

1 State of Arkansas
2 92nd General Assembly
3 Regular Session, 2019
4

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
12

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 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;

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whose license or certificate of authority in this state may have been suspended, revoked, not renewed, or voluntarily withdrawn, but does not include:

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

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

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

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

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

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

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

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

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

~~(13)~~(14) "Moody's Corporate Bond Yield Average" means the Monthly Average Corporates as published by Moody's Investors Service, Inc., or any successor thereto;

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

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

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

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

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

~~(16)~~(17) "Plan sponsor" means:

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

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

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

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

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

(ii) ~~Provided, "premiums" shall~~ However, "premiums" does not include:

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

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

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

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

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

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

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

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

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

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

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

~~(19)(20)~~ "Receivership court" means the court in the insolvent 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;i

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

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

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

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

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

31 (C) Sixty (60) days after receiving such approval, ~~no a~~
 32 member insurer ~~may~~ shall not deliver a policy or contract described in § 23-
 33 96-107(b) to a policy owner, ~~or~~ contract owner, certificate holder, or
 34 enrollee unless the summary document is delivered to the policy owner, ~~or~~
 35 contract owner, certificate holder, or enrollee at the time of delivery of
 36 the policy or contract ~~except if~~ unless § 23-96-107(c) applies.

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

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

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

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

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

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

17 (3) The disclaimer shall:

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

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

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

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

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

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

36 (G) Provide other information as directed by the

1 commissioner, including ~~but not limited to,~~ without limitation sources of
 2 information about financial conditions of insurers, ~~provided that if~~ the
 3 information is not proprietary and is subject to disclosure under that
 4 state's public records law.

5
 6 23-96-106. Scope of chapter.

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

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

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

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

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

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

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

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

(B) A minimum premium group insurance plan;

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

(D) An administrative services only contract;

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

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

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

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

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

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

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

(A) Claims based on marketing materials;

(B) Claims based on side letters, riders, or other documents that were issued by the member insurer without meeting applicable policy or contract form filing or approval requirements;

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

(D) Extra-contractual claims; or

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

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

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

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

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

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

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

23-96-107. Coverage.

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

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

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

(A) Are residents; or

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

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

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

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

(3) For unallocated annuity contracts specified in subsection (b) of this section, subdivisions (a)(1) and (2) of this section shall not apply, and except as provided in subdivisions (a)(5) and (6) of this section, this chapter shall provide coverage to:

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

(B) Persons who are owners of unallocated annuity

1 contracts issued to or in connection with government lotteries if the owners
2 are residents;

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

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

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

13 (i)~~(a)~~ The contract owner of the structured
14 settlement annuity:

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

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

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

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

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

26 (A) A person who is a payee, or beneficiary, of a contract
27 owner resident of this state, if the payee, or beneficiary, is afforded any
28 coverage by the association of another state; or

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

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

35 (B) In order to avoid duplicate coverage, if a person who
36 would otherwise receive coverage under this chapter is provided coverage

1 under the laws of any other state, the person shall not be provided coverage
2 under this chapter.

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

9 (b)(1) This chapter shall provide coverage to the persons specified in
10 subsection (a) of this section for policies or contracts of direct, nongroup
11 life insurance, ~~accident and~~ health insurance that, for the purposes of this
12 chapter, includes health maintenance organization subscriber contracts and
13 certificates, or ~~annuity policies or contracts~~ annuities for certificates
14 under direct group policies and contracts, and for supplemental contracts to
15 any of these, and for unallocated annuity contracts, in each case issued by
16 member insurers, except as limited by this chapter.

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

19 (A) ~~guaranteed~~ Guaranteed investment contracts,[;]

20 (B) ~~deposit~~ Deposit administration contracts,[;]

21 (C) ~~unallocated~~ Unallocated funding agreements,[;]

22 (D) ~~allocated~~ Allocated funding agreements,[;]

23 (E) ~~structured~~ Structured settlement annuities,[;]

24 (F) ~~annuities~~ Annuities issued to or in connection with
25 government lotteries,[;] and

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

27 (c)(1) ~~No~~ A member insurer or agent ~~may~~ shall not deliver a policy or
28 contract described in subsection (b) of this section and excluded under § 23-
29 96-106(a)(1) from coverage under this chapter unless the member insurer or
30 agent, ~~prior to~~ before or at the time of delivery, gives the policy holder or
31 contract holder a separate written notice which clearly and conspicuously
32 discloses that the policy or contract is not covered by the Arkansas Life and
33 Health Insurance Guaranty Association.

34 (2) The Insurance Commissioner shall by rule specify the form
35 and content of the notice.
36

23-96-108. Immunity.

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

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

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

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

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

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

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

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

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

(C) The association shall perform its functions under the plan of operation established and approved under § 23-96-116 and shall exercise its powers through a board of directors established under subsection (b) of this section.

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

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

(3) The association shall be subject to examination and

1 regulation by the commissioner.

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

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

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

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

12 (i) Life insurance account;

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

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

21 (B) The accident and health insurance account.

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

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

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

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

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

36 (3) Members of the board may be reimbursed from the assets of

1 the association for expenses incurred by them as members of the board, but
 2 members of the board shall not otherwise be compensated by the association
 3 for their services.

4
 5 23-96-110. Powers and duties of association.

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

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

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

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

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

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

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

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

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

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

33 (8) Request information from a person seeking coverage from the
 34 Arkansas Life and Health Insurance Guaranty Association in order to aid the
 35 Arkansas Life and Health Insurance Guaranty Association in determining its
 36 obligations under this chapter with respect to the person, and the person

1 shall promptly comply with the request; ~~and~~

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

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

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

14 (c)(1)(A) The Arkansas Life and Health Insurance Guaranty Association
 15 shall have standing to appear or intervene before any court or agency in this
 16 state with jurisdiction over an impaired insurer or insolvent insurer
 17 concerning which the Arkansas Life and Health Insurance Guaranty Association
 18 is or may become obligated under this chapter or with jurisdiction over any
 19 person or property against whom the Arkansas Life and Health Insurance
 20 Guaranty Association may have rights through subrogation or otherwise.

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

25 (C) ~~Such standing shall extend~~ Standing under this
 26 subdivision (c)(1) extends to all matters germane to the powers and duties of
 27 the Arkansas Life and Health Insurance Guaranty Association, including, ~~but~~
 28 ~~not limited to,~~ without limitation proposals for reinsuring, reissuing,
 29 modifying, or guaranteeing the policies or contracts of the impaired insurer
 30 or insolvent insurer and the determination of the policies or contracts and
 31 contractual obligations.

32 (2) The Arkansas Life and Health Insurance Guaranty Association
 33 shall also have the right to appear or intervene before a court or agency in
 34 another state with jurisdiction over an impaired insurer or insolvent insurer
 35 for which the Arkansas Life and Health Insurance Guaranty Association is or
 36 may become obligated or with jurisdiction over any person or property against

1 whom the Arkansas Life and Health Insurance Guaranty Association may have
2 rights through subrogation or otherwise.

3 ~~(d) The Arkansas Life and Health Insurance Guaranty Association may~~
4 ~~join an organization of one (1) or more other state associations of similar~~
5 ~~purposes, to~~ To further the purposes and administer the powers and duties of
6 the Arkansas Life and Health Insurance Guaranty Association, the Arkansas
7 Life and Health Insurance Guaranty Association may join an organization of
8 one (1) or more other state associations of similar purposes.

9 (e)(1)(A) Records shall be kept of all meetings of the Board of
10 Directors of the Arkansas Life and Health Insurance Guaranty Association to
11 discuss the activities of the Arkansas Life and Health Insurance Guaranty
12 Association in carrying out its powers and duties under §§ 23-96-111 – 23-96-
13 114 and 23-96-120.

14 (B) The records of the Arkansas Life and Health Insurance
15 Guaranty Association with respect to an impaired insurer or insolvent insurer
16 shall not be disclosed ~~prior to~~ before the termination of a liquidation,
17 rehabilitation, or conservation proceeding involving the impaired insurer or
18 insolvent insurer, upon the termination of the impairment or insolvency of
19 the insurer, or upon the order of a court of competent jurisdiction.

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

23 (f)(1)(A)(i) At any time within one hundred eighty (180) days of the
24 date of the order of liquidation, the Arkansas Life and Health Insurance
25 Guaranty Association may elect to succeed to the rights and obligations of
26 the ceding member insurer that relate to policies, contracts, or annuities
27 covered, in whole or in part, by the Arkansas Life and Health Insurance
28 Guaranty Association, in each case under any one (1) or more reinsurance
29 contracts entered into by the insolvent insurer and its reinsurers and
30 selected by the Arkansas Life and Health Insurance Guaranty Association.

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

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

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

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

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

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

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

(b) The Arkansas Life and Health Insurance Guaranty Association may charge policies, contracts, or annuities covered in part by the Arkansas Life and Health Insurance Guaranty Association, through reasonable allocation methods, the costs for reinsurance in excess of the obligations of the Arkansas Life and Health Insurance Guaranty Association and shall provide notice and an accounting of these charges to the liquidator;

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

1 the Arkansas Life and Health Insurance Guaranty Association~~r~~.

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

7 ~~(a)(1)~~ The amount received by the
 8 Arkansas Life and Health Insurance Guaranty Association; and

9 ~~(b)(2)~~ The excess of the amount received
 10 by the Arkansas Life and Health Insurance Guaranty Association over the
 11 amount equal to the benefits paid by the Arkansas Life and Health Insurance
 12 Guaranty Association on account of the policy, contract, or annuity less the
 13 retention of the insurer applicable to the loss or event;

14 ~~(iii)(a)~~ Within thirty (30) days following the
 15 Arkansas Life and Health Insurance Guaranty Association's election, the
 16 election date, the Arkansas Life and Health Insurance Guaranty Association
 17 and each reinsurer under contracts assumed by the Arkansas Life and Health
 18 Insurance Guaranty Association shall calculate the net balance due to or from
 19 the Arkansas Life and Health Insurance Guaranty Association under each
 20 reinsurance contract as of the election date with respect to policies,
 21 contracts, or annuities covered, in whole or in part, by the Arkansas Life
 22 and Health Insurance Guaranty Association, which calculation shall give full
 23 credit to all items paid by either the member insurer or its receiver or the
 24 reinsurer prior to the election date.

25 ~~(b)~~ The reinsurer shall pay the receiver any
 26 amounts due for losses or events ~~prior to~~ before the date of the order of
 27 liquidation, subject to any set-off for premiums unpaid for periods ~~prior to~~
 28 before the date, and the Arkansas Life and Health Insurance Guaranty
 29 Association or reinsurer shall pay any remaining balance due the other, in
 30 each case within five (5) days of the completion of the aforementioned
 31 calculation.

32 ~~(c)~~ Any disputes over the amounts due to
 33 either the Arkansas Life and Health Insurance Guaranty Association or the
 34 reinsurer shall be resolved by arbitration pursuant to the terms of the
 35 affected reinsurance contracts or, if the contract contains no arbitration
 36 clause, as otherwise provided by law.

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

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

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

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

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

(i) Neither the Arkansas Life and Health Insurance Guaranty Association nor the reinsurer shall have any rights or obligations under reinsurance contracts that the Arkansas Life and Health Insurance Guaranty Association has the right to assume under subdivision (f)(1) of this section, whether for periods ~~prior to~~ before or after the date of the order of liquidation; and

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

(B) ~~Provided that once~~ When the Arkansas Life and Health Insurance Guaranty Association has elected to assume a reinsurance contract,

the parties' rights and obligations shall be governed by subdivision (f)(1) of this section.

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

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

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

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

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

~~(5)(A) The provisions of this~~ This subsection shall supersede ~~the provisions of any law of this state law or of any~~ affected reinsurance agreement or agreements that provide for or require any payment of reinsurance proceeds, on account of losses or events that occur in periods after the coverage date, to the receiver, liquidator, or rehabilitator of the insolvent member insurer.

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

(6) Except as otherwise expressly provided ~~above~~ under

subdivision (f)(1)(C) of this section, nothing herein shall this section does not:

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

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

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

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

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

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

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

(h) ~~Where~~ If the Arkansas Life and Health Insurance Guaranty Association has arranged or offered to provide the benefits of this chapter to a covered person under a plan or arrangement that fulfills the Arkansas Life and Health Insurance Guaranty Association's obligations under this chapter, the person shall not be entitled to benefits from the Arkansas Life and Health Insurance Guaranty Association in addition to or other than those provided under the plan or arrangement.

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

(2) The Arkansas Life and Health Insurance Guaranty Association shall not be required to give an appeal bond in an appeal that relates to a

1 cause of action arising under this chapter.

2
3 23-96-111. Impaired insurers.

4 If a member insurer is an impaired insurer, the Arkansas Life and
5 Health Insurance Guaranty Association ~~may~~, in its discretion and subject to
6 any conditions imposed by the association that do not impair the contractual
7 obligations of the impaired insurer and that are approved by the Insurance
8 Commissioner, may:

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

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

16
17 23-96-112. Insolvent insurers.

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

20 (1)~~(A)~~ Do both of the following:

21 (A) Guarantee, assume, reissue, or reinsure, or cause to
22 be guaranteed, assumed, reissued, or reinsured, the policies or contracts of
23 the insolvent insurer; or

24 ~~(B)~~ Assure assure payment of the contractual obligations
25 of the insolvent insurer; and

26 ~~(C)~~ (B) Provide ~~such~~ the moneys, pledges, loans, notes,
27 guarantees, or other means as are reasonably necessary to discharge such
28 duties; or

29 (2) Provide benefits and coverages in accordance with § 23-96-
30 113.

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

36 (2) As to judgment under any decision, order, verdict, or

1 finding based on default, the association may apply to have ~~such~~ the judgment
 2 set aside by the same court that made ~~such~~ the judgment and shall be
 3 permitted to defend against ~~such~~ the suit on the merits.

4
 5 23-96-113. Authority of association when proceeding under § 23-96-111
 6 or § 23-96-112.

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

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

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

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

24 (B) Make diligent efforts to provide all known insureds,
 25 enrollees, or annuitants, for nongroup policies and contracts, or group
 26 policy or contract owners with respect to group policies and contracts thirty
 27 (30) days' notice of the termination, ~~pursuant to~~ under this subdivision
 28 (a)(1), of the benefits provided; and

29 (C) With respect to nongroup ~~life and accident and health~~
 30 ~~insurance policies and annuities~~ policies and contracts covered by the
 31 association, make available to each known insured, enrollee, or annuitant, or
 32 owner if other than the insured or annuitant, and with respect to an
 33 individual formerly an insured, enrollee, or ~~formerly an~~ annuitant under a
 34 group policy or contract who is not eligible for replacement group coverage,
 35 make available substitute coverage on an individual basis ~~in accordance with~~
 36 ~~the provisions of~~ according to subdivision (a)(2)(A) of this section, if the

1 insureds, enrollees, or annuitants had a right under law or the terminated
 2 policy, contract, or annuity to convert coverage to individual coverage or to
 3 continue an individual policy, contract, or annuity in force until a
 4 specified age or for a specified time, during which the insurer or health
 5 maintenance organization had no right unilaterally to make changes in any
 6 provisions of the policy, contract, or annuity or had a right only to make
 7 changes in premium by class.

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

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

17 (C) The association may reinsure any alternative or
 18 reissued policy or contract.

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

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

25 (B)(i) Alternative policies or contracts shall contain at
 26 least the minimum statutory provisions required in this state and provide
 27 benefits that shall not be unreasonable in relation to the premium charged.

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

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

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

1 association.

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

6 (c)(1) In carrying out its duties under §§ 23-96-111 and § 23-96-
7 112(a), the association may:

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

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

21 (ii) In addition, in the event of a temporary
22 moratorium or moratorium charge imposed by the receivership court on payment
23 of cash values or policy loans, or on any other right to withdraw funds held
24 in conjunction with policies or contracts, out of the assets of the impaired
25 insurer or insolvent insurer, the association may defer the payment of cash
26 values, policy loans, or other rights by the association for the period of
27 the moratorium or moratorium charge imposed by the receivership court, except
28 for claims covered by the association to be paid ~~in accordance with~~ according
29 to a hardship procedure established by the liquidator or rehabilitator and
30 approved by the receivership court.

31 ~~(3)~~(2)(A) A deposit in this state, held pursuant to law or
32 required by the ~~Insurance Commissioner~~ commissioner for the benefit of
33 creditors, including policy or contract owners, not turned over to the
34 domiciliary liquidator upon the entry of a final order of liquidation or
35 order approving a rehabilitation plan of ~~an~~ a member insurer domiciled in
36 this state or in a reciprocal state, ~~pursuant to~~ under § 23-68-115, shall be

promptly paid to the association.

(B) The association:

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

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

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

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

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

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

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

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

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

(3) The alternative policy or contract is substantially similar

1 to the replaced policy or contract in all other material terms.

2
3 23-96-114. Liability for benefits – Assignment or subrogation of
4 rights.

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

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

11 (2)~~(A)~~ With respect to:
12 (A) ~~any~~ Any one (1) life, regardless of the number of
13 policies or contracts:

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

17 (ii) Five hundred thousand dollars (\$500,000) in
18 ~~accident and~~ health insurance benefits, including any net cash surrender and
19 net cash withdrawal values, provided coverage for disability insurance
20 benefits and long term care insurance benefits shall not exceed three hundred
21 thousand dollars (\$300,000); or

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

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

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

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

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

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

(2)(A) With respect to either:

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

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

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

(3)(A) The limitations ~~set forth~~ stated in this subsection are limitations on the benefits for which the Arkansas Life and Health Insurance

1 Guaranty Association is obligated before taking into account either its
 2 subrogation and assignment rights or the extent to which those benefits could
 3 be provided out of the assets of the impaired insurer or insolvent insurer
 4 attributable to covered policies.

5 (B) The costs of the Arkansas Life and Health Insurance
 6 Guaranty Association's obligations under this chapter may be met by the use
 7 of assets attributable to covered policies or reimbursed to the Arkansas Life
 8 and Health Insurance Guaranty Association ~~pursuant to~~ under its subrogation
 9 and assignment rights.

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

14 (5) In performing its obligations to provide coverage under §
 15 23-96-111, the Arkansas Life and Health Insurance Guaranty Association shall
 16 not be required to guarantee, assume, reinsure, reissue, or perform, or cause
 17 to be guaranteed, assumed, reinsured, reissued, or performed, the contractual
 18 obligations of the insolvent insurer or impaired insurer under a covered
 19 policy or covered contract that do not materially affect the economic values
 20 or economic benefits of the covered policy or covered contract.

21 (c)(1)(A) ~~Any~~ A person receiving benefits under this chapter shall be
 22 deemed to have assigned the rights under, and any causes of action against
 23 any person for losses arising under, resulting from or otherwise relating to,
 24 the covered policy or covered contract to the Arkansas Life and Health
 25 Insurance Guaranty Association to the extent of the benefits received because
 26 of this chapter, whether the benefits are payments of or on account of
 27 contractual obligations, continuation of coverage, or provision of substitute
 28 or alternative policies, contracts, or coverages.

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

34 (2) The subrogation rights of the Arkansas Life and Health
 35 Insurance Guaranty Association under this subsection shall have the same
 36 priority against the assets of the impaired insurer or insolvent insurer as

1 that possessed by the person entitled to receive benefits under this chapter.

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

8 (4) If the preceding provisions of this subsection are invalid
9 or ineffective with respect to any person or claim for any reason, the amount
10 payable by the Arkansas Life and Health Insurance Guaranty Association with
11 respect to the related covered obligations shall be reduced by the amount
12 realized by any other person with respect to the person or claim that is
13 attributable to the policies or contracts, or portion thereof, covered by the
14 Arkansas Life and Health Insurance Guaranty Association.

15 (5) If the Arkansas Life and Health Insurance Guaranty
16 Association has provided benefits with respect to a covered obligation and a
17 person recovers amounts as to which the Arkansas Life and Health Insurance
18 Guaranty Association has rights as described in subdivisions (c)(1)-(4) of
19 this section, the person shall pay to the Arkansas Life and Health Insurance
20 Guaranty Association the portion of the recovery attributable to the policies
21 or contracts, or portion thereof, covered by the Arkansas Life and Health
22 Insurance Guaranty Association.

23 (d)(1)(A) For the purpose of carrying out its obligations under this
24 chapter, the Arkansas Life and Health Insurance Guaranty Association shall be
25 deemed to be a creditor of the impaired insurer or insolvent insurer to the
26 extent of assets attributable to covered policies or contracts reduced by any
27 amounts to which the Arkansas Life and Health Insurance Guaranty Association
28 is entitled as subrogee ~~pursuant to~~ under subsection (c) of this section.

29 (B) Assets of the impaired insurer or insolvent insurer
30 attributable to covered policies or contracts shall be used to continue all
31 covered policies and pay all contractual obligations of the impaired insurer
32 or insolvent insurer as required by this chapter.

33 (2) As used in this subsection, "Assets assets of the impaired
34 insurer or insolvent insurer attributable to covered policies or contracts",
35 ~~as used in this subsection, are~~ means that proportion of the assets which the
36 reserves that should have been established for such policies or contracts

1 bear to the reserves that should have been established for all policies of
2 insurance or health benefit plans written by the impaired insurer or
3 insolvent insurer.

4 (e)(1) As a creditor of the impaired insurer or insolvent insurer as
5 established in subsection (d) of this section and consistent with § 23-68-
6 126, the Arkansas Life and Health Insurance Guaranty Association and other
7 similar associations shall be entitled to receive a disbursement of assets
8 out of the marshaled assets, from time to time as the assets become
9 available, to reimburse it, as a credit against contractual obligations under
10 this chapter.

11 (2) If the liquidator has not, within one hundred twenty (120)
12 days of a final determination of insolvency of ~~an~~ a member insurer by the
13 receivership court, made an application to the court for the approval of a
14 proposal to disburse assets out of marshaled assets to guaranty associations
15 having obligations because of the insolvency, then the Arkansas Life and
16 Health Insurance Guaranty Association shall be entitled to make application
17 to the receivership court for approval of its own proposal to disburse these
18 assets.

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

26 (g) It is the intent of the General Assembly that coverage provided by
27 the Arkansas Life and Health Insurance Guaranty Association for annuity
28 contracts executed ~~pursuant to~~ under § 11-9-210 shall not be affected by the
29 fact that the annuity payments are sent to the Workers' Compensation
30 Commission for distribution to the claimants and beneficiaries, and that any
31 funds provided by the Arkansas Life and Health Insurance Guaranty Association
32 for payment to claimants or beneficiaries for whom annuity contracts are
33 executed under § 11-9-210 shall be sent to the commission for distribution to
34 claimants or beneficiaries.

35
36 23-96-115. Assessments – Tax credits.

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

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

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

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

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

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

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

(ii) If pro rata, the board ~~of directors~~ may provide that ~~it~~ the Class A assessment be credited against future Class B assessments. ~~The total of all non-pro rata assessments shall not exceed one hundred fifty dollars (\$150) per member insurer in any one (1) calendar year.~~

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

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

1 (ii) The methodology shall provide for fifty percent
2 (50%) of the assessment to be allocated to health member insurers and fifty
3 percent (50%) of the assessment to be allocated to life and annuity member
4 insurers.

5 (2) Class B assessments against member insurers for each account
6 shall be in the proportion that the premiums received on business in this
7 state by each assessed member insurer or policies or contracts covered by
8 each account for the three (3) most recent calendar years for which
9 information is available preceding the year in which the member insurer
10 became insolvent, or in the case of an assessment with respect to an impaired
11 insurer, the three (3) most recent calendar years for which information is
12 available preceding the year in which the insurer became impaired, bears to
13 such premiums received on business in this state for such calendar years by
14 all assessed member insurers.

15 (3) Assessments for funds to meet the requirements of the
16 association with respect to an impaired insurer or insolvent insurer shall
17 not be authorized or called until necessary to implement the purpose of this
18 chapter.

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

23 (2) The association shall notify each member insurer of its
24 anticipated pro rata share of an authorized assessment not yet called within
25 one hundred eighty (180) days after the assessment is authorized.

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

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

35 (3) Once the conditions that caused a deferral have been removed
36 or rectified, the member insurer shall pay all assessments that were deferred

1 ~~pursuant to~~ under a repayment plan approved by the association.

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

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

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

22 (2) The board may provide in the plan of operation a method of
23 allocating funds among claims, whether relating to one (1) or more impaired
24 insurers or insolvent insurers, when the maximum assessment will be
25 insufficient to cover anticipated claims.

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

32 (g)(1) The board may, by an equitable method as established in the
33 plan of operation, refund to member insurers, in proportion to the
34 contribution of each member insurer to that account, the amount by which the
35 assets of the account exceed the amount the board finds is necessary to carry
36 out during the coming year the obligations of the association with regard to

that account, including assets accruing from assignment, subrogation, net realized gains, and income from investments.

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

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

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

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

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

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

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

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

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

(iii) If a member insurer collects excess

1 surcharges, the insurer shall remit the excess amount to the association, and
 2 the excess amount shall be applied to reduce future assessments in the
 3 appropriate amount.

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

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

11
 12 23-96-116. Plan of operation.

13 (a)(1)(A) The Arkansas Life and Health Insurance Guaranty Association
 14 shall submit to the Insurance Commissioner a plan of operation and any
 15 amendments thereto necessary or suitable to assure the fair, reasonable, and
 16 equitable administration of the Arkansas Life and Health Insurance Guaranty
 17 Association.

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

21 (2)(A) If the Arkansas Life and Health Insurance Guaranty
 22 Association fails to submit a suitable plan of operation within one hundred
 23 twenty (120) days following March 9, 1989, or if at any time thereafter the
 24 Arkansas Life and Health Insurance Guaranty Association fails to submit
 25 suitable amendments to the plan of operation, the commissioner shall, after
 26 notice and hearing, adopt and promulgate such reasonable rules as are
 27 necessary or advisable to ~~effectuate the provisions of~~ this chapter.

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

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

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

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

36 (2) Establish the amount and method of reimbursing members of

1 the Board of Directors of the Arkansas Life and Health Insurance Guaranty
2 Association under § 23-96-109(b);

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

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

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

10 (6) Establish any additional procedures for assessments under §
11 23-96-115; and

12 (7) Contain additional provisions necessary or proper for the
13 execution of the powers and duties of the Arkansas Life and Health Insurance
14 Guaranty Association.

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

21 (B) Such a corporation, association, organization, or
22 other entity, including, as applicable, the department, shall be reimbursed
23 for any payments made on behalf of the Arkansas Life and Health Insurance
24 Guaranty Association and shall be paid for its performance of any function of
25 the Arkansas Life and Health Insurance Guaranty Association.

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

31
32 23-96-117. Detection and prevention of insolvencies or impairments.

33 To aid in the detection and prevention of member insurer insolvencies
34 or impairments:

35 (1) ~~It shall be the duty of the~~ The Insurance Commissioner
36 shall:

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

- (a) Revocation of license;
- (b) Suspension of license; or
- (c) Makes any formal order that ~~such company~~ the member insurer restrict its premium writing, obtain additional contributions to surplus, withdraw from the state, reinsure all or any part of its business, or increase capital, surplus, or any other account for the security of policy owners, contract owners, certificate holders, or creditors.

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

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

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

(C) ~~To report~~ Report to the board when he or she has reasonable cause to believe from any examination, whether completed or in process, of any member insurer that the insurer may be an impaired insurer or insolvent insurer; and

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

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

(2) The Insurance Commissioner may seek the advice and

1 recommendations of the board concerning any matter affecting his or her
 2 duties and responsibilities regarding the financial condition of member
 3 insurers, ~~and companies~~ insurers, or health maintenance organizations seeking
 4 admission to transact ~~insurance~~ business in this state; and

5 (3)(A) ~~The board may, upon majority vote,~~ Upon majority vote,
 6 the board may:

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

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

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

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

20
 21 23-96-118. Duties and powers of ~~commissioner~~ Insurance Commissioner.

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

24 (1) The Insurance Commissioner shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

23-96-119. Distributions of ownership rights.

(a)(1)(A) ~~Prior to~~ Before the termination of any liquidation, rehabilitation, or conservation proceeding, the court may take into consideration the contributions of the respective parties, including the Arkansas Life and Health Insurance Guaranty Association, the shareholders, contract owners, certificate holders, enrollees, and policy owners of the

insolvent insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of the insolvent insurer.

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

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

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

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

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

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

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

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

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

23-96-120. Payment of premiums.

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

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

23-96-121. Reissuance of terminated coverage.

(a) If the Arkansas Life and Health Insurance Guaranty Association elects to reissue terminated coverage at a premium rate different from that charged under the terminated policy or contract, the premium shall be actuarially justified and set by the association ~~in accordance with~~ according to the amount of insurance or coverage provided and the age and class of risk, subject to prior approval of the ~~domiciliary commissioner and the receivership court~~ Insurance Commissioner.

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