  
12 is upheld, the amount paid in error or excess shall be returned  
13 to the member company. Interest on a refund due a protesting  
14 member shall be paid at the rate actually earned by the  
15 association.

16 P. The association may request information of  
17 member insurers in order to aid in the exercise of its power  
18 pursuant to this section and member insurers shall promptly  
19 comply with a request."

20 Section 9. Section 59A-42-9 NMSA 1978 (being Laws 1984,  
21 Chapter 127, Section 758) is amended to read:

22 "59A-42-9. PLAN OF OPERATION.--

23 A. The association shall submit to the  
24 superintendent a plan of operation [~~and any~~] or amendments  
25 [~~thereto~~] to the plan necessary or suitable to assure the fair,

.174445.3

underscored material = new  
[bracketed material] = delete

1 reasonable and equitable administration of the association.  
2 The plan of operation [~~and any~~] or amendments [~~thereto~~] shall  
3 become effective upon approval in writing by the superintendent  
4 or on the thirty-first day after submission to the  
5 superintendent if it has not been disapproved within that time.

6 B. If the association [~~at any time~~] fails to submit  
7 suitable amendments to the plan, the superintendent shall,  
8 after notice and hearing, [~~adopt and~~] promulgate reasonable  
9 rules necessary or advisable to effectuate the provisions of  
10 [~~this article~~] the Life and Health Insurance Guaranty  
11 Association Act. The rules shall continue in force until  
12 modified by the superintendent or superseded by amendments  
13 submitted by the association and approved by the  
14 superintendent.

15 C. All member insurers shall comply with the plan  
16 of operation.

17 D. The plan of operation [~~among other things~~] shall  
18 [~~establish all procedures for conducting the business of the~~  
19 ~~association, for handling its assets, for the receiving of~~  
20 ~~claims, for the keeping of records and for the conduct of other~~  
21 ~~activities necessary for the execution of the powers and duties~~  
22 ~~of the association]~~ include:

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

25 (2) the amount and method of reimbursement for

.174445.3

underscoring material = new  
[bracketed material] = delete

1 members of the board;

2 (3) the regular places and times for meetings,  
3 including telephone conference calls of the board;

4 (4) procedures for records to be kept of all  
5 financial transactions of the association, its agents and the  
6 board;

7 (5) procedures for selecting members of the  
8 board and submitting those selections for approval to the  
9 superintendent;

10 (6) additional procedures for assessments;

11 (7) additional provisions necessary or proper  
12 for the execution of the powers and duties of the association;

13 (8) procedures to remove a director for cause,  
14 including the case where a member insurer director becomes an  
15 impaired or insolvent insurer; and

16 (9) policies and procedures for addressing  
17 conflicts of interests.

18 E. The plan of operation may provide that ~~[any or~~  
19 ~~all]~~ the powers and duties of the association, except those  
20 ~~[under Subsections A and B of Section 756 of this article, are]~~  
21 provided in Paragraph (3) of Subsection L of Section 59A-42-7  
22 NMSA 1978 and in Section 59A-42-8 NMSA 1978 may be delegated to  
23 a corporation, association or other organization ~~[which]~~ that  
24 performs or will perform functions similar to those of ~~[this]~~  
25 the association, or its equivalent, in two ~~[-2-]~~ or more

.174445.3

underscored material = new  
[bracketed material] = delete

1 states. [~~Such a~~] That corporation, association or organization  
2 shall be reimbursed as a servicing facility would be reimbursed  
3 and shall be paid for its performance of [~~any~~] other functions  
4 of the association. A delegation [~~under~~] pursuant to this  
5 subsection shall take effect only with the approval of both the  
6 board [~~of directors~~] and the superintendent, and may be made  
7 only to a corporation, association or organization [~~which~~] that  
8 extends protection not substantially less favorable and  
9 effective than that provided by [~~this article~~] the Life and  
10 Health Insurance Guaranty Association Act."

11 Section 10. Section 59A-42-10 NMSA 1978 (being Laws 1984,  
12 Chapter 127, Section 759) is amended to read:

13 "59A-42-10. DUTIES AND POWERS OF THE SUPERINTENDENT.--

14 A. The superintendent shall:

15 (1) notify the association of the existence of  
16 an insolvent insurer not later than three [~~(3)~~] days after [~~he~~]  
17 the superintendent receives notice of the determination of the  
18 insolvency; [~~and~~]

19 (2) upon request of the board [~~of directors~~],  
20 provide the association with a statement of the [~~net direct~~  
21 ~~written~~] premiums in this or another state of each member  
22 insurer; and

23 (3) when an impairment is declared and the  
24 amount of the impairment is determined, serve a demand upon the  
25 impaired insurer to make good the impairment within a

.174445.3

underscored material = new  
[bracketed material] = delete

1 reasonable time. Notice to the impaired insurer shall  
2 constitute notice to its shareholders, if any. The failure of  
3 the insurer to promptly comply with the demand shall not excuse  
4 the association from the performance of its powers and duties  
5 pursuant to the Life and Health Insurance Guaranty Association  
6 Act.

7 B. The superintendent may:

8 [~~(1)~~] ~~require that the association notify the~~  
9 ~~insureds of the insolvent insurer and any other interested~~  
10 ~~parties of the determination of insolvency and of their rights~~  
11 ~~under this article. The notification shall be by mail at their~~  
12 ~~last known address, where available, but if sufficient~~  
13 ~~information for notification by mail is not available, notice~~  
14 ~~by publication in a newspaper of general circulation shall be~~  
15 ~~sufficient;~~

16 ~~(2)]~~ (1) suspend or revoke, after notice and  
17 hearing, the certificate of authority to transact insurance in  
18 this state of [~~any~~] a member insurer [~~which~~] that fails to pay  
19 an assessment when due or fails to comply with the plan of  
20 operation. As an alternative, the superintendent may levy a  
21 fine on [~~any~~] a member insurer [~~which~~] that fails to pay an  
22 assessment when due. [~~Such~~] The fine shall not exceed five  
23 percent of the unpaid assessment [~~per~~] a month, except that no  
24 fine shall be less than one hundred dollars (\$100) a month; and

25 [~~(3)]~~ (2) revoke the designation of [~~any~~] a

.174445.3

underscored material = new  
[bracketed material] = delete

1 servicing facility if ~~[he]~~ the superintendent finds that claims  
2 are being handled unsatisfactorily."

3 Section 11. Section 59A-42-11 NMSA 1978 (being Laws 1984,  
4 Chapter 127, Section 760) is amended to read:

5 "59A-42-11. PREVENTION OF INSOLVENCIES.--To aid in the  
6 detection and prevention of insurance insolvencies:

7 A. the superintendent shall:

8 (1) notify the superintendents in other states,  
9 within thirty days following the action taken or the date the  
10 action occurs, when the superintendent takes any of the  
11 following actions against a member insurer:

12 (a) revokes a license;

13 (b) suspends a license; or

14 (c) makes a formal order that the company  
15 restrict its premium writing, obtain additional contributions  
16 to surplus, withdraw from the state, reinsure all or a part of  
17 its business or increase capital, surplus or another account  
18 for the security of policy owners or creditors;

19 (2) report to the board when the superintendent  
20 has taken an action set forth in Paragraph (1) of this  
21 subsection or has received a report from another superintendent  
22 indicating that an action has been taken in another state. The  
23 report to the board shall contain all significant details of  
24 the action taken or the report received from another  
25 superintendent;

.174445.3

underscored material = new  
[bracketed material] = delete

1                   (3) report to the board when the superintendent  
2 has reasonable cause to believe from an examination, whether  
3 completed or in process, of a member insurer that the insurer  
4 may be an impaired or insolvent insurer; and

5                   (4) furnish to the board the national  
6 association of insurance commissioners' insurance regulatory  
7 information system ratios and listings of companies not  
8 included in the ratios developed by the national association of  
9 insurance superintendents. The board may use that information  
10 in carrying out its duties and responsibilities pursuant to  
11 this section. The report shall be kept confidential by the  
12 board until it is made public by the superintendent or other  
13 lawful authority;

14                   B. the superintendent may seek the advice and  
15 recommendations of the board concerning a matter affecting the  
16 duties and responsibilities of the superintendent regarding the  
17 financial condition of member insurers and companies seeking  
18 admission to transact insurance business in this state;

19                   ~~[A.]~~ C. the board of directors ~~[shall]~~ may, upon  
20 majority vote:

21                   (1) notify the superintendent of [any]  
22 information indicating [any] that a member insurer may be  
23 ~~[insolvent or in a financial condition where it will be unable~~  
24 ~~to fulfill its contractual obligations and hazardous to the~~  
25 ~~policyholders or the public] an impaired or insolvent insurer;~~

.174445.3



underscored material = new  
[bracketed material] = delete

1           ~~[B. the board of directors may, upon majority vote~~  
2 ~~request that the superintendent order an examination of any~~  
3 ~~member insurer which the board in good faith believes may be in~~  
4 ~~such financial condition. Within thirty (30) days of the~~  
5 ~~receipt of the request, the superintendent shall begin the~~  
6 ~~examination. The examination may be conducted as a national~~  
7 ~~association of insurance commissioners examination or may be~~  
8 ~~conducted by persons the superintendent designates. The cost~~  
9 ~~of examination shall be paid by the association and the~~  
10 ~~examination report shall be treated as other examination~~  
11 ~~reports. In no event shall the examination report be released~~  
12 ~~to the board of directors prior to its release to the public,~~  
13 ~~but this shall not preclude the superintendent from complying~~  
14 ~~with Subsection A of this section. The superintendent shall~~  
15 ~~notify the board of directors when the examination is~~  
16 ~~completed. The request for an examination shall be kept on~~  
17 ~~file by the superintendent, but it shall not be open to public~~  
18 ~~inspection prior to the release of the examination report to~~  
19 ~~the public;~~

20           ~~C. the superintendent shall report to the board of~~  
21 ~~directors when he has reasonable cause to believe that any~~  
22 ~~member insurer examined or being examined at the request of the~~  
23 ~~board of directors may be insolvent, potentially insolvent or~~  
24 ~~in a financial condition hazardous to the policy holders or the~~  
25 ~~public;~~

.174445.3

underscored material = new  
[bracketed material] = delete

1           ~~D. the board of directors may, upon majority vote]~~

2                   (2) make reports and recommendations to the  
3 superintendent upon any matter germane to the solvency,  
4 liquidation, rehabilitation or conservation of ~~[any]~~ a member  
5 insurer or germane to the solvency of a company seeking to do  
6 insurance business in this state. The reports and  
7 recommendations ~~[shall not be considered]~~ are not public  
8 documents; and

9           ~~[E. the board of directors may, upon majority vote]~~

10                   (3) make recommendations to the superintendent  
11 for the detection and prevention of insurers' insolvencies ~~[and~~

12           ~~F. the board of directors shall, at the conclusion of~~  
13 ~~any insurance insolvency in which the association was obligated~~  
14 ~~to pay covered contractual obligations or claims, prepare a~~  
15 ~~report on the history and causes of the insolvency based on~~  
16 ~~information available to the association and submit the report~~  
17 ~~to the superintendent]."~~

18           Section 12. Section 59A-42-12 NMSA 1978 (being Laws 1984,  
19 Chapter 127, Section 761, as amended) is amended to read:

20           "59A-42-12. APPEALS.--

21           A. A member insurer may appeal to the superintendent  
22 from an action of the board ~~[of directors of the association]~~  
23 by filing with the superintendent a notice of appeal within  
24 thirty days after ~~[the]~~ that action ~~[appealed from]~~.

25           B. A final order of the superintendent on appeal is

.174445.3

underscored material = new  
[bracketed material] = delete

1 subject to judicial review by an action in the district court  
2 pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

3 Section 13. Section 59A-42-13 NMSA 1978 (being Laws 1984,  
4 Chapter 127, Section 762) is amended to read:

5 "59A-42-13. MISCELLANEOUS PROVISIONS.--

6 A. [~~Nothing in this article~~] The Life and Health  
7 Insurance Guaranty Association Act shall not be construed to  
8 reduce the liability for unpaid assessments of the insureds of  
9 an impaired or insolvent insurer operating under a plan with  
10 assessment liability.

11 B. Records shall be kept of all negotiations and  
12 meetings [~~in which the association or its representatives are~~  
13 ~~involved~~] of the board to discuss the activities of the  
14 association in carrying out its powers and duties. Records of  
15 the negotiations or meetings with respect to an impaired or  
16 insolvent insurer shall be made public only upon the  
17 termination of a liquidation, rehabilitation or conservation  
18 proceeding involving the impaired or insolvent insurer, upon  
19 the termination of the insolvency of the insurer or upon the  
20 order of a court of competent jurisdiction. Nothing in this  
21 subsection limits the duty of the association to render [~~a~~  
22 ~~report of its activities under~~] the reports required by Section  
23 [~~763 of this article~~] 59A-42-14 NMSA 1978.

24 C. For the purpose of carrying out its obligations,  
25 the association shall be deemed to be a creditor of the

.174445.3

underscoring material = new  
[bracketed material] = delete

1 impaired or insolvent insurer to the extent of assets  
2 attributable to covered policies reduced by amounts to which  
3 the association is entitled as a subrogee. Assets of the  
4 impaired or insolvent insurer attributable to covered policies  
5 shall be used to continue all covered policies and pay all  
6 contractual obligations of the impaired or insolvent insurer.  
7 Assets attributable to covered policies, as used in this  
8 subsection, are that proportion of the assets that the reserves  
9 that should have been established for those policies bear to  
10 the reserves that should have been established for all policies  
11 of insurance written by the impaired or insolvent insurer.

12 D. As a creditor of the impaired or insolvent insurer  
13 and consistent with the Insurers Conservation, Rehabilitation  
14 and Liquidation Law, the association and other similar  
15 associations shall be entitled to receive a disbursement of  
16 assets out of the marshaled assets, from time to time as the  
17 assets become available to reimburse it, as a credit against  
18 contractual obligations pursuant to the Life and Health  
19 Insurance Guaranty Association Act. If the liquidator has not,  
20 within one hundred twenty days of a final determination of  
21 insolvency of an insurer by the receivership court, made an  
22 application to the court for the approval of a proposal to  
23 disburse assets out of marshaled assets to guaranty  
24 associations having obligations because of the insolvency, then  
25 the association shall be entitled to make application to the

.174445.3

underscored material = new  
[bracketed material] = delete

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

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

13 ~~[D.]~~ F. No distribution to stockholders, if any, of  
14 an impaired or insolvent insurer shall be made until and unless  
15 the total amount of ~~[assessments levied by the association]~~  
16 valid claims of the association with interest thereon for funds  
17 expended in carrying out its powers and duties with respect to  
18 the insurer has been fully recovered by the association.

19 ~~[E. It is a prohibited unfair trade practice for any~~  
20 ~~person to make use in any manner of the protection afforded by~~  
21 ~~this article in the sale of insurance.]~~

22 G. If an order for liquidation or rehabilitation of  
23 an insurer domiciled in this state has been entered:

24 (1) the receiver appointed under the order shall  
25 have a right to recover on behalf of the insurer, from any

.174445.3

underscored material = new  
[bracketed material] = delete

1 affiliate that controlled it, the amount of distributions,  
2 other than stock dividends paid by the insurer on its capital  
3 stock, made at any time during the five years preceding the  
4 petition for liquidation or rehabilitation subject to the  
5 limitations of Paragraphs (2), (3) and (4) of this subsection;

6 (2) no distribution shall be recoverable if the  
7 insurer shows that, when paid, the distribution was lawful and  
8 reasonable and that the insurer did not know and could not  
9 reasonably have known that the distribution might adversely  
10 affect the ability of the insurer to fulfill its contractual  
11 obligations;

12 (3) a person who was an affiliate that  
13 controlled the insurer at the time the distributions were paid  
14 shall be liable up to the amount of distributions received. A  
15 person who was an affiliate that controlled the insurer at the  
16 time the distributions were declared shall be liable up to the  
17 amount of distributions that would have been received if they  
18 had been paid immediately. If two or more persons are liable  
19 with respect to the same distributions, they shall be jointly  
20 and severally liable. If a person liable pursuant to this  
21 paragraph is insolvent, all its affiliates that controlled it  
22 at the time the distribution was paid, shall be jointly and  
23 severally liable for a resulting deficiency in the amount  
24 recovered from the insolvent affiliate; and

25 (4) the maximum amount recoverable pursuant to

.174445.3

underscoring material = new  
[bracketed material] = delete

1 this subsection shall be the amount needed in excess of all  
2 other available assets of the insolvent insurer to pay the  
3 contractual obligations of the insolvent insurer."

4 Section 14. Section 59A-42-14 NMSA 1978 (being Laws 1984,  
5 Chapter 127, Section 763) is amended to read:

6 "59A-42-14. EXAMINATION OF ASSOCIATION--ANNUAL REPORT.--  
7 The association is subject to examination and regulation by the  
8 superintendent. The board [~~of directors~~] shall submit to the  
9 superintendent, not later than May 1 each year, a financial  
10 report for the preceding calendar year in form approved by the  
11 superintendent and a report of its activities during the  
12 preceding calendar year. Upon the request of a member insurer,  
13 the association shall provide the member insurer with a copy of  
14 the report."

15 Section 15. Section 59A-42-15 NMSA 1978 (being Laws 1984,  
16 Chapter 127, Section 764) is amended to read:

17 "59A-42-15. IMMUNITY.--There shall be no liability on the  
18 part of, and no cause of action [~~of any nature~~] shall arise  
19 against, [~~any~~] a member insurer or its agents or employees, the  
20 association or its agents or employees, members of the board  
21 [~~of directors~~] or the superintendent or [~~his~~] the  
22 superintendent's representatives for [~~any action taken~~] an act  
23 or omission by them in the performance of their powers and  
24 duties [~~under this article~~] pursuant to the Life and Health  
25 Insurance Guaranty Association Act. This immunity shall extend

.174445.3

underscored material = new  
[bracketed material] = delete

1 to the participation in an organization of one or more other  
2 state associations of similar purposes and to that organization  
3 and its agents or employees."

4 Section 16. Section 59A-42-16 NMSA 1978 (being Laws 1984,  
5 Chapter 127, Section 765) is amended to read:

6 "59A-42-16. STAY OF PROCEEDINGS--REOPENING DEFAULT  
7 JUDGMENTS.--~~[All proceedings]~~ A proceeding in which ~~[the]~~ an  
8 insolvent insurer is a party in ~~[any]~~ a court in this state  
9 shall be stayed ~~[sixty (60)]~~ one hundred eighty days from the  
10 date an order of liquidation, rehabilitation or conservation is  
11 final to permit proper legal action by the association on ~~[any]~~  
12 matters germane to its powers or duties. As to a judgment  
13 under ~~[any]~~ a decision, order, verdict or finding based on  
14 ~~[the]~~ default, the association may apply to have the judgment  
15 set aside by the same court that made the judgment and shall be  
16 permitted to defend against the suit on the merits."

17 Section 17. A new section of the Life and Health  
18 Insurance Guaranty Association Act is enacted to read:

19 "[NEW MATERIAL] PROHIBITED ADVERTISEMENT--NOTICE TO POLICY  
20 OWNERS.--

21 A. No person, including an insurer, agent or  
22 affiliate of an insurer shall make, publish, disseminate,  
23 circulate or place before the public, or cause directly or  
24 indirectly to be made, published, disseminated, circulated or  
25 placed before the public, in a newspaper, magazine or other

.174445.3



underscoring material = new  
~~[bracketed material]~~ = delete

1 publication, or in the form of a notice, circular, pamphlet,  
2 letter or poster, or over a radio station or television  
3 station, or in any other way, an advertisement, announcement or  
4 statement, written or oral, that uses the existence of the  
5 association for the purpose of sales, solicitation or  
6 inducement to purchase insurance covered by the Life and Health  
7 Insurance Guaranty Association Act. However, this subsection  
8 shall not apply to the association or any other entity that  
9 does not sell or solicit insurance.

10 B. Within one hundred eighty days of the effective  
11 date of the Life and Health Insurance Guaranty Association Act,  
12 the association shall prepare a summary document describing the  
13 general purposes and current limitations of that act and  
14 complying with Subsection C of this section. This document  
15 shall be submitted to the superintendent for approval. At the  
16 expiration of the sixtieth day after the date on which the  
17 superintendent approves the document, an insurer shall not  
18 deliver a policy or contract to a policy or contract owner  
19 unless the summary document is delivered to the policy or  
20 contract owner at the time of delivery of the policy or  
21 contract. The document shall also be available upon request by  
22 a policy owner. The distribution, delivery or contents or  
23 interpretation of this document does not guarantee that either  
24 the policy or the contract or the owner of the policy or  
25 contract is covered in the event of the impairment or

.174445.3

underscored material = new  
[bracketed material] = delete

1 insolvency of a member insurer. The description document shall  
2 be revised by the association as amendments to the Life and  
3 Health Insurance Guaranty Association Act may require. Failure  
4 to receive this document does not give the policy owner,  
5 contract owner, certificate holder or insured greater rights  
6 than those stated in the Life and Health Insurance Guaranty  
7 Association Act.

8 C. The document prepared pursuant to Subsection B of  
9 this section shall contain a clear and conspicuous disclaimer  
10 on its face. The superintendent shall establish the form and  
11 content of the disclaimer. The disclaimer shall:

12 (1) state the name and address of the  
13 association and insurance department;

14 (2) prominently warn the policy or contract  
15 owner that the association may not cover the policy or, if  
16 coverage is available, that it will be subject to substantial  
17 limitations and exclusions and conditioned on continued  
18 residence in this state;

19 (3) state the types of policies for which  
20 guaranty funds will provide coverage;

21 (4) state that the insurer and its agents are  
22 prohibited by law from using the existence of the association  
23 for the purpose of sales, solicitation or inducement to  
24 purchase any form of insurance;

25 (5) state that the policy or contract owner

.174445.3

underscored material = new  
[bracketed material] = delete

1 should not rely on coverage pursuant to the Life and Health  
2 Insurance Guaranty Association Act when selecting an insurer;

3 (6) explain rights available and procedures for  
4 filing a complaint to allege a violation of the provisions of  
5 the Life and Health Insurance Guaranty Association Act; and

6 (7) provide other information as directed by the  
7 superintendent, including sources for information about the  
8 financial condition of insurers, provided that the information  
9 is not proprietary and is subject to disclosure pursuant to the  
10 Inspection of Public Records Act.

11 D. A member insurer shall retain evidence of  
12 compliance with Subsection B of this section for so long as the  
13 policy or contract for which the notice is given remains in  
14 effect."

15 Section 18. TEMPORARY PROVISION--CONTINUATION OF  
16 ACCOUNTS, ASSOCIATION, BOARD, PLAN OF OPERATION AND  
17 ACTIVITIES.--

18 A. The accounts maintained pursuant to the Life and  
19 Health Insurance Guaranty Law and in effect on July 1, 2009  
20 shall continue in full force as the accounts maintained  
21 pursuant to the Life and Health Insurance Guaranty Association  
22 Act, modified as necessary to comply with that act.

23 B. The association existing pursuant to the Life and  
24 Health Insurance Guaranty Law on July 1, 2009 is the  
25 association organized pursuant the Life and Health Insurance

.174445.3

underscoring material = new  
~~[bracketed material] = delete~~

1 Guaranty Association Act, subject to the provisions of that  
2 act.

3 C. The insurer members of the board of directors  
4 serving pursuant to the Life and Health Insurance Guaranty Law  
5 on July 1, 2009 shall serve as the insurer members of the board  
6 of directors pursuant to the provisions of the Life and Health  
7 Insurance Guaranty Association Act.

8 D. The plan of operation in effect pursuant to the  
9 Life and Health Insurance Guaranty Law on July 1, 2009 shall  
10 serve as the plan of operation required pursuant to the Life  
11 and Health Insurance Guaranty Association Act, modified as  
12 necessary to comply with that act.

13 E. An action, including an assessment, or an  
14 obligation of the association, board of directors or  
15 superintendent initiated or created but not completed pursuant  
16 to the Life and Health Insurance Guaranty Law prior to July 1,  
17 2009, shall continue until completed pursuant to the provisions  
18 of the Life and Health Insurance Guaranty Law.

19 Section 19. EFFECTIVE DATE.--The effective date of the  
20 provisions of this act is July 1, 2009.