

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5958

57th Legislature
2001 Regular Session

Passed by the Senate March 10, 2001
YEAS 48 NAYS 0

President of the Senate

Passed by the House April 4, 2001
YEAS 92 NAYS 0

**Speaker of the
House of Representatives**

**Speaker of the
House of Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Tony M. Cook, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5958** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5958

Passed Legislature - 2001 Regular Session

State of Washington

57th Legislature

2001 Regular Session

By Senate Committee on Labor, Commerce & Financial Institutions
(originally sponsored by Senators Prentice and Winsley)

READ FIRST TIME 03/05/01.

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

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

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

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

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

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

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

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

15 (i) Are residents; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (i) A portion of a policy or contract not guaranteed by the
13 insurer, or under which the risk is borne by the policy or contract
14 owner;

15 (ii) A policy or contract of reinsurance, unless assumption
16 certificates have been issued pursuant to the reinsurance policy or
17 contract;

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

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

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

36 (iv) A portion of a policy or contract issued to a plan or program
37 of an employer, association, or other person to provide life,
38 disability, or annuity benefits to its employees, members, or others,
39 to the extent that the plan or program is self-funded or uninsured,

1 including but not limited to benefits payable by an employer,
2 association, or other person under:

3 (A) A multiple employer welfare arrangement as defined in 29 U.S.C.
4 Sec. 1144;

5 (B) A minimum premium group insurance plan;

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

7 (D) An administrative services only contract;

8 (v) A portion of a policy or contract to the extent that it
9 provides for:

10 (A) Dividends or experience rating credits;

11 (B) Voting rights; or

12 (C) Payment of any fees or allowances to any person, including the
13 policy or contract owner, in connection with the service to or
14 administration of the policy or contract;

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

18 (vii) An unallocated annuity contract issued to or in connection
19 with a benefit plan protected under the federal pension benefit
20 guaranty corporation, regardless of whether the federal pension benefit
21 guaranty corporation has yet become liable to make any payments with
22 respect to the benefit plan;

23 (viii) A portion of an unallocated annuity contract that is not
24 issued to or in connection with a specific employee, union, or
25 association of natural persons benefit plan or a government lottery;

26 (ix) A portion of a policy or contract to the extent that the
27 assessments required by section 9 of this act with respect to the
28 policy or contract are preempted by federal or state law;

29 (x) An obligation that does not arise under the express written
30 terms of the policy or contract issued by the insurer to the contract
31 owner or policy owner, including without limitation:

32 (A) Claims based on marketing materials;

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

36 (C) Misrepresentations of or regarding policy benefits;

37 (D) Extra-contractual claims; or

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

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

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

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

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

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

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

31 (B) In disability insurance benefits:

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

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

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

1 (C) Five hundred thousand dollars in the present value of annuity
2 benefits, including net cash surrender and net cash withdrawal values,
3 except as provided in (ii), (iii), and (v) of this subsection (3)(b);
4 (ii) With respect to each individual participating in a
5 governmental retirement benefit plan established under section 401,
6 403(b), or 457 of the United States Internal Revenue Code covered by an
7 unallocated annuity contract or the beneficiaries of each such
8 individual if deceased, in the aggregate, one hundred thousand dollars
9 in present value annuity benefits, including net cash surrender and net
10 cash withdrawal values;
11 (iii) With respect to each payee of a structured settlement
12 annuity, or beneficiary or beneficiaries of the payee if deceased, five
13 hundred thousand dollars in present value annuity benefits, in the
14 aggregate, including net cash surrender and net cash withdrawal values,
15 if any;
16 (iv) However, in no event shall the association be obligated to
17 cover more than: (A) An aggregate of five hundred thousand dollars in
18 benefits with respect to any one life under (i), (ii), and (iii) of
19 this subsection (3)(b) except with respect to benefits for basic
20 hospital, medical, and surgical insurance and major medical insurance
21 under (i)(B) of this subsection (3)(b), in which case the aggregate
22 liability of the association shall not exceed five hundred thousand
23 dollars with respect to any one individual; or (B) with respect to one
24 owner of multiple nongroup policies of life insurance, whether the
25 policy owner is an individual, firm, corporation, or other person, and
26 whether the persons insured are officers, managers, employees, or other
27 persons, more than five million dollars in benefits, regardless of the
28 number of policies and contracts held by the owner;
29 (v) With respect to either: (A) One contract owner provided
30 coverage under subsection (1)(d)(ii) of this section; or (B) one plan
31 sponsor whose plans own directly or in trust one or more unallocated
32 annuity contracts not included in (ii) of this subsection (3)(b), five
33 million dollars in benefits, irrespective of the number of contracts
34 with respect to the contract owner or plan sponsor. However, in the
35 case where one or more unallocated annuity contracts are covered
36 contracts under this chapter and are owned by a trust or other entity
37 for the benefit of two or more plan sponsors, coverage shall be
38 afforded by the association if the largest interest in the trust or
39 entity owning the contract or contracts is held by a plan sponsor whose

1 principal place of business is in this state and in no event shall the
2 association be obligated to cover more than five million dollars in
3 benefits with respect to all these unallocated contracts; or

4 (vi) The limitations set forth in this subsection are limitations
5 on the benefits for which the association is obligated before taking
6 into account either its subrogation and assignment rights or the extent
7 to which those benefits could be provided out of the assets of the
8 impaired or insolvent insurer attributable to covered policies. The
9 costs of the association's obligations under this chapter may be met by
10 the use of assets attributable to covered policies or reimbursed to the
11 association pursuant to its subrogation and assignment rights.

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

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

21 NEW SECTION. **Sec. 5.** DEFINITIONS. The definitions in this
22 section apply throughout this chapter unless the context clearly
23 requires otherwise.

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

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

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

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

35 (5) "Called assessment" or the term "called" when used in the
36 context of assessments means that a notice has been issued by the
37 association to member insurers requiring that an authorized assessment

1 be paid within the time frame set forth within the notice. An
2 authorized assessment becomes a called assessment when notice is mailed
3 by the association to member insurers.

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

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

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

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

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

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

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

27 (a) A health care service contractor, whether profit or nonprofit;

28 (b) A health maintenance organization;

29 (c) A fraternal benefit society;

30 (d) A mandatory state pooling plan;

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

33 (f) An insurance exchange;

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

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

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

1 (14) "Owner" of a policy or contract and "policy owner" and
2 "contract owner" mean the person who is identified as the legal owner
3 under the terms of the policy or contract or who is otherwise vested
4 with legal title to the policy or contract through a valid assignment
5 completed in accordance with the terms of the policy or contract and
6 properly recorded as the owner on the books of the insurer. "Owner,"
7 "contract owner," and "policy owner" do not include persons with a mere
8 beneficial interest in a policy or contract.

9 (15) "Person" means an individual, corporation, limited liability
10 company, partnership, association, governmental body or entity, or
11 voluntary organization.

12 (16) "Plan sponsor" means:

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

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

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

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

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

37 (b) With respect to multiple nongroup policies of life insurance
38 owned by one owner, whether the policy owner is an individual, firm,
39 corporation, or other person, and whether the persons insured are

1 officers, managers, employees, or other persons, premiums in excess of
2 five million dollars with respect to these policies or contracts,
3 regardless of the number of policies or contracts held by the owner.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 section 7 of this act. For purposes of administration and assessment,
2 the association shall maintain two accounts:

3 (a) The life insurance and annuity account which includes the
4 following subaccounts:

5 (i) Life insurance account;

6 (ii) Annuity account which includes annuity contracts owned by a
7 governmental retirement plan, or its trustee, established under section
8 401, 403(b), or 457 of the United States Internal Revenue Code, but
9 otherwise excludes unallocated annuities; and

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

14 (b) The disability insurance account.

15 (2) The association is under the immediate supervision of the
16 commissioner and is subject to the applicable provisions of the
17 insurance laws of this state. Meetings or records of the association
18 may be opened to the public upon majority vote of the board of
19 directors of the association.

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

26 Vacancies on the board are filled for the remaining period of the
27 term by a majority vote of the remaining board members, subject to the
28 approval of the commissioner.

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

32 (3) Members of the board may be reimbursed from the assets of the
33 association for expenses incurred by them as members of the board of
34 directors but members of the board are not otherwise compensated by the
35 association for their services.

36 NEW SECTION. **Sec. 8.** POWERS AND DUTIES OF THE ASSOCIATION. (1)
37 If a member insurer is an impaired insurer, the association may, in its

1 discretion, and subject to any conditions imposed by the association
2 that do not impair the contractual obligations of the impaired insurer
3 and that are approved by the commissioner:

4 (a) Guaranty, assume, or reinsure, or cause to be guaranteed,
5 assumed, or reinsured, any or all of the policies or contracts of the
6 impaired insurer; or

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

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

13 (a)(i)(A) Guaranty, assume, or reinsure, or cause to be guaranteed,
14 assumed, or reinsured, the policies or contracts of the insolvent
15 insurer; or

16 (B) Assure payment of the contractual obligations of the insolvent
17 insurer; and

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

20 (b) Provide benefits and coverages in accordance with the following
21 provisions:

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

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

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

37 (ii) Make diligent efforts to provide all known insureds or
38 annuitants, for nongroup policies and contracts, or group policy owners

1 with respect to group policies and contracts, thirty days notice of the
2 termination of the benefits provided;

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

17 (iv)(A) The substitute coverage under (b)(iii) of this subsection,
18 must be offered through a solvent, admitted insurer. In the
19 alternative, the association in its discretion, and subject to any
20 conditions imposed by the association and approved by the commissioner,
21 may reissue the terminated coverage;

22 (B) Substituted coverage must be offered without requiring evidence
23 of insurability, and may not provide for any waiting period or
24 exclusion that would not have applied under the terminated policy;

25 (C) The association may reinsure any reissued policy;

26 (v) If the association elects to reissue terminated coverage at a
27 premium rate different from that charged under the terminated policy,
28 the premium must be set by the association in accordance with the
29 amount of insurance provided and the age and class of risk, subject to
30 approval of the domiciliary insurance commissioner and the receivership
31 court;

32 (vi) The association's obligations with respect to coverage under
33 any policy of the impaired or insolvent insurer or under any reissued
34 policy cease on the date the coverage or policy is replaced by another
35 similar policy by the policy owner, the insured, or the association; or

36 (vii) When proceeding under this subsection (2)(b) with respect to
37 a policy or contract carrying guaranteed minimum interest rates, the
38 association shall assure the payment or crediting of a rate of interest
39 consistent with section 3(2)(b)(iii) of this act.

1 (3) Nonpayment of premiums within thirty-one days after the date
2 required under the terms of any guaranteed, assumed, or reissued policy
3 or contract or substitute coverage terminates the association's
4 obligations under the policy or coverage under this chapter with
5 respect to the policy or coverage, except with respect to any claims
6 incurred or any net cash surrender value which may be due in accordance
7 with the provisions of this chapter.

8 (4) Premiums due for coverage after entry of an order of
9 liquidation of an insolvent insurer belong to and are payable at the
10 direction of the association, and the association is liable for
11 unearned premiums due to policy or contract owners arising after the
12 entry of the order.

13 (5) The protection provided by this chapter does not apply when any
14 guaranty protection is provided to residents of this state by the laws
15 of the domiciliary state or jurisdiction of the impaired or insolvent
16 insurer other than this state.

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

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

28 (b) Subject to approval by a court in this state, impose temporary
29 moratoriums or liens on payments of cash values and policy loans, or
30 any other right to withdraw funds held in conjunction with policies or
31 contracts, in addition to any contractual provisions for deferral of
32 cash or policy loan value. In addition, in the event of a temporary
33 moratorium or moratorium charge imposed by the receivership court on
34 payment of cash values or policy loans, or on any other right to
35 withdraw funds held in conjunction with policies or contracts, out of
36 the assets of the impaired or insolvent insurer, the association may
37 defer the payment of cash values, policy loans, or other rights by the
38 association for the period of the moratorium or moratorium charge
39 imposed by the receivership court, except for claims covered by the

1 association to be paid in accordance with a hardship procedure
2 established by the liquidator or rehabilitator and approved by the
3 receivership court.

4 (7) A deposit in this state, held pursuant to law or required by
5 the commissioner for the benefit of creditors, including policy owners,
6 not turned over to the domiciliary liquidator upon the entry of a final
7 order of liquidation or order approving a rehabilitation plan of an
8 insurer domiciled in this state or in a reciprocal state, under RCW
9 48.31.171, shall be promptly paid to the association. The association
10 is entitled to retain a portion of any amount so paid to it equal to
11 the percentage determined by dividing the aggregate amount of policy
12 owners claims related to that insolvency for which the association has
13 provided statutory benefits by the aggregate amount of all policy
14 owners' claims in this state related to that insolvency and shall remit
15 to the domiciliary receiver the amount so paid to the association and
16 not retained under this subsection. Any amount so paid to the
17 association less the amount not retained by it shall be treated as a
18 distribution of estate assets under RCW 48.31.185 or similar provision
19 of the state of domicile of the impaired or insolvent insurer.

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

24 (9) The association may render assistance and advice to the
25 commissioner, upon the commissioner's request, concerning
26 rehabilitation, payment of claims, continuance of coverage, or the
27 performance of other contractual obligations of an impaired or
28 insolvent insurer.

29 (10) The association has standing to appear or intervene before a
30 court or agency in this state with jurisdiction over an impaired or
31 insolvent insurer concerning which the association is or may become
32 obligated under this chapter or with jurisdiction over any person or
33 property against which the association may have rights through
34 subrogation or otherwise. Standing extends to all matters germane to
35 the powers and duties of the association, including, but not limited
36 to, proposals for reinsuring, modifying, or guaranteeing the policies
37 or contracts of the impaired or insolvent insurer and the determination
38 of the policies or contracts and contractual obligations. The
39 association also has the right to appear or intervene before a court or

1 agency in another state with jurisdiction over an impaired or insolvent
2 insurer for which the association is or may become obligated or with
3 jurisdiction over any person or property against whom the association
4 may have rights through subrogation or otherwise.

5 (11)(a) A person receiving benefits under this chapter is deemed to
6 have assigned the rights under, and any causes of action against any
7 person for losses arising under, resulting from, or otherwise relating
8 to, the covered policy or contract to the association to the extent of
9 the benefits received because of this chapter, whether the benefits are
10 payments of or on account of contractual obligations, continuation of
11 coverage, or provision of substitute or alternative coverages. The
12 association may require an assignment to it of such rights and cause of
13 action by any payee, policy or contract owner, beneficiary, insured, or
14 annuitant as a condition precedent to the receipt of any right or
15 benefits conferred by this chapter upon the person.

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

20 (c) In addition to (a) and (b) of this subsection, the association
21 has all common law rights of subrogation and any other equitable or
22 legal remedy that would have been available to the impaired or
23 insolvent insurer or owner, beneficiary, or payee of a policy or
24 contract with respect to the policy or contracts, including without
25 limitation, in the case of a structured settlement annuity, any rights
26 of the owner, beneficiary, or payee of the annuity, to the extent of
27 benefits received under this chapter, against a person originally or by
28 succession responsible for the losses arising from the personal injury
29 relating to the annuity or payment therefor, excepting any such person
30 responsible solely by reason of serving as an assignee in respect of a
31 qualified assignment under section 130 of the United States Internal
32 Revenue Code.

33 (d) If (a) through (c) of this subsection are invalid or
34 ineffective with respect to any person or claim for any reason, the
35 amount payable by the association with respect to the related covered
36 obligations shall be reduced by the amount realized by any other person
37 with respect to the person or claim that is attributable to the
38 policies, or portion thereof, covered by the association.

1 (e) If the association has provided benefits with respect to a
2 covered obligation and a person recovers amounts as to which the
3 association has rights as described in this subsection, the person
4 shall pay to the association the portion of the recovery attributable
5 to the policies, or portion thereof, covered by the association.

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

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

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

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

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

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

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

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

29 (h) Request information from a person seeking coverage from the
30 association in order to aid the association in determining its
31 obligations under this chapter with respect to the person, and the
32 person shall promptly comply with the request; and

33 (i) Take other necessary or appropriate action to discharge its
34 duties and obligations under this chapter or to exercise its powers
35 under this chapter.

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

1 (14)(a) At any time within one year after the coverage date, which
2 is the date on which the association becomes responsible for the
3 obligations of a member insurer, the association may elect to succeed
4 to the rights and obligations of the member insurer, that accrue on or
5 after the coverage date and that relate to contracts covered, in whole
6 or in part, by the association, under any one or more indemnity
7 reinsurance agreements entered into by the member insurer as a ceding
8 insurer and selected by the association. However, the association may
9 not exercise an election with respect to a reinsurance agreement if the
10 receiver, rehabilitator, or liquidator of the member insurer has
11 previously and expressly disaffirmed the reinsurance agreement. The
12 election is effective when notice is provided to the receiver,
13 rehabilitator, or liquidator and to the affected reinsurers. If the
14 association makes an election, the following provisions apply with
15 respect to the agreements selected by the association:

16 (i) The association is responsible for all unpaid premiums due
17 under the agreements, for periods both before and after the coverage
18 date, and is responsible for the performance of all other obligations
19 to be performed after the coverage date, in each case which relate to
20 contracts covered, in whole or in part, by the association. The
21 association may charge contracts covered in part by the association,
22 through reasonable allocation methods, the costs for reinsurance in
23 excess of the obligations of the association;

24 (ii) The association is entitled to any amounts payable by the
25 reinsurer under the agreements with respect to losses or events that
26 occur in periods after the coverage date and that relate to contracts
27 covered by the association, in whole or in part. However, upon receipt
28 of any such amounts, the association is obliged to pay to the
29 beneficiary under the policy or contract on account of which the
30 amounts were paid a portion of the amount equal to the excess of: The
31 amount received by the association, over the benefits paid by the
32 association on account of the policy or contract, less the retention of
33 the impaired or insolvent member insurer applicable to the loss or
34 event;

35 (iii) Within thirty days following the association's election, the
36 association and each indemnity reinsurer shall calculate the net
37 balance due to or from the association under each reinsurance agreement
38 as of the date of the association's election, giving full credit to all
39 items paid by either the member insurer, or its receiver,

1 rehabilitator, or liquidator, or the indemnity reinsurer during the
2 period between the coverage date and the date of the association's
3 election. Either the association or indemnity reinsurer shall pay the
4 net balance due the other within five days of the completion of this
5 calculation. If the receiver, rehabilitator, or liquidator has
6 received any amounts due the association pursuant to (a)(ii) of this
7 subsection, the receiver, rehabilitator, or liquidator shall remit the
8 same to the association as promptly as practicable; and

9 (iv) If the association, within sixty days of the election, pays
10 the premiums due for periods both before and after the coverage date
11 that relate to contracts covered by the association, in whole or in
12 part, the reinsurer is not entitled to terminate the reinsurance
13 agreements, insofar as the agreements relate to contracts covered by
14 the association, in whole or in part, and is not entitled to set off
15 any unpaid premium due for periods prior to the coverage date against
16 amounts due the association.

17 (b) In the event the association transfers its obligations to
18 another insurer, and if the association and the other insurer agree,
19 the other insurer succeeds to the rights and obligations of the
20 association under (a) of this subsection effective as of the date
21 agreed upon by the association and the other insurer and regardless of
22 whether the association has made the election referred to in (a) of
23 this subsection. However:

24 (i) The indemnity reinsurance agreements automatically terminate
25 for new reinsurance unless the indemnity reinsurer and the other
26 insurer agree to the contrary;

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

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

33 (c) The provisions of this subsection supersede the provisions of
34 any law of this state or of any affected reinsurance agreement that
35 provides for or requires any payment of reinsurance proceeds, on
36 account of losses or events that occur in periods after the coverage
37 date, to the receiver, liquidator, or rehabilitator of the insolvent
38 member insurer. The receiver, rehabilitator, or liquidator remains
39 entitled to any amounts payable by the reinsurer under the reinsurance

1 agreement with respect to losses or events that occur in periods prior
2 to the coverage date, subject to applicable setoff provisions; and

3 (d) Except as set forth under this subsection, this subsection does
4 not alter or modify the terms and conditions of the indemnity
5 reinsurance agreements of the insolvent member insurer. This
6 subsection does not abrogate or limit any rights of any reinsurer to
7 claim that it is entitled to rescind a reinsurance agreement. This
8 subsection does not give a policy owner or beneficiary an independent
9 cause of action against an indemnity reinsurer that is not otherwise
10 set forth in the indemnity reinsurance agreement.

11 (15) The board of directors of the association has discretion and
12 may exercise reasonable business judgment to determine the means by
13 which the association provides the benefits of this chapter in an
14 economical and efficient manner.

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

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

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

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

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

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

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

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

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

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

22 (3)(a) The amount of a class A assessment is determined by the
23 board and may be authorized and called on a pro rata or nonpro rata
24 basis. If pro rata, the board may provide that it be credited against
25 future class B assessments. The total of all nonpro rata assessments
26 may not exceed one hundred fifty dollars per member insurer in any one
27 calendar year. The amount of a class B assessment may be allocated for
28 assessment purposes among the accounts pursuant to an allocation
29 formula which may be based on the premiums or reserves of the impaired
30 or insolvent insurer or any other standard determined by the board to
31 be fair and reasonable under the circumstances.

32 (b) Class B assessments against member insurers for each account
33 and subaccount must be in the proportion that the premiums received on
34 business in this state by each assessed member insurer on policies or
35 contracts covered by each account for the three most recent calendar
36 years for which information is available preceding the year in which
37 the insurer became insolvent or, in the case of an assessment with
38 respect to an impaired insurer, the three most recent calendar years

1 for which information is available preceding the year in which the
2 insurer became impaired, bears to premiums received on business in this
3 state for those calendar years by all assessed member insurers.

4 (c) Assessments for funds to meet the requirements of the
5 association with respect to an impaired or insolvent insurer may not be
6 authorized or called until necessary to implement the purposes of this
7 chapter. Classification of assessments under subsection (2) of this
8 section and computation of assessments under this subsection must be
9 made with a reasonable degree of accuracy, recognizing that exact
10 determinations are not always possible. The association shall notify
11 each member insurer of its anticipated pro rata share of an authorized
12 assessment not yet called within one hundred eighty days after the
13 assessment is authorized.

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

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

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

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

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

10 (c) If the maximum assessment for a subaccount of the life and
11 annuity account in one year does not provide an amount sufficient to
12 carry out the responsibilities of the association, then under
13 subsection (3)(b) of this section, the board shall access the other
14 subaccounts of the life and annuity account for the necessary
15 additional amount, subject to the maximum stated in (a) of this
16 subsection.

17 (6) The board may, by an equitable method as established in the
18 plan of operation, refund to member insurers, in proportion to the
19 contribution of each insurer to that account, the amount by which the
20 assets of the account exceed the amount the board finds is necessary to
21 carry out during the coming year the obligations of the association
22 with regard to that account, including assets accruing from assignment,
23 subrogation, net realized gains, and income from investments. A
24 reasonable amount may be retained in any account to provide funds for
25 the continuing expenses of the association and for future losses
26 claims.

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

31 (8) The association shall issue to each insurer paying an
32 assessment under this chapter, other than a class A assessment, a
33 certificate of contribution, in a form prescribed by the commissioner,
34 for the amount of the assessment paid. All outstanding certificates
35 must be of equal dignity and priority without reference to amounts or
36 dates of issue. A certificate of contribution may be shown by the
37 insurer in its financial statement as an asset in such form and for
38 such amount, if any, and period of time as the commissioner may
39 approve.

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

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

13 (c) Within thirty days after a final decision has been made, the
14 association shall notify the protesting member insurer in writing of
15 that final decision. Within sixty days of receipt of notice of the
16 final decision, the protesting member insurer may appeal that final
17 action to the commissioner.

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

22 (e) If the protest or appeal on the assessment is upheld, the
23 amount paid in error or excess must be returned to the member company.
24 Interest on a refund due a protesting member must be paid at the rate
25 actually earned by the association.

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

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

35 (b) If the association fails to submit a suitable plan of operation
36 within one hundred twenty days following the effective date of this
37 section or if at any time thereafter the association fails to submit
38 suitable amendments to the plan, the commissioner shall, after notice

1 and hearing, adopt reasonable rules as necessary or advisable to
2 effectuate the provisions of this chapter. The rules continue in force
3 until modified by the commissioner or superseded by a plan submitted by
4 the association and approved by the commissioner.

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

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

8 (a) Establish procedures for handling the assets of the
9 association;

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

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

14 (d) Establish procedures for records to be kept of all financial
15 transactions of the association, its agents, and the board of
16 directors;

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

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

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

23 (4) The plan of operation may provide that any or all powers and
24 duties of the association, except those under sections 8(12)(c) and 9
25 of this act, are delegated to a corporation, association, or other
26 organization which performs or will perform functions similar to those
27 of this association, or its equivalent, in two or more states. Such a
28 corporation, association, or organization must be reimbursed for any
29 payments made on behalf of the association and must be paid for its
30 performance of any function of the association. A delegation under
31 this subsection takes effect only with the approval of both the board
32 of directors and the commissioner, and may be made only to a
33 corporation, association, or organization which extends protection not
34 substantially less favorable and effective than that provided by this
35 chapter.

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

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

4 (b) When an impairment is declared and the amount of the impairment
5 is determined, serve a demand upon the impaired insurer to make good
6 the impairment within a reasonable time; notice to the impaired insurer
7 constitutes notice to its shareholders, if any; the failure of the
8 insurer to promptly comply with such a demand does not excuse the
9 association from the performance of its powers and duties under this
10 chapter; and

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

13 (2) In addition to the duties and powers enumerated elsewhere in
14 this chapter, the commissioner may suspend or revoke, after notice and
15 hearing, the certificate of authority to transact insurance in this
16 state of any member insurer which fails to pay an assessment when due
17 or fails to comply with the plan of operation. As an alternative the
18 commissioner may levy a forfeiture on any member insurer that fails to
19 pay an assessment when due. The forfeiture may not exceed five percent
20 of the unpaid assessment per month, but no forfeiture may be less than
21 one hundred dollars per month.

22 (3) A final action by the board of directors of the association may
23 be appealed to the commissioner by a member insurer if the appeal is
24 taken within sixty days of the member insurer's receipt of notice of
25 the final action being appealed. A final action or order of the
26 commissioner is subject to judicial review in a court of competent
27 jurisdiction in accordance with the laws of this state that apply to
28 the actions or orders of the commissioner.

29 (4) The liquidator, rehabilitator, or conservator of an impaired
30 insurer may notify all interested persons of the effect of this
31 chapter.

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

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

36 (a) Notify the commissioners of all the other states, territories
37 of the United States, and the District of Columbia within thirty days
38 following the action taken or the date the action occurs, when the

1 commissioner takes any of the following actions against a member
2 insurer:

3 (i) Revocation of license;

4 (ii) Suspension of license; or

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

10 (b) Report to the board of directors when the commissioner has
11 taken any of the actions set forth in (a) of this subsection or has
12 received a report from any other commissioner indicating that any such
13 action has been taken in another state. The report to the board of
14 directors must contain all significant details of the action taken or
15 the report received from another commissioner;

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

20 (d) Furnish to the board of directors the national association of
21 insurance commissioners insurance regulatory information system ratios
22 and listings of companies not included in the ratios developed by the
23 national association of insurance commissioners, and the board may use
24 the information contained therein in carrying out its duties and
25 responsibilities under this section. The report and the information
26 must be kept confidential by the board of directors until such time as
27 made public by the commissioner or other lawful authority.

28 (2) The commissioner may seek the advice and recommendations of the
29 board of directors concerning any matter affecting the duties and
30 responsibilities of the commissioner regarding the financial condition
31 of member insurers and companies seeking admission to transact
32 insurance business in this state.

33 (3) The board of directors may, upon majority vote, make reports
34 and recommendations to the commissioner upon any matter germane to the
35 solvency, liquidation, rehabilitation, or conservation of any member
36 insurer or germane to the solvency of any company seeking to do an
37 insurance business in this state. The reports and recommendations are
38 not public documents.

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

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

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

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

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

22 NEW SECTION. **Sec. 14.** MISCELLANEOUS PROVISIONS. (1) This chapter
23 does not reduce the liability for unpaid assessments of the insureds of
24 an impaired or insolvent insurer operating under a plan with assessment
25 liability.

26 (2) Records must be kept of all meetings of the board of directors
27 to discuss the activities of the association in carrying out its powers
28 and duties under section 8 of this act. The records of the association
29 with respect to an impaired or insolvent insurer may not be disclosed
30 prior to the termination of a liquidation, rehabilitation, or
31 conservation proceeding involving the impaired or insolvent insurer,
32 upon the termination of the impairment or insolvency of the insurer, or
33 upon the order of a court of competent jurisdiction. This subsection
34 does not limit the duty of the association to render a report of its
35 activities under section 15 of this act.

36 (3) For the purpose of carrying out its obligations under this
37 chapter, the association is a creditor of the impaired or insolvent

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

12 (4) As a creditor of the impaired or insolvent insurer as
13 established in subsection (3) of this section, the association and
14 other similar associations are entitled to receive a disbursement of
15 assets out of the marshaled assets, from time to time as the assets
16 become available to reimburse it, as a credit against contractual
17 obligations under this chapter. If the liquidator has not, within one
18 hundred twenty days of a final determination of insolvency of an
19 insurer by the receivership court, made an application to the court for
20 the approval of a proposal to disburse assets out of marshaled assets
21 to guaranty associations having obligations because of the insolvency,
22 then the association is entitled to make application to the
23 receivership court for approval of its own proposal to disburse these
24 assets.

25 (5)(a) Prior to the termination of any liquidation, rehabilitation,
26 or conservation proceeding, the court may take into consideration the
27 contributions of the respective parties, including the association, the
28 shareholders, and the policy owners of the insolvent insurer, and any
29 other party with a bona fide interest, in making an equitable
30 distribution of the ownership rights of the insolvent insurer. In such
31 a determination, consideration must be given to the welfare of the
32 policy owners of the continuing or successor insurer.

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

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

9 (b) A distribution is not recoverable if the insurer shows that
10 when paid the distribution was lawful and reasonable, and that the
11 insurer did not know and could not reasonably have known that the
12 distribution might adversely affect the ability of the insurer to
13 fulfill its contractual obligations.

14 (c) Any person who was an affiliate that controlled the insurer at
15 the time the distributions were paid is liable up to the amount of
16 distributions received. Any person who was an affiliate that
17 controlled the insurer at the time the distributions were declared, is
18 liable up to the amount of distributions which would have been received
19 if they had been paid immediately. If two or more persons are liable
20 with respect to the same distributions, they are jointly and severally
21 liable.

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

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

29 NEW SECTION. **Sec. 15.** EXAMINATION OF THE ASSOCIATION--ANNUAL
30 REPORT. The association is subject to examination and regulation by
31 the commissioner. The board of directors shall submit to the
32 commissioner each year, not later than one hundred eighty days after
33 the association's fiscal year, a financial report in a form approved by
34 the commissioner and a report of its activities during the preceding
35 fiscal year. Upon the request of a member insurer, the association
36 shall provide the member insurer with a copy of the report.

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

4 NEW SECTION. **Sec. 17.** IMMUNITY. There is no liability on the
5 part of and no cause of action of any nature may arise against any
6 member insurer or its agents or employees, the association or its
7 agents or employees, members of the board of directors, or the
8 commissioner or the commissioner's representatives, for any action or
9 omission by them in the performance of their powers and duties under
10 this chapter. Immunity extends to the participation in any
11 organization of one or more other state associations of similar
12 purposes and to any such organization and its agents or employees.

13 NEW SECTION. **Sec. 18.** STAY OF PROCEEDINGS--REOPENING DEFAULT
14 JUDGMENTS. All proceedings in which the insolvent insurer is a party
15 in any court in this state are stayed sixty days from the date an order
16 of liquidation, rehabilitation, or conservation is final to permit
17 proper legal action by the association on any matters germane to its
18 powers or duties. As to judgment under any decision, order, verdict,
19 or finding based on default the association may apply to have such a
20 judgment set aside by the same court that made such a judgment and must
21 be permitted to defend against the suit on the merits.

22 NEW SECTION. **Sec. 19.** PROHIBITED ADVERTISEMENT OF INSURANCE
23 GUARANTY ASSOCIATION ACT IN INSURANCE SALES--NOTICE TO POLICY OWNERS.
24 (1) No person, including an insurer, agent, or affiliate of an insurer
25 may make, publish, disseminate, circulate, or place before the public,
26 or cause directly or indirectly, to be made, published, disseminated,
27 circulated, or placed before the public, in any newspaper, magazine, or
28 other publication, or in the form of a notice, circular, pamphlet,
29 letter, or poster, or over any radio station or television station, or
30 in any other way, any advertisement, announcement, or statement,
31 written or oral, which uses the existence of the insurance guaranty
32 association of this state for the purpose of sales, solicitation, or
33 inducement to purchase any form of insurance covered by the Washington
34 life and disability insurance guaranty association act. However, this
35 section does not apply to the Washington life and disability insurance

1 guaranty association or any other entity which does not sell or solicit
2 insurance.

3 (2) Within one hundred eighty days after the effective date of this
4 section, the association shall prepare a summary document describing
5 the general purposes and current limitations of this chapter and
6 complying with subsection (3) of this section. This document must be
7 submitted to the commissioner for approval. The document must also be
8 available upon request by a policy owner. The distribution, delivery,
9 contents, or interpretation of this document does not guarantee that
10 either the policy or the contract or the owner of the policy or
11 contract is covered in the event of the impairment or insolvency of a
12 member insurer. The description document must be revised by the
13 association as amendments to this chapter may require. Failure to
14 receive this document does not give the policy owner, contract owner,
15 certificate holder, or insured any greater rights than those stated in
16 this chapter.

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

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

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

27 (c) State the types of policies for which guaranty funds provide
28 coverage;

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

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

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

38 (g) Provide other information as directed by the commissioner
39 including but not limited to, sources for information about the

1 financial condition of insurers provided that the information is not
2 proprietary and is subject to disclosure under chapter 42.17 RCW.

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

6 NEW SECTION. **Sec. 20.** PROSPECTIVE APPLICATION AND SAVINGS CLAUSE.

7 (1) This chapter does not apply to any impaired insurer that was under
8 an order of rehabilitation or conservation, or to any insolvent insurer
9 that was placed under an order of liquidation, prior to the effective
10 date of this act.

11 (2) Any section repealed in this act pertaining to the powers and
12 obligations of the association, reinsurance and guaranty of policies,
13 assessments, and premium tax offsets shall apply to impaired insurers
14 placed under an order of rehabilitation or conservation, and to
15 insolvent insurers placed under an order of liquidation, prior to the
16 effective date of this act.

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

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

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

23 (1) RCW 48.32A.010 (Purpose) and 1994 c 149 s 1, 1990 c 51 s 1, &
24 1971 ex.s. c 259 s 1;

25 (2) RCW 48.32A.020 (Scope--Obligations of association) and 1996 c
26 98 s 1, 1994 c 149 s 2, 1990 c 51 s 2, & 1971 ex.s. c 259 s 2;

27 (3) RCW 48.32A.030 (Definitions) and 1996 c 98 s 2, 1994 c 149 s 3,
28 1990 c 51 s 3, & 1971 ex.s. c 259 s 3;

29 (4) RCW 48.32A.040 (Guaranty association created) and 1996 c 98 s
30 3 & 1971 ex.s. c 259 s 4;

31 (5) RCW 48.32A.050 (Powers of the association) and 1994 c 149 s 4
32 & 1971 ex.s. c 259 s 5;

33 (6) RCW 48.32A.060 (Reinsurance--Guaranty of policies--Contracts)
34 and 1994 c 149 s 5, 1990 c 51 s 4, 1975 1st ex.s. c 133 s 2, & 1971
35 ex.s. c 259 s 6;

1 (7) RCW 48.32A.070 (Duplication of benefits prohibited) and 1994 c
2 149 s 6 & 1971 ex.s. c 259 s 7;
3 (8) RCW 48.32A.080 (Guaranty funds--Assessment of member insurers)
4 and 1994 c 149 s 7, 1990 c 51 s 5, 1975-'76 2nd ex.s. c 119 s 5, & 1971
5 ex.s. c 259 s 8;
6 (9) RCW 48.32A.090 (Certificates of contribution--Allowance as
7 asset--Offset against premium taxes) and 1997 c 300 s 2, 1993 sp.s. c
8 25 s 902, 1990 c 51 s 6, 1977 ex.s. c 183 s 2, 1975 1st ex.s. c 133 s
9 1, & 1971 ex.s. c 259 s 9;
10 (10) RCW 48.32A.100 (Taxation) and 1971 ex.s. c 259 s 10;
11 (11) RCW 48.32A.110 (Prohibited use of chapter) and 1971 ex.s. c
12 259 s 11;
13 (12) RCW 48.32A.120 (Recapture of excessive dividends to
14 affiliates) and 1994 c 149 s 8 & 1971 ex.s. c 259 s 12;
15 (13) RCW 48.32A.900 (Short title) and 1971 ex.s. c 259 s 13;
16 (14) RCW 48.32A.910 (Construction--1971 ex.s. c 259) and 1971 ex.s.
17 c 259 s 14;
18 (15) RCW 48.32A.920 (Section headings not part of law) and 1971
19 ex.s. c 259 s 15;
20 (16) RCW 48.32A.930 (Severability--1971 ex.s. c 259) and 1971 ex.s.
21 c 259 s 17; and
22 (17) RCW 48.32A.931 (Severability--1990 c 51) and 1990 c 51 s 7.

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