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2 92nd General Assembly
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4

As Engrossed: S2/27/19

A Bill

SENATE BILL 292

5 By: Senator Rapert
6

For An Act To Be Entitled

8 AN ACT TO AMEND THE ARKANSAS LIFE AND HEALTH
9 INSURANCE GUARANTY ASSOCIATION ACT; AND FOR OTHER
10 PURPOSES.
11

Subtitle

14 TO AMEND THE ARKANSAS LIFE AND HEALTH
15 INSURANCE GUARANTY ASSOCIATION ACT.
16
17

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
19

20 SECTION 1. Arkansas Code § 23-76-104(a), concerning Arkansas Insurance
21 Code sections applicable to health maintenance organizations, is amended to
22 add an additional subdivision to read as follows:

23 (17) The Arkansas Life and Health Insurance Guaranty Association
24 Act, § 23-96-101 et seq., referring to the Arkansas Life and Health Insurance
25 Guaranty Association.
26

27 SECTION 2. Arkansas Code Title 23, Chapter 96, is amended to read as
28 follows:

29 23-96-101. Title.

30 This chapter shall be known and may be cited as the “Arkansas Life and
31 Health Insurance Guaranty Association Act”.
32

33 23-96-102. Purpose.

34 (a) The purpose of this chapter is to protect, subject to certain
35 limitations, the persons specified in § 23-96-107(a) against failure in the
36 performance of contractual obligations under life ~~and accident~~ and health



1 ~~insurance policies~~ and annuity policies, plans, or contracts specified in §
2 23-96-107(b) because of the impairment or insolvency of the member insurer
3 that issued the ~~policies, plans, or~~ contracts.

4 (b) To provide this protection, an association of member insurers is
5 created to pay benefits and to continue coverages as limited ~~herein~~ in this
6 chapter, and members of the association are subject to assessment to provide
7 funds to carry out the purpose of this chapter.

8
9 23-96-103. Construction – Applicability.

10 (a) This chapter shall be construed to effect the purpose under § 23-
11 96-102.

12 (b) ~~Nothing in this~~ This chapter shall not be construed to reduce the
13 liability for unpaid assessments of the insureds of an impaired or insolvent
14 insurer operating under a plan with assessment liability.

15
16 23-96-104. Definitions.

17 As used in this chapter:

18 (1) “Account” means any of the two (2) accounts created under §
19 23-96-109;

20 (2) “Association” means the Arkansas Life and Health Insurance
21 Guaranty Association created under § 23-96-109;

22 (3) “Authorized assessment” or the term “authorized” when used
23 in the context of assessments means a resolution by the ~~board of directors~~
24 Board of Directors of the Arkansas Life and Health Insurance Guaranty
25 Association has been passed whereby an assessment will be called immediately
26 or in the future from member insurers for a specified amount. An assessment
27 is authorized when the resolution is passed;

28 (4) “Benefit plan” means a specific employee, union, or
29 association of natural persons benefit plan;

30 (5)(A) “Called assessment” or the term “called” when used in the
31 context of assessments means that a notice has been issued by the Arkansas
32 Life and Health Insurance Guaranty Association to member insurers requiring
33 that an authorized assessment be paid within the time frame set forth within
34 the notice.

35 (B) An authorized assessment becomes a called assessment
36 when notice is mailed by the Arkansas Life and Health Insurance Guaranty

1 Association to member insurers;

2 (6) "Commissioner" means the Insurance Commissioner of this
3 state;

4 (7) "Contractual obligations" means any obligation under a
5 policy or contract or certificate under a group policy or contract, or
6 portion thereof for which coverage is provided under § 23-96-107;

7 (8) "Covered policy" or "covered contract" means any policy or
8 contract or portion of a policy or contract for which coverage is provided
9 under § 23-96-107;

10 (9) "Extra-contractual claims" ~~shall include~~ includes, for
11 example, claims relating to bad faith in the payment of claims, punitive or
12 exemplary damages, or attorney's fees and costs;

13 (10)(A) "Health benefit plan" means any hospital or medical
14 expense policy or certificate, health maintenance organization subscriber
15 contract, or any other similar health contract.

16 (B) "Health benefit plan" does not include:

17 (i) Accident-only insurance;

18 (ii) Credit insurance;

19 (iii) Dental-only insurance;

20 (iv) Vision-only insurance;

21 (v) Medicare supplement insurance;

22 (vi) Benefits for long-term care, home health care,
23 community-based care, or any combination of the benefits described in this
24 subdivision (10)(B)(vi);

25 (vii) Disability income insurance;

26 (viii) Coverage for on-site medical clinics; or

27 (ix) Specified disease, hospital confinement
28 indemnity, or limited benefit health insurance if the types of coverage do
29 not provide coordination of benefits and are provided under separate policies
30 or certificates;

31 (11) "Impaired insurer" means a member insurer which, after
32 March 9, 1989, is not an insolvent insurer and is placed under an order of
33 rehabilitation or conservation by a court of competent jurisdiction;

34 ~~(11)~~(12) "Insolvent insurer" means a member insurer which, after
35 March 9, 1989, is placed under an order of liquidation by a court of
36 competent jurisdiction with a finding of insolvency;

1 ~~(12)~~(13) “Member insurer” means any insurer or health
 2 maintenance organization licensed or which holds a certificate of authority
 3 to transact in this state any kind of insurance or health maintenance
 4 organization business for which coverage is provided under § 23-96-107, and
 5 includes any insurer or health maintenance organization whose license or
 6 certificate of authority in this state may have been suspended, revoked, not
 7 renewed, or voluntarily withdrawn, but does not include:

8 (A) A hospital or medical service organization, whether
 9 profit or nonprofit;

10 (B) ~~A health maintenance organization;~~

11 ~~(C)~~ A fraternal benefit society;

12 ~~(D)~~(C) A mandatory state pooling plan;

13 ~~(E)~~(D) A burial association;

14 ~~(F)~~(E) An insurance exchange;

15 ~~(G)~~(F) Prepaid funeral trusts;

16 ~~(H)~~(G) An organization ~~which~~ that has a certificate or
 17 license limited to the issuance of charitable gift annuities; or

18 ~~(I)~~(H) Any entity similar to any of ~~the above~~ those listed
 19 in subdivisions (13)(A)-(G) of this section;

20 ~~(13)~~(14) “Moody’s Corporate Bond Yield Average” means the
 21 Monthly Average Corporates as published by Moody’s Investors Service, Inc.,
 22 or any successor thereto;

23 ~~(14)~~(15)(A) “Owner” of a policy or contract and "policyholder",
 24 “policy owner”, and “contract owner” mean the person who is identified as
 25 the legal owner under the terms of the policy or contract or who is otherwise
 26 vested with legal title to the policy or contract through a valid assignment
 27 completed ~~in accordance with~~ according to the terms of the policy or contract
 28 and properly recorded as the owner on the books of the member insurer.

29 (B) ~~The terms “owner”~~ "Owner", “contract owner”,
 30 "policyholder", and “policy owner” do not include persons with a mere
 31 beneficial interest in a policy or contract;

32 ~~(15)~~(A)(16)(A) “Person” means any individual, corporation,
 33 limited liability company, partnership, association, governmental body or
 34 entity, or voluntary organization.

35 (B) It is the intent of the General Assembly that “person”
 36 shall include a claimant or beneficiary who is receiving annuity benefits as

1 provided in § 11-9-210 and §§ 23-96-114(b) and 23-96-114(f);

2 ~~(16)~~(17) “Plan sponsor” means:

3 (A) The employer in the case of a benefit plan established
4 or maintained by a single employer;

5 (B) The employee organization in the case of a benefit
6 plan established or maintained by an employee organization; or

7 (C) In a case of a benefit plan established or maintained
8 by two (2) or more employers or jointly by one (1) or more employers and one
9 (1) or more employee organizations, the association, committee, joint board
10 of trustees, or other similar group of representatives of the parties who
11 establish or maintain the benefit plan;

12 ~~(17)(A)~~(18)(A) “Premiums” means amounts or considerations, by
13 whatever name called, received on covered policies or contracts less returned
14 premiums, considerations, and deposits and less dividends and experience
15 credits.

16 (B)(i) “Premiums” does not include amounts or
17 considerations received for any policies or contracts or for the portions of
18 policies or contracts for which coverage is not provided under § 23-96-106,
19 except that assessable ~~premium~~ premiums shall not be reduced on account of §
20 23-96-106(a)(3), relating to interest limitations and § 23-96-114(a)(2),
21 relating to limitations with respect to one (1) individual, one (1)
22 participant, and one (1) policy or contract owner.

23 (ii) ~~Provided, “premiums” shall~~ However, “premiums”
24 does not include:

25 (a) Any premiums in excess of one million
26 dollars (\$1,000,000) on an unallocated annuity contract not issued under a
27 governmental retirement benefit plan, or its trustee, established under
28 section 401(k), section 403(b), or section 457 of the Internal Revenue Code;
29 or

30 (b) With respect to multiple nongroup policies
31 of life insurance owned by one (1) owner, whether the policy or contract
32 owner is an individual, firm, corporation, or other person, and whether the
33 persons insured are officers, managers, employees, or other persons, premiums
34 in excess of one million dollars (\$1,000,000) with respect to these policies
35 or contracts, regardless of the number of policies or contracts held by the
36 owner;

1 ~~(18)(A)~~(19)(A) “Principal place of business” of a plan sponsor
2 or a person other than a natural person means the single state in which the
3 natural persons who establish policy for the direction, control, and
4 coordination of the operations of the entity as a whole primarily exercise
5 that function, determined by the Arkansas Life and Health Insurance Guaranty
6 Association in its reasonable judgment by considering the following factors:

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

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

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

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

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

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

23 (b) However, in the case of a plan sponsor, if
24 more than fifty percent (50%) of the participants in the benefit plan are
25 employed in a single state, that state shall be deemed to be the principal
26 place of business of the plan sponsor.

27 (B) The principal place of business of a plan sponsor of a
28 benefit plan described in subdivision ~~(16)(C)~~ (17)(C) of this section shall
29 be deemed to be the principal place of business of the association,
30 committee, joint board of trustees, or other similar group of representatives
31 of the parties who establish or maintain the benefit plan that, in lieu of a
32 specific or clear designation of a principal place of business, shall be
33 deemed to be the principal place of business of the employer or employee
34 organization that has the largest investment in the benefit plan in question;

35 ~~(19)~~(20) “Receivership court” means the court in the insolvent
36 or impaired insurer’s state having jurisdiction over the conservation,

1 rehabilitation, or liquidation of the member insurer;

2 ~~(20)~~(21) "Resident" means a person to whom a contractual
 3 obligation is owed and who resides in this state on the date of entry of a
 4 court order that determines a member insurer to be an impaired insurer or a
 5 court order that determines a member insurer to be an insolvent insurer. A
 6 person may be a resident of only one (1) state, which in the case of a person
 7 other than a natural person shall be its principal place of business.
 8 Citizens of the United States that are either (i) residents of foreign
 9 countries, or (ii) residents of United States possessions, territories, or
 10 protectorates that do not have an association similar to the Arkansas Life
 11 and Health Insurance Guaranty Association created by this chapter shall be
 12 deemed residents of the state of domicile of the member insurer that issued
 13 the policies or contracts;

14 ~~(21)~~(22) "State" means a state, the District of Columbia, Puerto
 15 Rico, and a United States possession, territory, or protectorate;

16 ~~(22)~~(23) "Structured settlement annuity" means an annuity
 17 purchased in order to fund periodic payments for a plaintiff or other
 18 claimant in payment for or with respect to personal injury suffered by the
 19 plaintiff or other claimant;

20 ~~(23)~~(24) "Supplemental contract" means a written agreement
 21 entered into for the distribution of proceeds under a life, ~~an accident and~~
 22 health, or an annuity policy or contract; and

23 ~~(24)(A)~~(25)(A) "Unallocated annuity contract" means an annuity
 24 contract or group annuity certificate which is not issued to and owned by an
 25 individual, except to the extent of any annuity benefits guaranteed to an
 26 individual by an insurer under such contract or certificate.

27 (B) It is the intent of the General Assembly that an
 28 annuity contract as provided for in § 11-9-210, shall not be an "unallocated
 29 annuity contract".

30

31 23-96-105. Advertisement of association act in insurance sales –
 32 Notice to policy owners.

33 (a)(1) ~~No~~ A person, including ~~an~~ a member insurer, agent, or affiliate
 34 of ~~an~~ a member insurer shall not make, publish, disseminate, circulate, or
 35 place before the public, or cause, directly or indirectly, to be made,
 36 published, disseminated, circulated, or placed before the public, in any

1 newspaper, magazine, or other publication, or in the form of a notice,
 2 circular, pamphlet, letter, or poster, or over any radio station or
 3 television station, or in any other way, any advertisement, announcement, or
 4 statement, written or oral, which uses the existence of the Arkansas Life and
 5 Health Insurance Guaranty Association for the purpose of sales, solicitation,
 6 or inducement to purchase any form of insurance or other coverage covered by
 7 this chapter, except in conformity with the rules ~~and regulations~~ of the
 8 Insurance Commissioner.

9 (2) In adopting such rules ~~and regulations~~, the ~~commissioner~~
 10 commissioner, in consultation with the Board of Directors of the Arkansas
 11 Life and Health Insurance Guaranty Association, shall take into consideration
 12 the following factors:

13 (A) ~~the~~ The need of the public to have confidence in the
 14 financial soundness of insurance and health maintenance organization products
 15 offered for sale in this state;;

16 (B) ~~the~~ The financial integrity of member insurers doing
 17 business in this state;; and

18 (C) ~~the~~ The role of the association in serving as a safety
 19 net for policy owners, contract owners, *insureds*, certificate holders,
 20 enrollees, and beneficiaries of impaired insurers or insolvent insurers in
 21 this state.

22 (3) ~~Provided, however, that this~~ This section shall not apply to
 23 the association or any other entity which does not sell or solicit insurance
 24 or coverage by a health maintenance organization.

25 (b)(1)(A) Within one hundred eighty (180) days of March 9, 1989, the
 26 association shall prepare a summary document describing the general purpose
 27 and current limitations of this chapter and complying with subsection (c) of
 28 this section.

29 (B) ~~This document~~ The summary document required under
 30 subdivision (b)(1)(A) of this section shall be submitted to the commissioner
 31 for approval.

32 (C) Sixty (60) days after receiving such approval, ~~ne a~~
 33 member insurer may shall not deliver a policy or contract described in § 23-
 34 96-107(b) to a policy owner, ~~or~~ contract owner, certificate holder, or
 35 enrollee unless the summary document is delivered to the policy owner, ~~or~~
 36 contract owner, certificate holder, or enrollee at the time of delivery of

1 the policy or contract ~~except if~~ unless § 23-96-107(c) applies.

2 (2)(A) The document should also be available upon request by a
3 policy owner, contract owner, certificate holder, or enrollee.

4 (B) The distribution, delivery, or contents or
5 interpretation of this document does not guarantee that either the policy or
6 the contract or the policy owner, contract owner, certificate holder, or
7 enrollee thereof is covered in the event of the impairment or insolvency of a
8 member insurer.

9 (C) The description document shall be revised by the
10 association as amendments to this chapter may require.

11 (D) Failure to receive this document does not give the
12 policy owner, contract owner, certificate holder, enrollee, or insured any
13 greater rights than those stated in this chapter.

14 (c)(1) The document prepared under subsection (b) of this section
15 shall contain a clear and conspicuous disclaimer on its face.

16 (2) The commissioner shall establish the form and content of the
17 disclaimer.

18 (3) The disclaimer shall:

19 (A) State the name and address of the association and the
20 State Insurance Department;

21 (B) Prominently warn the policy owner, ~~or~~ contract owner,
22 certificate holder, or enrollee that the association may not cover the policy
23 or contract or, if coverage is available, ~~it~~ that the coverage will be
24 subject to substantial limitations, exclusions, and conditioned on continued
25 residence in this state;

26 (C) State the types of policies or contracts for which
27 guaranty funds will provide coverage;

28 (D) State that the member insurer and its agents are
29 prohibited by law from using the existence of the association for the purpose
30 of sales, solicitation, or inducement to purchase any form of insurance or
31 health maintenance organization product;

32 (E) State that the policy owner, ~~or~~ contract owner,
33 certificate holder, or enrollee should not rely on coverage under the
34 association when selecting an insurer or health maintenance organization;

35 (F) Explain rights available and procedures for filing a
36 complaint of a violation of any provisions of this chapter; and

1 (G) Provide other information as directed by the
2 commissioner, including ~~but not limited to,~~ without limitation sources of
3 information about financial conditions of member insurers, ~~provided that if~~
4 the information is not proprietary and is subject to disclosure under that
5 state's public records law.

6
7 23-96-106. Scope of chapter.

8 (a) This chapter shall not provide coverage for:

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

12 (2) A portion of a policy or contract of reinsurance, unless
13 assumption certificates have been issued ~~pursuant to~~ under the reinsurance
14 policy or contract;

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

19 (A) Averaged over the period of four (4) years ~~prior to~~
20 before the date on which the member insurer becomes an impaired or insolvent
21 insurer under this chapter, whichever is earlier, exceeds a rate of interest
22 determined by subtracting two (2) percentage points from Moody's Corporate
23 Bond Yield Average averaged for that same four-year period or for such lesser
24 period if the policy or contract was issued less than four (4) years before
25 the member insurer becomes an impaired insurer or insolvent insurer under
26 this chapter, whichever is earlier; and

27 (B) On and after the date on which the Arkansas Life and
28 Health Insurance Guaranty Association becomes obligated with respect to such
29 policy or contract, exceeds the rate of interest determined by subtracting
30 three (3) percentage points from Moody's Corporate Bond Yield Average as most
31 recently available;

32 (4) A portion of a policy or contract issued to a plan or
33 program of an employer, association, or other person to provide life,
34 ~~accident and~~ health, or annuity benefits to its employees, members, or others
35 to the extent that the plan or program is self-funded or uninsured,
36 including, ~~but not limited to,~~ without limitation benefits payable by an

1 employer, association, or other person under:

2 (A) A multiple employer welfare arrangement as defined in
3 section 514 of the Employee Retirement Income Security Act of 1974, as
4 amended;

5 (B) A minimum premium group insurance plan;

6 (C) A stop-loss group insurance plan; or

7 (D) An administrative services only contract;

8 (5) A portion of a policy or contract to the extent that it
9 provides for dividends or experience rating credits, voting rights, or
10 payment of any fees or allowances to any person, including the policy owner
11 or contract owner, in connection with the service to or administration of
12 such policy or contract;

13 (6) A policy or contract issued in this state by a member
14 insurer at a time when it was not licensed or did not have a certificate of
15 authority to issue such policy or contract in this state;

16 (7) An unallocated annuity contract issued to or in connection
17 with a benefit plan protected under the Pension Benefit Guaranty Corporation
18 regardless of whether the Pension Benefit Guaranty Corporation has yet become
19 liable to make any payments with respect to the benefit plan;

20 (8) A portion of an unallocated annuity contract that is not
21 owned by a benefit plan, directly or in trust, or a government lottery or
22 issued to a collective investment trust or similar pooled fund offered by a
23 bank or other financial institution;

24 (9) Any policy or contract written on the mutual assessment plan
25 or stipulated premium plan prior to January 1, 1968, for which no statutory
26 legal reserves are required;

27 (10) A portion of a policy or contract to the extent that the
28 assessments required by § 23-96-115 with respect to the policy or contract
29 are preempted by federal or state law;

30 (11) An obligation that does not arise under the express written
31 terms of the policy or contract issued by the member insurer to the contract
32 owner, ~~or~~ policy owner, certificate holder, or enrollee, including without
33 limitation:

34 (A) Claims based on marketing materials;

35 (B) Claims based on side letters, riders, or other
36 documents that were issued by the member insurer without meeting applicable

1 policy or contract form filing or approval requirements;

2 (C) Misrepresentations of or regarding policy or contract
3 benefits;

4 (D) Extra-contractual claims; or

5 (E) A claim for penalties or consequential or incidental
6 damages;

7 (12) A contractual agreement that establishes the member
8 insurer's obligations to provide a book value accounting guaranty for defined
9 contribution benefit plan participants by reference to a portfolio of assets
10 that is owned by the benefit plan or its trustees, which in each case is not
11 an affiliate of the member insurer;

12 (13)(A) A portion of a policy or contract to the extent it
13 provides for interest or other changes in value to be determined by the use
14 of an index or other external reference stated in the policy or contract, but
15 which has not been credited to the policy or contract, or as to which the
16 policy owner's or contract owner's rights are subject to forfeiture, as of
17 the date the member insurer becomes an impaired or insolvent insurer under
18 this chapter, whichever is earlier.

19 (B) If a policy's or contract's interest or changes in
20 value are credited less frequently than annually, then for purposes of
21 determining the values that have been credited and are not subject to
22 forfeiture under this subdivision (a)(13), the interest or change in value
23 determined by using the procedures defined in the policy or contract will be
24 credited as if the contractual date of crediting interest or changing values
25 was the date of impairment or insolvency, whichever is earlier, and will not
26 be subject to forfeiture; ~~and~~

27 (14) A policy or contract providing any hospital, medical,
28 prescription drug, or other healthcare benefits pursuant to Part C or Part D
29 of ~~42 U.S.C. §§ 1395—1395kkk-1~~, Subchapter XVIII, Chapter 7, Title 42 of
30 the United States Code, 42 U.S.C. §§ 1395 – 1395kkk-1, commonly known as
31 ~~Medicare Part C and D~~ "Medicare Parts C and D", or Title XIX of the Social
32 Security Act, 42 U.S.C. §§ 1396-1396w5, commonly referred to as Medicaid, or
33 any regulations issued pursuant thereto; and

34 (15) Structured settlement annuity benefits to which a payee, or
35 beneficiary, has transferred his or her rights under a structured settlement
36 factoring transaction as defined in 26 U.S.C. 5891(c)(3)(A), regardless of

1 whether or not the structured settlement factoring transaction occurred
2 before or after the section became effective.

3 (b) The protection provided by this chapter shall not apply where any
4 guaranty protection is provided to residents of this state by the laws of the
5 domiciliary state or jurisdiction of the impaired insurer or insolvent
6 insurer other than this state.

7 (c) The exclusion from coverage described in subdivision (a)(3) of
8 this section does not apply to any portion of a policy or contract, including
9 a rider, that provides long-term care or any other health insurance benefits.

10
11 23-96-107. Coverage.

12 (a) This chapter shall provide coverage for the policies and contracts
13 specified in subsection (b) of this section to:

14 (1) Persons who, regardless of where they reside, except for
15 nonresident certificate holders under group policies or contracts, are the
16 beneficiaries, assignees, or payees, including healthcare providers rendering
17 services covered under health insurance policies or certificates of the
18 persons covered under subdivision (a)(2) of this section;

19 (2) Persons who are owners of or certificate holders or
20 enrollees under such policies or contracts, other than unallocated annuity
21 contracts and structured settlement annuities, and in each case who:

22 (A) Are residents; or

23 (B) Are not residents, but only under all of the following
24 conditions:

25 (i) The member insurer that issued the policies or
26 contracts is domiciled in this state;

27 (ii) The states in which the persons reside have
28 associations similar to the Arkansas Life and Health Insurance Guaranty
29 Association created by this chapter; and

30 (iii) The persons are not eligible for coverage by
31 an association in any other state ~~due to the fact that~~ because the insurer or
32 the health maintenance organization was not licensed in the state at the time
33 specified in the state's guaranty association law;

34 (3) For unallocated annuity contracts specified in subsection
35 (b) of this section, subdivisions (a)(1) and (2) of this section shall not
36 apply, and except as provided in subdivisions (a)(5) and (6) of this section,

1 this chapter shall provide coverage to:

2 (A) Persons who are the owners of the unallocated annuity
3 contracts if the unallocated ~~annuity~~ annuity contracts are issued to or in
4 connection with a specific benefit plan whose plan sponsor has its principal
5 place of business in this state; and

6 (B) Persons who are owners of unallocated annuity
7 contracts issued to or in connection with government lotteries if the owners
8 are residents;

9 (4) For structured settlement annuities specified in subsection
10 (b) of this section, subdivisions (a)(1) and (2) of this section shall not
11 apply, and except as provided in subdivisions (a)(5) and (6) of this section,
12 this chapter shall provide coverage to a person who is a payee under a
13 structured settlement annuity, or beneficiary of a payee if the payee is
14 deceased, if the payee:

15 (A) Is a resident, regardless of where the contract owner
16 resides; or

17 (B) Is not a resident, but only under ~~both~~ of the
18 following conditions:

19 (i)~~(a)~~ The contract owner of the structured
20 settlement annuity:

21 (a) ~~is~~ Is a resident; or

22 (b) ~~The contract owner of the structured~~
23 ~~settlement annuity is~~ Is not a resident, but the insurer that issued the
24 structured settlement annuity is domiciled in this state;

25 ~~(e)(ii)~~ The state in which the contract owner
26 resides has an association similar to the Arkansas Life and Health Insurance
27 Guaranty Association created by this chapter; and

28 ~~(ii)(iii)~~ Neither the payee, or beneficiary, nor the
29 contract owner is eligible for coverage by the association of the state in
30 which the payee or contract owner resides;

31 (5) This chapter shall not provide coverage for:

32 (A) A person who is a payee, or beneficiary, of a contract
33 owner resident of this state, if the payee, or beneficiary, is afforded any
34 coverage by the association of another state; ~~or~~

35 (B) A person covered in subdivision (a)(3) of this section
36 if any coverage is provided by the association of another state to the

1 person; or

2 (C) A person who acquires rights to receive payments
 3 through a structured settlement factoring transaction as defined in 26 U.S.C.
 4 5891(c)(3)(A), regardless of whether or not the structured settlement
 5 factoring transaction occurred before or after the section became effective;

6 (6)(A) This chapter is intended to provide coverage to a person
 7 who is a resident of this state and, in special circumstances, to a
 8 nonresident.

9 (B) In order to avoid duplicate coverage, if a person who
 10 would otherwise receive coverage under this chapter is provided coverage
 11 under the laws of any other state, the person shall not be provided coverage
 12 under this chapter.

13 (C) In determining the application of the provision of
 14 this subdivision (a)(6) in situations ~~where~~ in which a person could be
 15 covered by the association of more than one (1) state, whether as an owner,
 16 payee, enrollee, beneficiary, or assignee, this chapter shall be construed in
 17 conjunction with other state laws to result in coverage by only one (1)
 18 association.

19 (b)(1) This chapter shall provide coverage to the persons specified in
 20 subsection (a) of this section for policies or contracts of direct, nongroup
 21 life insurance, accident and health insurance that, for the purposes of this
 22 chapter, includes health maintenance organization subscriber contracts and
 23 certificates, or annuity policies or contracts annuities for certificates
 24 under direct group policies and contracts, and for supplemental contracts to
 25 any of these, and for unallocated annuity contracts, in each case issued by
 26 member insurers, except as limited by this chapter.

27 (2) Annuity contracts and certificates under group annuity
 28 contracts include ~~but are not limited to~~ without limitation:

29 (A) ~~guaranteed~~ Guaranteed investment contracts;;

30 (B) ~~deposit~~ Deposit administration contracts;;

31 (C) ~~unallocated~~ Unallocated funding agreements;;

32 (D) ~~allocated~~ Allocated funding agreements;;

33 (E) ~~structured~~ Structured settlement annuities;;

34 (F) ~~annuities~~ Annuities issued to or in connection with
 35 government lotteries;; and

36 (G) ~~any~~ Any immediate or deferred annuity contracts.

1 (c)(1) ~~No~~ A member insurer or agent ~~may~~ shall not deliver a policy or
 2 contract described in subsection (b) of this section and excluded under § 23-
 3 96-106(a)(1) from coverage under this chapter unless the member insurer or
 4 agent, ~~prior to~~ before or at the time of delivery, gives the policy holder or
 5 contract holder a separate written notice which clearly and conspicuously
 6 discloses that the policy or contract is not covered by the Arkansas Life and
 7 Health Insurance Guaranty Association.

8 (2) The Insurance Commissioner shall by rule specify the form
 9 and content of the notice.

10 23-96-108. Immunity.

11 ~~(a) There shall be no liability on the part of and no cause of action~~
 12 ~~of any nature shall arise against any~~ The following are not liable for or
 13 subject to any cause of action resulting from an act or omission by them in
 14 the performance of their powers and duties under this chapter:

15 (1) A member insurer or its agents or employees;

16 (2) ~~the~~ The Arkansas Life and Health Insurance Guaranty
 17 Association or its agents or employees;

18 (3) ~~members~~ Members of the Board of Directors of the Arkansas
 19 Life and Health Insurance Guaranty Association; or

20 (4) ~~the~~ The Insurance Commissioner or his or her representatives
 21 ~~for any action or omission by them in the performance of their powers and~~
 22 ~~duties under this chapter.~~

23 (b) ~~Such immunity shall extend~~ Immunity under this section extends to
 24 the participation in any organization of one (1) or more other state
 25 associations of similar purposes and to any such organization and its agents
 26 or employees.

27 23-96-109. Creation of the association – Examination – Annual report –
 28 Tax exemption – Board of directors.

29 (a)(1)(A) There is created a nonprofit legal entity to be known as the
 30 “Arkansas Life and Health Insurance Guaranty Association”.

31 (B) All member insurers shall be and remain members of the
 32 association as a condition of their authority to transact insurance or a
 33 health maintenance organization business in this state.

34 (C) The association shall perform its functions under the
 35

1 plan of operation established and approved under § 23-96-116 and shall
2 exercise its powers through a board of directors established under subsection
3 (b) of this section.

4 (2)(A) The association shall come under the immediate
5 supervision of the Insurance Commissioner and shall be subject to the
6 applicable ~~provisions of the~~ insurance laws of this state.

7 (B) Meetings or records of the association may be opened
8 to the public upon majority vote of the Board of Directors of the Arkansas
9 Life and Health Insurance Guaranty Association.

10 (3) The association shall be subject to examination and
11 regulation by the commissioner.

12 (4)(A) The board shall submit to the commissioner each year, not
13 later than one hundred twenty (120) days after the association's fiscal year,
14 a financial report in a form approved by the commissioner and a report of its
15 activities during the preceding fiscal year.

16 (B) Upon request of a member insurer, the association
17 shall provide the member insurer with a copy of the report.

18 (5) For purposes of administration and assessment, the
19 association shall maintain two (2) accounts:

20 (A) The life insurance and annuity account, which includes
21 the following subaccounts:

22 (i) Life insurance account;

23 (ii) Annuity account, which shall include annuity
24 contracts owned by a governmental retirement plan, or its trustee,
25 established under section 401(k), section 403(b), or section 457 of the
26 Internal Revenue Code, but shall otherwise exclude unallocated annuities; and

27 (iii) Unallocated annuity account, which shall
28 exclude contracts owned by a governmental retirement benefit plan, or its
29 trustee, established under section 401(k), section 403(b), or section 457 of
30 the Internal Revenue Code; and

31 (B) ~~The accident and health insurance account.~~

32 (6) The association shall be exempt from payment of all fees and
33 all taxes levied by this state or any of its subdivisions, except taxes
34 levied on real property.

35 (b)(1)(A) The board shall consist of not less than five (5) nor more
36 than nine (9) member insurers serving terms as established in the plan of

1 operation.

2 (B) The members of the board shall be selected by member
3 insurers subject to the approval of the commissioner.

4 (C) Vacancies on the board shall be filled for the
5 remaining period of the term by a majority vote of the remaining board
6 members, subject to the approval of the commissioner.

7 (2) In approving selections to the board, the commissioner shall
8 consider, among other things, whether all member insurers are fairly
9 represented.

10 (3) Members of the board may be reimbursed from the assets of
11 the association for expenses incurred by them as members of the board, but
12 members of the board shall not otherwise be compensated by the association
13 for their services.

14

15 23-96-110. Powers and duties of association.

16 (a) In addition to the rights and powers elsewhere in this chapter,
17 the Arkansas Life and Health Insurance Guaranty Association may:

18 (1) Enter into such contracts as are necessary or proper to
19 carry out ~~the provisions and purposes of~~ this chapter;

20 (2) Sue or be sued, including taking any legal actions necessary
21 or proper to recover any unpaid assessments under § 23-96-115 and to settle
22 claims or potential claims against it;

23 (3)(A) Borrow money to effect the purposes of this chapter.

24 (B) Any notes or other evidence of indebtedness of the
25 Arkansas Life and Health Insurance Guaranty Association not in default shall
26 be legal investments for domestic member insurers and may be carried as
27 admitted assets;

28 (4) Employ or retain such persons as are necessary or
29 appropriate to handle the financial transactions of the Arkansas Life and
30 Health Insurance Guaranty Association and to perform such other functions as
31 become necessary or proper under this chapter;

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

34 (6)(A) Exercise, for the purpose of this chapter and to the
35 extent approved by the Insurance Commissioner, the powers of a domestic life
36 insurer, or accident and health insurer, or health maintenance organization.

1 ~~(B) but in no case may the~~ The Arkansas Life and Health
2 Insurance Guaranty Association shall not issue ~~insurance~~ policies or ~~annuity~~
3 contracts other than those issued to perform its obligations under this
4 chapter;

5 (7) Organize itself as a corporation or in other legal form
6 permitted by the laws of this state;

7 (8) Request information from a person seeking coverage from the
8 Arkansas Life and Health Insurance Guaranty Association in order to aid the
9 Arkansas Life and Health Insurance Guaranty Association in determining its
10 obligations under this chapter with respect to the person, and the person
11 shall promptly comply with the request; ~~and~~

12 (9) Unless prohibited by law, according to the terms and
13 conditions of the policy or contract, file for actuarially justified rate or
14 premium increases for any policy or contract for which the association
15 provides coverage under this chapter; and

16 (10) Take other necessary or appropriate action to discharge its
17 duties and obligations under this chapter or to exercise its powers under
18 this chapter.

19 (b) The Arkansas Life and Health Insurance Guaranty Association may
20 render assistance and advice to the commissioner, upon his or her request,
21 concerning rehabilitation, payment of claims, continuance of coverage, or the
22 performance of other contractual obligations of any impaired insurer or
23 insolvent insurer.

24 (c)(1)(A) The Arkansas Life and Health Insurance Guaranty Association
25 shall have standing to appear or intervene before any court or agency in this
26 state with jurisdiction over an impaired insurer or insolvent insurer
27 concerning which the Arkansas Life and Health Insurance Guaranty Association
28 is or may become obligated under this chapter or with jurisdiction over any
29 person or property against whom the Arkansas Life and Health Insurance
30 Guaranty Association may have rights through subrogation or otherwise.

31 (B) Provided, at its option, the Arkansas Life and Health
32 Insurance Guaranty Association may appear solely for the purpose of receiving
33 copies of all pleadings and notices and attending hearings without otherwise
34 becoming a party to the proceeding.

35 (C) ~~Such standing shall extend~~ Standing under this
36 subdivision (c)(1) extends to all matters germane to the powers and duties of

1 the Arkansas Life and Health Insurance Guaranty Association, including, ~~but~~
2 ~~not limited to,~~ without limitation proposals for reinsuring, reissuing,
3 modifying, or guaranteeing the policies or contracts of the impaired insurer
4 or insolvent insurer and the determination of the policies or contracts and
5 contractual obligations.

6 (2) The Arkansas Life and Health Insurance Guaranty Association
7 shall also have the right to appear or intervene before a court or agency in
8 another state with jurisdiction over an impaired insurer or insolvent insurer
9 for which the Arkansas Life and Health Insurance Guaranty Association is or
10 may become obligated or with jurisdiction over any person or property against
11 whom the Arkansas Life and Health Insurance Guaranty Association may have
12 rights through subrogation or otherwise.

13 ~~The Arkansas Life and Health Insurance Guaranty Association may~~
14 ~~join an organization of one (1) or more other state associations of similar~~
15 ~~purposes, to~~ To further the purposes and administer the powers and duties of
16 the Arkansas Life and Health Insurance Guaranty Association, the Arkansas
17 Life and Health Insurance Guaranty Association may join an organization of
18 one (1) or more other state associations of similar purposes.

19 (e)(1)(A) Records shall be kept of all meetings of the Board of
20 Directors of the Arkansas Life and Health Insurance Guaranty Association to
21 discuss the activities of the Arkansas Life and Health Insurance Guaranty
22 Association in carrying out its powers and duties under §§ 23-96-111 – 23-96-
23 114 and 23-96-120.

24 (B) The records of the Arkansas Life and Health Insurance
25 Guaranty Association with respect to an impaired insurer or insolvent insurer
26 shall not be disclosed ~~prior to~~ before the termination of a liquidation,
27 rehabilitation, or conservation proceeding involving the impaired insurer or
28 insolvent insurer, upon the termination of the impairment or insolvency of
29 the member insurer, or upon the order of a court of competent jurisdiction.

30 (2) ~~Nothing in this~~ This subsection shall not limit the duty of
31 the Arkansas Life and Health Insurance Guaranty Association to render a
32 report of its activities under § 23-96-109(a)(4).

33 (f)(1)(A)(i) At any time within one hundred eighty (180) days of the
34 date of the order of liquidation, the Arkansas Life and Health Insurance
35 Guaranty Association may elect to succeed to the rights and obligations of
36 the ceding member insurer that relate to policies, contracts, or annuities

1 covered, in whole or in part, by the Arkansas Life and Health Insurance
2 Guaranty Association, in each case under any one (1) or more reinsurance
3 contracts entered into by the insolvent insurer and its reinsurers and
4 selected by the Arkansas Life and Health Insurance Guaranty Association.

5 (ii) Any such assumption shall be effective as of
6 the date of the order of liquidation.

7 (iii) The election shall be effected by the Arkansas
8 Life and Health Insurance Guaranty Association or the National Organization
9 of Life and Health Insurance Guaranty Associations on its behalf sending
10 written notice, return receipt requested, to the affected reinsurers.

11 (B) To facilitate the earliest practicable decision about
12 whether to assume any of the contracts of reinsurance and in order to protect
13 the financial position of the estate, the receiver and each reinsurer of the
14 ceding member insurer shall make available upon request to the Arkansas Life
15 and Health Insurance Guaranty Association or to the National Organization of
16 Life and Health Insurance Guaranty Associations on its behalf as soon as
17 possible after commencement of formal delinquency proceedings:

18 (i) ~~copies~~ Copies of in-force contracts of
19 reinsurance and all related files and records relevant to the determination
20 of whether such contracts should be assumed; and

21 (ii) ~~notices~~ Notices of any defaults under the
22 reinsurance contracts or any known event or condition which with the passage
23 of time could become a default under the reinsurance contracts.

24 (C) ~~The following subdivisions (f)(1)(C)(i)-(iv) shall~~
25 ~~apply~~ This subdivision (f)(1)(C) applies to reinsurance contracts so assumed
26 by the Arkansas Life and Health Insurance Guaranty Association, as follows:

27 (i) (a) The Arkansas Life and Health Insurance
28 Guaranty Association shall be responsible for all unpaid premiums due under
29 the reinsurance contracts for periods both before and after the date of the
30 order of liquidation and shall be responsible for the performance of all
31 other obligations to be performed after the date of the order of liquidation,
32 in each case which relate to policies, contracts, or annuities covered, in
33 whole or in part, by the Arkansas Life and Health Insurance Guaranty
34 Association.

35 (b) The Arkansas Life and Health Insurance
36 Guaranty Association may charge policies, contracts, or annuities covered in

1 part by the Arkansas Life and Health Insurance Guaranty Association, through
2 reasonable allocation methods, the costs for reinsurance in excess of the
3 obligations of the Arkansas Life and Health Insurance Guaranty Association
4 and shall provide notice and an accounting of these charges to the
5 liquidator;

6 (ii)(a) The Arkansas Life and Health Insurance
7 Guaranty Association shall be entitled to any amounts payable by the
8 reinsurer under the reinsurance contracts with respect to losses or events
9 that occur in periods after the date of the order of liquidation and that
10 relate to policies, contracts, or annuities covered, in whole or in part, by
11 the Arkansas Life and Health Insurance Guaranty Association.

12 (b) ~~provided that, upon~~ Upon receipt of any
13 ~~such~~ amounts under subdivision (f)(1)(C)(ii)(a) of this section, the Arkansas
14 Life and Health Insurance Guaranty Association shall ~~be obliged to~~ pay to the
15 beneficiary under the policy, contract, or annuity on account of which the
16 amounts were paid a portion of the amount equal to the lesser of:

17 (a)(1) The amount received by the
18 Arkansas Life and Health Insurance Guaranty Association; and

19 (b)(2) The excess of the amount received
20 by the Arkansas Life and Health Insurance Guaranty Association over the
21 amount equal to the benefits paid by the Arkansas Life and Health Insurance
22 Guaranty Association on account of the policy, contract, or annuity less the
23 retention of the insurer applicable to the loss or event;

24 (iii)(a) Within thirty (30) days following the
25 Arkansas Life and Health Insurance Guaranty Association's election, the
26 election date, the Arkansas Life and Health Insurance Guaranty Association
27 and each reinsurer under contracts assumed by the Arkansas Life and Health
28 Insurance Guaranty Association shall calculate the net balance due to or from
29 the Arkansas Life and Health Insurance Guaranty Association under each
30 reinsurance contract as of the election date with respect to policies,
31 contracts, or annuities covered, in whole or in part, by the Arkansas Life
32 and Health Insurance Guaranty Association, which calculation shall give full
33 credit to all items paid by either the member insurer or its receiver or the
34 reinsurer prior to the election date.

35 (b) The reinsurer shall pay the receiver any
36 amounts due for losses or events ~~prior to~~ before the date of the order of

1 liquidation, subject to any set-off for premiums unpaid for periods ~~prior to~~
2 before the date, and the Arkansas Life and Health Insurance Guaranty
3 Association or reinsurer shall pay any remaining balance due the other, in
4 each case within five (5) days of the completion of the aforementioned
5 calculation.

6 (c) Any disputes over the amounts due to
7 either the Arkansas Life and Health Insurance Guaranty Association or the
8 reinsurer shall be resolved by arbitration pursuant to the terms of the
9 affected reinsurance contracts or, if the contract contains no arbitration
10 clause, as otherwise provided by law.

11 (d) If the receiver has received any amounts
12 due the Arkansas Life and Health Insurance Guaranty Association pursuant to
13 subdivision (f)(1)(C)(ii) of this section, the receiver shall remit the same
14 to the Arkansas Life and Health Insurance Guaranty Association as promptly as
15 practicable; and

16 (iv) If the Arkansas Life and Health Insurance
17 Guaranty Association or receiver, on the Arkansas Life and Health Insurance
18 Guaranty Association's behalf, within sixty (60) days of the election date,
19 pays the unpaid premiums due for periods both before and after the election
20 date that relate to policies, contracts, or annuities covered, in whole or in
21 part, by the Arkansas Life and Health Insurance Guaranty Association, the
22 reinsurer shall not:

23 (a) ~~be entitled to terminate~~ Terminate the
24 reinsurance contracts for failure to pay premium insofar as the reinsurance
25 contracts relate to policies, contracts, or annuities covered, in whole or in
26 part, by the Arkansas Life and Health Insurance Guaranty Association; and

27 (b) ~~shall not be entitled to set~~ Set off any
28 unpaid amounts due under other contracts, or unpaid amounts due from parties
29 other than the Arkansas Life and Health Insurance Guaranty Association,
30 against amounts due the Arkansas Life and Health Insurance Guaranty
31 Association.

32 (2)(A) During the period from the date of the order of
33 liquidation until the election date or, if the election date does not occur,
34 until one hundred eighty (180) days after the date of the order of
35 liquidation:

36 (i) Neither the Arkansas Life and Health Insurance

1 Guaranty Association nor the reinsurer shall have any rights or obligations
2 under reinsurance contracts that the Arkansas Life and Health Insurance
3 Guaranty Association has the right to assume under subdivision (f)(1) of this
4 section, whether for periods ~~prior to~~ before or after the date of the order
5 of liquidation; and

6 (ii) The reinsurer, the receiver, and the Arkansas
7 Life and Health Insurance Guaranty Association shall, to the extent
8 practicable, provide each other data and records reasonably requested.

9 (B) ~~Provided that once~~ When the Arkansas Life and Health
10 Insurance Guaranty Association has elected to assume a reinsurance contract,
11 the parties' rights and obligations shall be governed by subdivision (f)(1)
12 of this section.

13 (3) If the Arkansas Life and Health Insurance Guaranty
14 Association does not elect to assume a reinsurance contract by the election
15 date pursuant to subdivision (f)(1) of this section, the Arkansas Life and
16 Health Insurance Guaranty Association shall have no rights or obligations, in
17 each case for periods both before and after the date of the order of
18 liquidation, with respect to the reinsurance contract.

19 (4) When policies, contracts, or annuities or covered
20 obligations with respect thereto are transferred to an assuming insurer,
21 reinsurance on the policies, contracts, or annuities may also be transferred
22 by the Arkansas Life and Health Insurance Guaranty Association, in the case
23 of contracts assumed under subdivision (f)(1) of this section, subject to the
24 following:

25 (A) Unless the reinsurer and the assuming insurer agree
26 otherwise, the reinsurance contract transferred shall not cover any new
27 policies of insurance, contracts, or annuities in addition to those
28 transferred;

29 (B) The obligations described in subdivision (f)(1) of
30 this section shall no longer apply with respect to matters arising after the
31 effective date of the transfer; and

32 (C) Notice shall be given in writing, return receipt
33 requested, by the transferring party to the affected reinsurer not less than
34 thirty (30) days ~~prior to~~ before the effective date of the transfer.

35 (5) ~~(A) The provisions of this~~ This subsection shall supersede
36 ~~the provisions of any law of this state law or of any~~ affected reinsurance

1 agreement or agreements that provide for or require any payment of
2 reinsurance proceeds, on account of losses or events that occur in periods
3 after the coverage date, to the receiver, liquidator, or rehabilitator of the
4 insolvent member insurer.

5 (B) The receiver, rehabilitator, or liquidator shall
6 remain entitled to any amounts payable by the reinsurer under the reinsurance
7 agreement or agreements with respect to losses or events that occur in
8 periods ~~prior to~~ before the coverage date, subject to applicable setoff
9 provisions.

10 (6) Except as otherwise expressly provided ~~above~~ under
11 subdivision (f)(1)(C) of this section, nothing herein shall this section does
12 not:

13 (A) ~~alter~~ Alter or modify the terms and conditions of the
14 indemnity reinsurance agreements of the insolvent member insurer+;

15 (B) ~~Nothing herein shall abrogate~~ Abrogate or limit any
16 rights of any reinsurer to claim that it is entitled to rescind a reinsurance
17 agreement+;

18 (C) ~~Nothing herein shall give a policy~~ Give a
19 policyholder, contract owner, enrollee, certificate holder, or beneficiary an
20 independent cause of action against an indemnity reinsurer that is not
21 otherwise ~~set forth~~ stated in the indemnity reinsurance agreement+;

22 (D) ~~Nothing in this section shall give~~ Give a policyholder
23 or beneficiary an independent cause of action against a reinsurer that is not
24 otherwise ~~set forth~~ stated in the reinsurance contract+;

25 (E) ~~Nothing in this section shall limit~~ Limit or affect
26 the Arkansas Life and Health Insurance Guaranty Association's rights as a
27 creditor of the estate against the assets of the estate+; or

28 (F) ~~Nothing in this section shall apply~~ Apply to
29 reinsurance agreements covering property or casualty risks.

30 (g) The Board of Directors of the Arkansas Life and Health Insurance
31 Guaranty Association shall have discretion and may exercise reasonable
32 business judgment to determine the means by which the Arkansas Life and
33 Health Insurance Guaranty Association is to provide the benefits of this
34 chapter in an economical and efficient manner and may provide additional or
35 alternative coverages and benefits in appropriate situations.

36 (h) ~~Where~~ If the Arkansas Life and Health Insurance Guaranty

1 Association has arranged or offered to provide the benefits of this chapter
 2 to a covered person under a plan or arrangement that fulfills the Arkansas
 3 Life and Health Insurance Guaranty Association's obligations under this
 4 chapter, the person shall not be entitled to benefits from the Arkansas Life
 5 and Health Insurance Guaranty Association in addition to or other than those
 6 provided under the plan or arrangement.

7 (i)(1) Venue in a suit against the Arkansas Life and Health Insurance
 8 Guaranty Association arising under this chapter shall be in Pulaski County.

9 (2) The Arkansas Life and Health Insurance Guaranty Association
 10 shall not be required to give an appeal bond in an appeal that relates to a
 11 cause of action arising under this chapter.

12

13 23-96-111. Impaired insurers.

14 If a member insurer is an impaired insurer, the Arkansas Life and
 15 Health Insurance Guaranty Association ~~may~~, in its discretion and subject to
 16 any conditions imposed by the association that do not impair the contractual
 17 obligations of the impaired insurer and that are approved by the Insurance
 18 Commissioner, may:

19 (1) Guarantee, assume, reissue, or reinsure, or cause to be
 20 guaranteed, assumed, reissued, or reinsured, any or all of the policies or
 21 contracts of the impaired insurer; or

22 (2) Provide ~~such the~~ moneys, pledges, loans, notes, guarantees,
 23 or other means as are proper to effectuate subdivision (1) of this section
 24 and assure payment of the contractual obligations of the impaired insurer
 25 pending action under subdivision (1) of this section.

26

27 23-96-112. Insolvent insurers.

28 (a) If a member insurer is an insolvent insurer, the Arkansas Life and
 29 Health Insurance Guaranty Association ~~shall~~, in its discretion, ~~either shall~~:

30 (1)(A) Do both of the following:

31 (A) Guarantee, assume, reissue, or reinsure, or cause to
 32 be guaranteed, assumed, reissued, or reinsured, the policies or contracts of
 33 the insolvent insurer; or

34 (B) ~~Assure~~ assure payment of the contractual obligations
 35 of the insolvent insurer; and

36 (C)(B) Provide ~~such the~~ moneys, pledges, loans, notes,

1 guarantees, or other means as are reasonably necessary to discharge such
2 duties; or

3 (2) Provide benefits and coverages in accordance with § 23-96-
4 113.

5 (b)(1) All proceedings in which the insolvent insurer is a party in
6 any court in this state shall be stayed sixty (60) days from the date an
7 order of liquidation, rehabilitation, or conservation is final to permit
8 proper legal action by the association on any matters germane to its powers
9 or duties.

10 (2) As to judgment under any decision, order, verdict, or
11 finding based on default, the association may apply to have ~~such~~ the judgment
12 set aside by the same court that made ~~such~~ the judgment and shall be
13 permitted to defend against ~~such~~ the suit on the merits.

14

15 23-96-113. Authority of association when proceeding under § 23-96-111
16 or § 23-96-112.

17 (a)(1) When proceeding under § 23-96-111 or § 23-96-112(a)(2), the
18 Arkansas Life and Health Insurance Guaranty Association shall:

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

24 (i) With respect to group policies and contracts,
25 not later than the earlier of the next renewal date under ~~such~~ the policies
26 or contracts or forty-five (45) days, but in no event less than thirty (30)
27 days, after the date on which the association becomes obligated with respect
28 to ~~such~~ the policies and contracts; and

29 (ii) With respect to nongroup policies, contracts,
30 and annuities, not later than the earlier of the next renewal date, if any,
31 under ~~such~~ the policies or contracts, or one (1) year, but in no event less
32 than thirty (30) days, from the date on which the association becomes
33 obligated with respect to ~~such~~ the policies or contracts;

34 (B) Make diligent efforts to provide all known insureds,
35 enrollees, or annuitants, for nongroup policies and contracts, or group
36 policy or contract owners with respect to group policies and contracts thirty

1 (30) days' notice of the termination, ~~pursuant to~~ under this subdivision
2 (a)(1), of the benefits provided; and

3 (C) With respect to nongroup ~~life and accident and health~~
4 ~~insurance policies and annuities~~ policies and contracts covered by the
5 association, make available to each known insured, enrollee, or annuitant, or
6 owner if other than the insured or annuitant, and with respect to an
7 individual formerly an insured, enrollee, or ~~formerly an~~ annuitant under a
8 group policy or contract who is not eligible for replacement group coverage,
9 make available substitute coverage on an individual basis ~~in accordance with~~
10 ~~the provisions of~~ according to subdivision (a)(2)(A) of this section, if the
11 insureds, enrollees, or annuitants had a right under law or the terminated
12 policy, contract, or annuity to convert coverage to individual coverage or to
13 continue an individual policy, contract, or annuity in force until a
14 specified age or for a specified time, during which the insurer or health
15 maintenance organization had no right unilaterally to make changes in any
16 provisions of the policy, contract, or annuity or had a right only to make
17 changes in premium by class.

18 (2)(A) In providing the substitute coverage required under
19 subdivision (a)(1)(C) of this section, the association may offer either to
20 reissue the terminated coverage or to issue an alternative policy or contract
21 at actuarially justified rates subject to the prior approval of the Insurance
22 Commissioner.

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

27 (C) The association may reinsure any alternative or
28 reissued policy or contract.

29 (3)(A)(i) Alternative policies or contracts adopted by the
30 association shall be subject to the approval of the ~~domiciliary insurance~~
31 ~~commissioner and the receivership court~~.

32 (ii) The association may adopt alternative policies
33 or contracts of various types for future issuance without regard to any
34 particular impairment or insolvency.

35 (B)(i) Alternative policies or contracts shall contain at
36 least the minimum statutory provisions required in this state and provide

1 benefits that shall not be unreasonable in relation to the premium charged.

2 (ii) The association shall set the premium ~~in~~
3 ~~accordance with~~ according to a table of rates which it shall adopt.

4 (iii) The premium shall reflect the amount of
5 insurance to be provided and the age and class of risk of each insured, but
6 shall not reflect any changes in the health of the insured after the original
7 policy or contract was last underwritten.

8 (C) Any alternative policy or contract issued by the
9 association shall provide coverage of a type similar to that of the policy or
10 contract issued by the impaired or insolvent insurer, as determined by the
11 association.

12 (b) When proceeding under § 23-96-111 or § 23-96-112(a) with respect
13 to a policy or contract carrying guaranteed minimum interest rates, the
14 association shall assure the payment or crediting of a rate of interest
15 consistent with § 23-96-106(a)(3).

16 (c)(1) In carrying out its duties under §§ 23-96-111 and § 23-96-
17 112(a), the association may:

18 ~~(1)(A)~~ Subject to approval by a court in this state,
19 impose permanent policy or contract liens in connection with any guarantee,
20 assumption, or reinsurance agreement, if the association finds that the
21 amounts which can be assessed under this chapter are less than the amounts
22 needed to assure full and prompt performance of the association's duties
23 under this chapter or that the economic or financial conditions as they
24 affect member insurers are sufficiently adverse to render the imposition of
25 such permanent policy or contract liens to be in the public interest; or

26 ~~(2)(B)(i)~~ Subject to approval by a court in this state,
27 impose temporary moratoriums or liens on payments of cash values and policy
28 loans, or any other right to withdraw funds held in conjunction with policies
29 or contracts, in addition to any contractual provisions for deferral of cash
30 or policy loan value.

31 (ii) In addition, in the event of a temporary
32 moratorium or moratorium charge imposed by the receivership court on payment
33 of cash values or policy loans, or on any other right to withdraw funds held
34 in conjunction with policies or contracts, out of the assets of the impaired
35 insurer or insolvent insurer, the association may defer the payment of cash
36 values, policy loans, or other rights by the association for the period of

1 the moratorium or moratorium charge imposed by the receivership court, except
 2 for claims covered by the association to be paid ~~in accordance with~~ according
 3 to a hardship procedure established by the liquidator or rehabilitator and
 4 approved by the receivership court.

5 ~~(3)(2)(A)~~ A deposit in this state, held pursuant to law or
 6 required by the ~~Insurance Commissioner~~ commissioner for the benefit of
 7 creditors, including policy or contract owners, not turned over to the
 8 domiciliary liquidator upon the entry of a final order of liquidation or
 9 order approving a rehabilitation plan of ~~an~~ a member insurer domiciled in
 10 this state or in a reciprocal state, ~~pursuant to~~ under § 23-68-115, shall be
 11 promptly paid to the association.

12 (B) The association:

13 (i) ~~shall be~~ Is entitled to retain a portion of any
 14 amount so paid to it equal to the percentage determined by dividing the
 15 aggregate amount of policy or contract ~~owners~~ owners' claims related to that
 16 insolvency for which the association has provided statutory benefits by the
 17 aggregate amount of all policy or contract owners' claims in this state
 18 related to that insolvency; and

19 (ii) ~~shall~~ Shall remit to the domiciliary receiver
 20 the amount so paid to the association and retained ~~pursuant to clause (i)~~
 21 under subdivision (c)(3)(B)(i) of this section.

22 (C) Any amount so paid to the association and retained by
 23 it ~~pursuant to clause (i)~~ under subdivision (c)(3)(B)(i) of this section
 24 shall be treated as a distribution of estate assets ~~pursuant to~~ under § 23-
 25 68-126 or similar provision of the state of domicile of the impaired insurer
 26 or insolvent insurer.

27 (d) In carrying out its duties in connection with guaranteeing,
 28 assuming, reissuing, or reinsuring policies or contracts under § 23-96-111 or
 29 § 23-96-112(a), the association, ~~subject to approval of the receivership~~
 30 ~~court~~, may issue substitute coverage for a policy or contract that provides
 31 an interest rate, crediting rate, or similar factor determined by use of an
 32 index or other external reference stated in the policy or contract employed
 33 in calculating returns or changes in value by issuing an alternative policy
 34 or contract ~~in accordance with~~ according to the following provisions:

35 (1) In lieu of the index or other external reference provided
 36 for in the original policy or contract, the alternative policy or contract

1 provides for:

2 ~~(i)~~(A) a A fixed rate; ~~or~~

3 ~~(ii)~~(B) ~~payments~~ Payments of dividends with minimum
4 guarantees; or

5 ~~(iii)~~(C) a A different method for calculating interest or
6 changes in value;

7 (2) There is no requirement for evidence of insurability,
8 waiting period, or other exclusion that would not have applied under the
9 replaced policy or contract; and

10 (3) The alternative policy or contract is substantially similar
11 to the replaced policy or contract in all other material terms.

12

13 23-96-114. Liability for benefits – Assignment or subrogation of
14 rights.

15 (a) The benefits that the Arkansas Life and Health Insurance Guaranty
16 Association may become obligated to cover shall in no event exceed the lesser
17 of:

18 (1) The contractual obligations for which the member insurer is
19 liable or would have been liable if it were not an impaired insurer or
20 insolvent insurer; or

21 (2)~~(A)~~ With respect to:

22 (A) ~~any~~ Any one (1) life, regardless of the number of
23 policies or contracts:

24 (i) Three hundred thousand dollars (\$300,000) in
25 life insurance death benefits or net cash surrender and net cash withdrawal
26 values for life insurance;

27 (ii) Five hundred thousand dollars (\$500,000) in
28 ~~accident and health insurance~~ benefit plan benefits and five hundred thousand
29 dollars (\$500,000) in health benefits for coverages not defined as health
30 benefit plans, including any net cash surrender and net cash withdrawal
31 values, provided coverage for disability income insurance benefits and long
32 term care insurance benefits shall not exceed three hundred thousand dollars
33 (\$300,000); or

34 (iii) Three hundred thousand dollars (\$300,000) in
35 the present value of annuity benefits, including net cash surrender and net
36 cash withdrawal values;

1 (B) ~~With respect to each~~ Each individual participating in
2 a governmental retirement benefit plan established under section 401(k),
3 section 403(b), or section 457 of the Internal Revenue Code covered by an
4 unallocated annuity contract or the beneficiaries of each such individual if
5 deceased, in the aggregate three hundred thousand dollars (\$300,000) in
6 present value annuity benefits, including net cash surrender and net cash
7 withdrawal values; or

8 (C) ~~With respect to each~~ Each payee of a structured
9 settlement annuity or beneficiary or beneficiaries of the payee if deceased,
10 three hundred thousand dollars (\$300,000) in present value annuity benefits,
11 in the aggregate, including net cash surrender and net cash withdrawal
12 values, if any.

13 (b)(1) Provided, however, that in no event shall the Arkansas Life and
14 Health Insurance Guaranty Association be obligated to cover more than:

15 ~~(i)(A)~~ three Three hundred thousand dollars (\$300,000) in
16 benefits in the aggregate with respect to any one (1) life under § 23-96-106,
17 § 23-96-107, and this section except with respect to benefits for ~~basic~~
18 ~~hospital, medical, and surgical insurance and major medical insurance~~ health
19 benefit plans under subdivision (a)(2)(A)(ii) of this section, in which case
20 the aggregate liability of the Arkansas Life and Health Insurance Guaranty
21 Association shall not exceed five hundred thousand dollars (\$500,000) with
22 respect to any one (1) individual; or

23 ~~(ii)(B)~~ with With respect to one (1) owner of multiple
24 nongroup policies of life insurance, whether the policy or contract owner is
25 an individual, firm, corporation, or other person, and whether the persons
26 insured are officers, managers, employees, or other persons, more than one
27 million dollars (\$1,000,000) in benefits, regardless of the number of
28 policies and contracts held by the owner;

29 (2)(A) With respect to either:

30 (i) ~~one~~ One (1) contract owner provided coverage
31 under ~~§ 23-96-107(b)(2)~~ § 23-96-107(a)(3)(B); or

32 (ii) ~~one~~ One (1) plan sponsor whose plans own
33 directly or in trust one (1) or more unallocated annuity contracts not
34 included in subdivision (a)(2)(B) of this section, one million dollars
35 (\$1,000,000) in benefits, irrespective of the number of contracts with
36 respect to the contract owner or plan sponsor.

1 (B) However, in the case ~~where~~ in which one (1) or more
2 unallocated annuity contracts are covered contracts under this chapter and
3 are owned by a trust or other entity for the benefit of two (2) or more plan
4 sponsors, coverage shall be afforded by the Arkansas Life and Health
5 Insurance Guaranty Association if the largest interest in the trust or entity
6 owning the contract or contracts is held by a plan sponsor whose principal
7 place of business is in this state, and in no event shall the Arkansas Life
8 and Health Insurance Guaranty Association be obligated to cover more than one
9 million dollars (\$1,000,000) in benefits with respect to all of these
10 unallocated contracts.

11 (3)(A) The limitations ~~set forth~~ stated in this subsection are
12 limitations on the benefits for which the Arkansas Life and Health Insurance
13 Guaranty Association is obligated before taking into account either its
14 subrogation and assignment rights or the extent to which those benefits could
15 be provided out of the assets of the impaired insurer or insolvent insurer
16 attributable to covered policies.

17 (B) The costs of the Arkansas Life and Health Insurance
18 Guaranty Association's obligations under this chapter may be met by the use
19 of assets attributable to covered policies or reimbursed to the Arkansas Life
20 and Health Insurance Guaranty Association ~~pursuant to~~ under its subrogation
21 and assignment rights.

22 (4) For purposes of this chapter, benefits provided by a long-
23 term care rider to a life insurance policy or annuity contract shall be
24 considered the same type of benefits as the base life insurance policy or
25 annuity contract to which it relates.

26 (5) In performing its obligations to provide coverage under §
27 23-96-111, the Arkansas Life and Health Insurance Guaranty Association shall
28 not be required to guarantee, assume, reinsure, reissue, or perform, or cause
29 to be guaranteed, assumed, reinsured, reissued, or performed, the contractual
30 obligations of the insolvent insurer or impaired insurer under a covered
31 policy or covered contract that do not materially affect the economic values
32 or economic benefits of the covered policy or covered contract.

33 (c)(1)(A) ~~Any~~ A person receiving benefits under this chapter shall be
34 deemed to have assigned the rights under, and any causes of action against
35 any person for losses arising under, resulting from or otherwise relating to,
36 the covered policy or covered contract to the Arkansas Life and Health

1 Insurance Guaranty Association to the extent of the benefits received because
2 of this chapter, whether the benefits are payments of or on account of
3 contractual obligations, continuation of coverage, or provision of substitute
4 or alternative policies, contracts, or coverages.

5 (B) The Arkansas Life and Health Insurance Guaranty
6 Association may require an assignment to it of ~~such~~ the rights and cause of
7 action by any enrollee, payee, policy owner, or contract owner, beneficiary,
8 insured, or annuitant as a condition precedent to the receipt of any right or
9 benefits conferred by this chapter upon such person.

10 (2) The subrogation rights of the Arkansas Life and Health
11 Insurance Guaranty Association under this subsection shall have the same
12 priority against the assets of the impaired insurer or insolvent insurer as
13 that possessed by the person entitled to receive benefits under this chapter.

14 (3) In addition to subdivisions (c)(1) and (2) of this section,
15 the Arkansas Life and Health Insurance Guaranty Association shall have all
16 common law rights of subrogation and any other equitable or legal remedy that
17 would have been available to the impaired insurer or insolvent insurer or
18 owner, beneficiary, enrollee, or payee of a policy or contract with respect
19 to ~~such~~ the policy or contracts.

20 (4) If the preceding provisions of this subsection are invalid
21 or ineffective with respect to any person or claim for any reason, the amount
22 payable by the Arkansas Life and Health Insurance Guaranty Association with
23 respect to the related covered obligations shall be reduced by the amount
24 realized by any other person with respect to the person or claim that is
25 attributable to the policies or contracts, or portion thereof, covered by the
26 Arkansas Life and Health Insurance Guaranty Association.

27 (5) If the Arkansas Life and Health Insurance Guaranty
28 Association has provided benefits with respect to a covered obligation and a
29 person recovers amounts as to which the Arkansas Life and Health Insurance
30 Guaranty Association has rights as described in subdivisions (c)(1)-(4) of
31 this section, the person shall pay to the Arkansas Life and Health Insurance
32 Guaranty Association the portion of the recovery attributable to the policies
33 or contracts, or portion thereof, covered by the Arkansas Life and Health
34 Insurance Guaranty Association.

35 (d)(1)(A) For the purpose of carrying out its obligations under this
36 chapter, the Arkansas Life and Health Insurance Guaranty Association shall be

1 deemed to be a creditor of the impaired insurer or insolvent insurer to the
2 extent of assets attributable to covered policies or contracts reduced by any
3 amounts to which the Arkansas Life and Health Insurance Guaranty Association
4 is entitled as subrogee ~~pursuant to~~ under subsection (c) of this section.

5 (B) Assets of the impaired insurer or insolvent insurer
6 attributable to covered policies or contracts shall be used to continue all
7 covered policies and pay all contractual obligations of the impaired insurer
8 or insolvent insurer as required by this chapter.

9 (2) As used in this subsection, "Assets assets of the impaired
10 insurer or insolvent insurer attributable to covered policies or contracts",
11 ~~as used in this subsection, are~~ means that proportion of the assets which the
12 reserves that should have been established for such policies or contracts
13 bear to the reserves that should have been established for all policies of
14 insurance or health benefit plans written by the impaired insurer or
15 insolvent insurer.

16 (e)(1) As a creditor of the impaired insurer or insolvent insurer as
17 established in subsection (d) of this section and consistent with § 23-68-
18 126, the Arkansas Life and Health Insurance Guaranty Association and other
19 similar associations shall be entitled to receive a disbursement of assets
20 out of the marshaled assets, from time to time as the assets become
21 available, to reimburse it, as a credit against contractual obligations under
22 this chapter.

23 (2) If the liquidator has not, within one hundred twenty (120)
24 days of a final determination of insolvency of ~~an~~ a member insurer by the
25 receivership court, made an application to the court for the approval of a
26 proposal to disburse assets out of marshaled assets to guaranty associations
27 having obligations because of the insolvency, then the Arkansas Life and
28 Health Insurance Guaranty Association shall be entitled to make application
29 to the receivership court for approval of its own proposal to disburse these
30 assets.

31 (f) It is the intent of the General Assembly that the coverage
32 provided through the Arkansas Life and Health Insurance Guaranty Association
33 for any annuity contract executed ~~pursuant to~~ under § 11-9-210 shall be the
34 lesser of the contractual obligations of the insurer or one hundred thousand
35 dollars (\$100,000) in the present value of annuity benefits including net
36 cash surrender and net cash withdrawal values as provided in subsection (a)

1 of this section.

2 (g) It is the intent of the General Assembly that coverage provided by
3 the Arkansas Life and Health Insurance Guaranty Association for annuity
4 contracts executed ~~pursuant to~~ under § 11-9-210 shall not be affected by the
5 fact that the annuity payments are sent to the Workers' Compensation
6 Commission for distribution to the claimants and beneficiaries, and that any
7 funds provided by the Arkansas Life and Health Insurance Guaranty Association
8 for payment to claimants or beneficiaries for whom annuity contracts are
9 executed under § 11-9-210 shall be sent to the commission for distribution to
10 claimants or beneficiaries.

11

12 23-96-115. Assessments – Tax credits.

13 (a)(1) For the purpose of providing the funds necessary to carry out
14 the powers and duties of the Arkansas Life and Health Insurance Guaranty
15 Association, the Board of Directors of the Arkansas Life and Health Insurance
16 Guaranty Association shall assess the member insurers, separately for each
17 account, at such time and for such amounts as the board finds necessary.

18 (2) Assessments shall be due not less than thirty (30) days
19 after prior written notice to the member insurers and shall accrue interest
20 at ten percent (10%) per annum on and after the due date.

21 (b) There shall be two (2) classes of assessments, as follows:

22 (1)(A) Class A assessments shall be authorized and called for
23 the purpose of meeting administrative and legal costs and other expenses.

24 (B) Class A assessments may be authorized and called
25 whether or not related to a particular impaired insurer or insolvent insurer;
26 and

27 (2) Class B assessments shall be authorized and called to the
28 extent necessary to carry out the powers and duties of the association under
29 § 23-96-106(b), §§ 23-96-110 – 23-96-114, and 23-96-120 with regard to an
30 impaired insurer or an insolvent insurer.

31 (c)(1)(A)(i) The amount of a Class A assessment shall be determined by
32 the board and may be authorized and called on a pro rata or non-pro rata
33 basis.

34 (ii) If pro rata, the board ~~of directors~~ may provide
35 that ~~it~~ the Class A assessment be credited against future Class B
36 assessments. ~~The total of all non-pro rata assessments shall not exceed one~~

1 ~~hundred fifty dollars (\$150) per member insurer in any one (1) calendar year.~~

2 (B) The amount of a Class B assessment, except for
3 assessments related to long-term care insurance, shall be allocated for
4 assessment purposes ~~among~~ between the accounts and among the subaccounts of
5 the life insurance and annuity account pursuant to under an allocation
6 formula which may be based on the premiums or reserves of the impaired or
7 insolvent insurer or any other standard deemed by the board in its sole
8 discretion as being fair and reasonable under the circumstances.

9 (C)(i) The amount of the Class B assessment for long-term
10 care insurance written by the impaired or insolvent insurer shall be
11 allocated according to the methodology included in the plan of operation and
12 approved by the Insurance Commissioner.

13 (ii) The methodology shall provide for fifty percent
14 (50%) of the assessment to be allocated to health member insurers and fifty
15 percent (50%) of the assessment to be allocated to life and annuity member
16 insurers.

17 (2) Class B assessments against member insurers for each account
18 shall be in the proportion that the premiums received on business in this
19 state by each assessed member insurer or policies or contracts covered by
20 each account for the three (3) most recent calendar years for which
21 information is available preceding the year in which the member insurer
22 became insolvent, or in the case of an assessment with respect to an impaired
23 insurer, the three (3) most recent calendar years for which information is
24 available preceding the year in which *the member insurer* became impaired,
25 bears to such premiums received on business in this state for such calendar
26 years by all assessed member insurers.

27 (3) Assessments for funds to meet the requirements of the
28 association with respect to an impaired insurer or insolvent insurer shall
29 not be authorized or called until necessary to implement the purpose of this
30 chapter.

31 (d)(1) Classification of assessments under subsection (b) of this
32 section and computation of assessments under subsection (c) of this section
33 shall be made with a reasonable degree of accuracy, recognizing that exact
34 determinations may not always be possible.

35 (2) The association shall notify each member insurer of its
36 anticipated pro rata share of an authorized assessment not yet called within

1 one hundred eighty (180) days after the assessment is authorized.

2 (e)(1) The association may abate or defer, in whole or in part, the
3 assessment of a member insurer if, in the opinion of the board, payment of
4 the assessment would endanger the ability of the member insurer to fulfill
5 its contractual obligations.

6 (2) ~~In the event~~ If an assessment against a member insurer is
7 abated or deferred in whole or in part, the amount by which such assessment
8 is abated or deferred may be assessed against the other member insurers in a
9 manner consistent with the basis for assessments ~~set forth~~ stated in this
10 section.

11 (3) Once the conditions that caused a deferral have been removed
12 or rectified, the member insurer shall pay all assessments that were deferred
13 ~~pursuant to~~ under a repayment plan approved by the association.

14 (f)(1)(A) Subject to the provisions of subdivision (f)(1)(B) of this
15 section, the total of all assessments authorized by the association with
16 respect to a member insurer for each subaccount of the life insurance and
17 annuity account and for the ~~accident and~~ health account shall not in any one
18 (1) calendar year exceed two percent (2%) of such insurer's average annual
19 premiums received in this state on the policies and contracts covered by the
20 subaccount or account during the three (3) calendar years preceding the year
21 in which the member insurer became an impaired insurer or insolvent insurer.

22 (B) If two (2) or more assessments are authorized in one
23 (1) calendar year with respect to member insurers that become impaired or
24 insolvent in different calendar years, the average annual premiums for
25 purposes of the aggregate assessment percentage limitation referenced in
26 subdivision (f)(1)(A) of this section shall be equal and limited to the
27 higher of the three-year average annual premiums for the applicable
28 subaccount or account as calculated ~~pursuant to~~ under this section.

29 (C) If the maximum assessment, together with the other
30 assets of the association in any account, does not provide in any one (1)
31 year in either account an amount sufficient to carry out the responsibilities
32 of the association, the necessary additional funds shall be assessed as soon
33 thereafter as permitted by this chapter.

34 (2) The board may provide in the plan of operation a method of
35 allocating funds among claims, whether relating to one (1) or more impaired
36 insurers or insolvent insurers, when the maximum assessment will be

1 insufficient to cover anticipated claims.

2 (3) If the maximum assessment for any subaccount of the life and
3 annuity account in any one (1) year does not provide an amount sufficient to
4 carry out the responsibilities of the association, then pursuant to
5 subdivision (c)(2) of this section, the board shall assess the other
6 subaccounts of the life and annuity account for the necessary additional
7 amount, subject to the maximum stated in subdivision (f)(1) of this section.

8 (g)(1) The board may, by an equitable method as established in the
9 plan of operation, refund to member insurers, in proportion to the
10 contribution of each member insurer to that account, the amount by which the
11 assets of the account exceed the amount the board finds is necessary to carry
12 out during the coming year the obligations of the association with regard to
13 that account, including assets accruing from assignment, subrogation, net
14 realized gains, and income from investments.

15 (2) A reasonable amount may be retained in any account to
16 provide funds for the continuing expenses of the association and for future
17 losses claims.

18 (h) It shall be proper for any member insurer, in determining its
19 premium rates and policyholder dividends as to any kind of insurance or
20 health maintenance organization business within the scope of this chapter, to
21 consider the amount reasonably necessary to meet its assessment obligations
22 under this chapter.

23 (i)(1) The association shall issue to each member insurer paying an
24 assessment under this chapter, other than Class A assessment, a certificate
25 of contribution, in a form prescribed by the ~~Insurance Commissioner~~
26 commissioner, for the amount of the assessment so paid.

27 (2) All outstanding certificates shall be of equal dignity and
28 priority without reference to amounts or dates of issue.

29 (3) A certificate of contribution may be shown by the member
30 insurer in its financial statement as an asset in such form and for such
31 amount, if any, and period of time as the commissioner may approve.

32 (j)(1)(A) A member insurer may offset against its premium tax
33 liability to this state an assessment described in subsection (i) of this
34 section to the extent of twenty percent (20%) of the amount of the assessment
35 for each of the five (5) calendar years following the year in which the
36 assessment was paid.

1 (B) ~~In the event~~ If a member insurer should cease doing
2 business, all uncredited assessments may be credited against its premium tax
3 liability for the year it ceases doing business.

4 (2)(A)(i) A member insurer that is exempt from taxes referenced
5 in subdivision (j)(1) of this section may recoup its assessments by a
6 surcharge on its premiums in a sum reasonably calculated to recoup the
7 assessments over a reasonable period of time, as approved by the
8 commissioner.

9 (ii) Amounts recouped shall not be considered
10 premiums for any other purpose, including the computation of gross premium
11 tax, the medical loss ratio, or agent commission.

12 (iii) If a member insurer collects excess
13 surcharges, the member insurer shall remit the excess amount to the
14 association, and the excess amount shall be applied to reduce future
15 assessments in the appropriate amount.

16 (B) Any sums which are acquired by refund, ~~pursuant to~~
17 under subsection (g) of this section, from the association by member insurers
18 and which have theretofore been offset against premium taxes as provided in
19 subdivision (j)(1)(A) of this section, shall be paid by such insurers to this
20 state ~~in such manner~~ as the tax authorities may require.

21 ~~(B)(C)~~ The association shall notify the commissioner that
22 ~~such~~ the refunds have been made.

23
24 23-96-116. Plan of operation.

25 (a)(1)(A) The Arkansas Life and Health Insurance Guaranty Association
26 shall submit to the Insurance Commissioner a plan of operation and any
27 amendments thereto necessary or suitable to assure the fair, reasonable, and
28 equitable administration of the Arkansas Life and Health Insurance Guaranty
29 Association.

30 (B) The plan of operation and any amendments ~~thereto~~ to
31 the plan of operation shall become effective upon the commissioner's written
32 approval or unless he or she has not disapproved it within thirty (30) days.

33 (2)(A) If the Arkansas Life and Health Insurance Guaranty
34 Association fails to submit a suitable plan of operation within one hundred
35 twenty (120) days following March 9, 1989, or if at any time thereafter the
36 Arkansas Life and Health Insurance Guaranty Association fails to submit

1 suitable amendments to the plan of operation, the commissioner shall, after
2 notice and hearing, adopt and promulgate such reasonable rules as are
3 necessary or advisable to ~~effectuate the provisions of~~ this chapter.

4 (B) Such rules shall continue in force until modified by
5 the commissioner or superseded by a plan submitted by the Arkansas Life and
6 Health Insurance Guaranty Association and approved by the commissioner.

7 (b) All member insurers shall comply with the plan of operation.

8 (c) ~~The plan of operation shall, in~~ In addition to other requirements
9 enumerated ~~elsewhere~~ in this chapter, the plan of operation shall:

10 (1) Establish procedures for handling the assets of the Arkansas
11 Life and Health Insurance Guaranty Association;

12 (2) Establish the amount and method of reimbursing members of
13 the Board of Directors of the Arkansas Life and Health Insurance Guaranty
14 Association under § 23-96-109(b);

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

17 (4) Establish procedures for records to be kept of all financial
18 transactions of the Arkansas Life and Health Insurance Guaranty Association,
19 its agents, and the board;

20 (5) Establish the procedures whereby selections for the board
21 will be made and submitted to the commissioner;

22 (6) Establish any additional procedures for assessments under §
23 23-96-115; and

24 (7) Contain additional provisions necessary or proper for the
25 execution of the powers and duties of the Arkansas Life and Health Insurance
26 Guaranty Association.

27 (d)(1)(A) The plan of operation may provide that any or all powers and
28 duties of the Arkansas Life and Health Insurance Guaranty Association, except
29 those under § 23-96-114(c)(3) and § 23-96-115, may be delegated to the State
30 Insurance Department or to a corporation, association, organization, or other
31 entity which performs or will perform functions similar to those of this
32 association, or its equivalent, in two (2) or more states.

33 (B) Such a corporation, association, organization, or
34 other entity, including, as applicable, the department, shall be reimbursed
35 for any payments made on behalf of the Arkansas Life and Health Insurance
36 Guaranty Association and shall be paid for its performance of any function of

1 the Arkansas Life and Health Insurance Guaranty Association.

2 (2) A delegation under this subsection shall take effect only
3 with the approval of both the board and the commissioner, and may be made
4 only to a corporation, association, organization or other entity, including
5 the department, which extends protection not substantially less favorable and
6 effective than that provided by this chapter.

7
8 23-96-117. Detection and prevention of insolvencies or impairments.

9 To aid in the detection and prevention of member insurer insolvencies
10 or impairments:

11 (1) ~~It shall be the duty of the~~ The Insurance Commissioner
12 shall:

13 (A)(i) ~~To notify~~ Notify the commissioners of all the other
14 states, territories of the United States, and the District of Columbia when
15 he or she takes any of the following actions against a member insurer:

16 (a) Revocation of license;

17 (b) Suspension of license; or

18 (c) ~~Makes any formal order that such company~~
19 the member insurer restrict its premium writing, obtain additional
20 contributions to surplus, withdraw from the state, reinsure all or any part
21 of its business, or increase capital, surplus, or any other account for the
22 security of policy owners, contract owners, certificate holders, or
23 creditors.

24 (ii) ~~Such~~ The notice shall be mailed to all
25 commissioners within thirty (30) days following the action taken or the date
26 on which ~~such~~ the action occurs;

27 (B)(i) ~~To report~~ Report to the Board of Directors of the
28 Arkansas Life and Health Insurance Guaranty Association when he or she has
29 taken any of the actions ~~set forth~~ stated in subdivision (1)(A) of this
30 section or has received a report from any other commissioner indicating that
31 any such action has been taken in another state.

32 (ii) ~~Such~~ The report to the board shall contain all
33 significant details of the action taken or the report received from another
34 commissioner;

35 (C) ~~To report~~ Report to the board when he or she has
36 reasonable cause to believe from any examination, whether completed or in

1 process, of any member insurer that the insurer may be an impaired insurer or
2 insolvent insurer; and

3 (D)(i) ~~To furnish~~ Furnish to the board the National
4 Association of Insurance Commissioners' Insurance Regulatory Information
5 System (IRIS) ratios and listings of companies not included in the ratios
6 developed by the National Association of Insurance Commissioners, and the
7 board may use the information contained therein in carrying out its duties
8 and responsibilities under this section.

9 (ii) The report and the information contained
10 therein shall be kept confidential by the board until such time as made
11 public by the Insurance Commissioner or other lawful authority;

12 (2) The Insurance Commissioner may seek the advice and
13 recommendations of the board concerning any matter affecting his or her
14 duties and responsibilities regarding the financial condition of member
15 insurers, ~~and companies~~ insurers, or health maintenance organizations seeking
16 admission to transact ~~insurance~~ business in this state; and

17 (3)~~(A)~~ ~~The board may, upon majority vote,~~ Upon majority vote,
18 the board may:

19 (A)(i) ~~make~~ Make reports and recommendations to the
20 Insurance Commissioner upon any matter germane to the solvency, liquidation,
21 rehabilitation, or conservation of any member insurer or germane to the
22 solvency of any ~~company~~ insurer or health maintenance organization seeking to
23 do ~~an insurance~~ business in this state.

24 ~~(B)(ii) Such~~ The reports and recommendations ~~shall~~
25 ~~not be considered~~ are not public documents;

26 ~~(4)(B)~~ ~~The board may, upon majority vote, notify~~ Notify
27 the Insurance Commissioner of any information indicating any member insurer
28 may be an impaired insurer or insolvent insurer; and

29 ~~(5)(C)~~ ~~The board may, upon majority vote, make~~ Make
30 recommendations to the Insurance Commissioner for the detection and
31 prevention of member insurer insolvencies.

32
33 23-96-118. Duties and powers of ~~commissioner~~ Insurance Commissioner.

34 (a) In addition to the duties and powers enumerated elsewhere in this
35 chapter:

36 (1) The Insurance Commissioner shall:

1 (A) Upon request of the Board of Directors of the Arkansas
2 Life and Health Insurance Guaranty Association, provide the Arkansas Life and
3 Health Insurance Guaranty Association with a statement of the premiums in
4 this and any other appropriate states for each member insurer;

5 (B)(i) When an impairment is declared and the amount of
6 the impairment is determined, serve a demand upon the impaired insurer to
7 make good the impairment within a reasonable time.

8 (ii) Notice to the impaired insurer shall constitute
9 notice to its shareholders, if any.

10 (iii) The failure of the impaired insurer to
11 promptly comply with such a demand shall not excuse the association from the
12 performance of its powers and duties under this chapter; and

13 (C) In any liquidation or rehabilitation proceeding
14 involving a *domestic member insurer*, be appointed as the liquidator or
15 rehabilitator; and

16 (2)(A) The commissioner may suspend or revoke, after notice and
17 hearing, the certificate of authority to transact ~~insurance~~ business in this
18 state of any member insurer which fails to pay an assessment when due or
19 fails to comply with the plan of operation.

20 (B)(i) As an alternative, the commissioner may levy a
21 forfeiture on any member insurer ~~which~~ that fails to pay an assessment when
22 due.

23 (ii) ~~Such~~ The forfeiture shall not exceed five
24 percent (5%) of the unpaid assessment per month, but ~~no~~ a forfeiture shall
25 not be less than one hundred dollars (\$100) per month.

26 (b)(1) A final action of the board or the association may be appealed
27 to the commissioner by any member insurer if the appeal is taken within sixty
28 (60) days of its receipt of notice of the final action's being appealed.

29 (2) If a member company is appealing an assessment, the amount
30 assessed shall be paid to the association and available to meet association
31 obligations during the pendency of an appeal.

32 (3) If the appeal on the assessment is upheld, the amount paid
33 in error or excess shall be returned to the member insurer.

34 (4) Any final action or order of the commissioner shall be
35 subject to judicial review in a court of competent jurisdiction ~~in accordance~~
36 with according to the laws of this state that apply to actions or orders of

1 the commissioner.

2 (c) If the association fails to act within a reasonable period of time
3 as provided in § 23-96-112(a) and §§ 23-96-113 and 23-96-120, the
4 commissioner shall have the powers and duties of the association under this
5 chapter with respect to impaired insurers or insolvent insurers.

6

7 23-96-119. Distributions of ownership rights.

8 (a)(1)(A) ~~Prior to~~ Before the termination of any liquidation,
9 rehabilitation, or conservation proceeding, the court may take into
10 consideration the contributions of the respective parties, including the
11 Arkansas Life and Health Insurance Guaranty Association, the shareholders,
12 contract owners, certificate holders, enrollees, and policy owners of the
13 insolvent insurer, and any other party with a bona fide interest, in making
14 an equitable distribution of the ownership rights of the insolvent insurer.

15 (B) In such a determination, consideration shall be given
16 to the welfare of the policy owners, contract owners, certificate holders,
17 and enrollees of the continuing or successor member insurer.

18 (2) ~~No~~ A distribution to stockholders, if any, of an impaired
19 insurer or insolvent insurer shall not be made until ~~and unless~~ the total
20 amount of valid claims of the association with interest thereon for funds
21 expended in carrying out its powers and duties under §§ 23-96-111 – 23-96-114
22 and 23-96-120 with respect to ~~such an~~ the member insurer have been fully
23 recovered by the association.

24 (b)(1) If an order for liquidation or rehabilitation of ~~an~~ a member
25 insurer domiciled in this state has been entered, the receiver appointed
26 under the order shall have a right to recover on behalf of the member
27 insurer, from any affiliate that controlled it, the amount of distributions,
28 other than stock dividends paid by the member insurer on its capital stock,
29 made at any time during the five (5) years preceding the petition for
30 liquidation or rehabilitation subject to the limitations of subdivisions
31 (b)(2)-(4) of this section.

32 (2) ~~No such distribution shall be~~ Such a distribution is not
33 recoverable if the member insurer shows that, when paid, the distribution was
34 lawful and reasonable and that the member insurer did not know and could not
35 reasonably have known that the distribution might adversely affect the
36 ability of the member insurer to fulfill its contractual obligations.

1 (3)(A) Any person ~~who~~ that was an affiliate that controlled the
2 member insurer at the time the distributions were paid shall be liable up to
3 the amount of distributions ~~he or she~~ the person received.

4 (B) Any person ~~who~~ that was an affiliate that controlled
5 the member insurer at the time the distributions were declared shall be
6 liable up to the amount of distributions ~~he or she~~ the person would have
7 received if ~~they~~ the distributions had been paid immediately.

8 (C) If two (2) or more persons are liable with respect to
9 the same distributions, they shall be jointly and severally liable.

10 (4) The maximum amount recoverable under this subsection shall
11 be the amount needed in excess of all other available assets of the insolvent
12 insurer to pay the contractual obligations of the insolvent insurer.

13 (5) If any person liable under subdivision (b)(3) of this
14 section is insolvent, all ~~its affiliates that controlled it~~ of the affiliates
15 that controlled the person at the time the distribution was paid shall be
16 jointly and severally liable for any resulting deficiency in the amount
17 recovered from the insolvent affiliate.

18
19 23-96-120. Payment of premiums.

20 (a) Nonpayment of premiums within thirty-one (31) days after the date
21 required under the terms of any guaranteed, assumed, alternative, or reissued
22 policy or contract or substitute coverage shall terminate the Arkansas Life
23 and Health Insurance Guaranty Association's obligations under ~~such the~~
24 policy, contract, or coverage under this chapter with respect to ~~such the~~
25 policy, or contract, or coverage, except with respect to any claims incurred
26 or any net cash surrender value which may be due ~~in accordance with the~~
27 ~~provisions of~~ under this chapter.

28 (b) Premiums due for coverage after entry of an order of liquidation
29 of an insolvent insurer shall belong to and be payable at the direction of
30 the association, and the association shall be liable for unearned premiums
31 *due to policy owners or contract owners* arising after the entry of the order.

32
33 23-96-121. Reissuance of terminated coverage.

34 (a) If the Arkansas Life and Health Insurance Guaranty Association
35 elects to reissue terminated coverage at a premium rate different from that
36 charged under the terminated policy or contract, the premium shall be

1 actuarially justified and set by the association ~~in accordance with~~ according
2 to the amount of insurance or coverage provided and the age and class of
3 risk, subject to prior approval of the ~~domiciliary commissioner and the~~
4 ~~receivership court~~ Insurance Commissioner.

5 (b) The association's obligations with respect to coverage under any
6 policy or contract of the impaired insurer or insolvent insurer or under any
7 reissued or alternative policy or contract shall cease on the date ~~such~~ the
8 coverage or policy or contract is replaced by another similar policy or
9 contract by the policy or contract owner, the insured, the enrollee, or the
10 association.

11
12 */s/Rapert*

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15 **APPROVED: 3/20/19**
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