

SSB 6050 - H COMM AMD

By Committee on Health Care & Wellness

ADOPTED 03/05/2020

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 48.32A.015 and 2001 c 50 s 2 are each amended to
4 read as follows:

5 (1) The purpose of this chapter is to protect, subject to certain
6 limitations, the persons specified in RCW 48.32A.025(1) against
7 failure in the performance of contractual obligations, under life
8 ~~((and))~~ insurance, disability insurance ((policies)), health benefit
9 plans, and certificates of coverage, and annuity policies, plans, or
10 contracts specified in RCW 48.32A.025(2), because of the impairment
11 or insolvency of the member insurer that issued the policies, plans,
12 or contracts.

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

17 **Sec. 2.** RCW 48.32A.025 and 2001 c 50 s 3 are each amended to
18 read as follows:

19 (1) This chapter provides coverage for the policies and contracts
20 specified in subsection (2) of this section as follows:

21 (a) To persons who, regardless of where they reside, except for
22 nonresident certificate holders or enrollees under group policies or
23 contracts, are the beneficiaries, assignees, or payees, including
24 health care providers and facilities rendering services covered under
25 health benefit plans, policies, or certificates of coverage, of the
26 persons covered under (b) of this subsection;

27 (b) To persons who are owners of or certificate holders or
28 enrollees under the policies or contracts, other than unallocated
29 annuity contracts and structured settlement annuities, and in each
30 case who:

1 (i) Are residents; or
2 (ii) Are not residents, but only under all of the following
3 conditions:
4 (A) The member insurer that issued the policies or contracts is
5 domiciled in this state;
6 (B) The states in which the persons reside have associations
7 similar to the association created by this chapter; and
8 (C) The persons are not eligible for coverage by an association
9 in any other state due to the fact that the insurer, health care
10 service contractor, or health maintenance organization was not
11 licensed in the state at the time specified in the state's guaranty
12 association law;
13 (c) For unallocated annuity contracts specified in subsection (2)
14 of this section, (a) and (b) of this subsection do not apply, and
15 this chapter, except as provided in (e) and (f) of this subsection,
16 does provide coverage to:
17 (i) Persons who are the owners of the unallocated annuity
18 contracts if the contracts are issued to or in connection with a
19 specific benefit plan whose plan sponsor has its principal place of
20 business in this state; and
21 (ii) Persons who are owners of unallocated annuity contracts
22 issued to or in connection with government lotteries if the owners
23 are residents;
24 (d) For structured settlement annuities specified in subsection
25 (2) of this section, (a) and (b) of this subsection do not apply, and
26 this chapter, except as provided in (e) and (f) of this subsection,
27 does provide coverage to a person who is a payee under a structured
28 settlement annuity, or beneficiary of a payee if the payee is
29 deceased, if the payee:
30 (i) Is a resident, regardless of where the contract owner
31 resides; or
32 (ii) Is not a resident, but only under both of the following
33 conditions:
34 (A) (I) The contract owner of the structured settlement annuity is
35 a resident; or
36 (II) The contract owner of the structured settlement annuity is
37 not a resident, but the insurer that issued the structured settlement
38 annuity is domiciled in this state; and the state in which the
39 contract owner resides has an association similar to the association
40 created by this chapter; and

1 (B) Neither the payee, nor beneficiary, nor enrollee, nor the
2 contract owner is eligible for coverage by the association of the
3 state in which the payee or contract owner resides;

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

5 (i) A person who is a payee, or beneficiary, of a contract owner
6 resident of this state, if the payee, or beneficiary, is afforded any
7 coverage by the association of another state; (~~(or)~~)

8 (ii) A person covered under (c) of this subsection, if any
9 coverage is provided by the association of another state to the
10 person; or

11 (iii) A person who acquires rights to receive payments through a
12 structured settlement factoring transaction as defined in 26 U.S.C.
13 Sec. 5891(c)(3)(A), regardless of whether the transaction occurred
14 before or after such section became effective; and

15 (f) This chapter is intended to provide coverage to a person who
16 is a resident of this state and, in special circumstances, to a
17 nonresident. In order to avoid duplicate coverage, if a person who
18 would otherwise receive coverage under this chapter is provided
19 coverage under the laws of any other state, the person shall not be
20 provided coverage under this chapter. In determining the application
21 of this subsection (1)(f) in situations where a person could be
22 covered by the association of more than one state, whether as an
23 owner, payee, beneficiary, enrollee, or assignee, this chapter shall
24 be construed in conjunction with other state laws to result in
25 coverage by only one association.

26 (2)(a) This chapter provides coverage to the persons specified in
27 subsection (1) of this section for policies, plans, or contracts of
28 direct, nongroup life, disability, health benefit, or (~~(annuity~~
29 ~~policies or contracts)~~) annuities and supplemental contracts to any
30 of these, for certificates under direct group policies and contracts,
31 and for unallocated annuity contracts issued by member insurers,
32 except as limited by this chapter. Annuity contracts and certificates
33 under group annuity contracts include but are not limited to
34 guaranteed investment contracts, deposit administration contracts,
35 unallocated funding agreements, allocated funding agreements,
36 structured settlement annuities, annuities issued to or in connection
37 with government lotteries, and any immediate or deferred annuity
38 contracts. However, any annuity contracts that are unallocated
39 annuity contracts are subject to the specific provisions in this
40 chapter for unallocated annuity contracts.

1 (b) ((This)) Except as provided in (c) of this subsection, this
2 chapter does not provide coverage for:

3 (i) A portion of a policy or contract not guaranteed by the
4 member insurer, or under which the risk is borne by the policy or
5 contract owner;

6 (ii) A policy or contract of reinsurance, unless assumption
7 certificates have been issued pursuant to the reinsurance policy or
8 contract;

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

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

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

27 (iv) A portion of a policy or contract issued to a plan or
28 program of an employer, association, or other person to provide life,
29 disability, health, or annuity benefits to its employees, members, or
30 others, to the extent that the plan or program is self-funded or
31 uninsured, including but not limited to benefits payable by an
32 employer, association, or other person under:

33 (A) A multiple employer welfare arrangement as defined in 29
34 U.S.C. Sec. ((1144)) 1002;

35 (B) A minimum premium group insurance plan;

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

37 (D) An administrative services only contract;

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

40 (A) Dividends or experience rating credits;

1 (B) Voting rights; or

2 (C) Payment of any fees or allowances to any person, including
3 the policy or contract owner, in connection with the service to or
4 administration of the policy or contract;

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

9 (vii) An unallocated annuity contract issued to or in connection
10 with a benefit plan protected under the federal pension benefit
11 guaranty corporation, regardless of whether the federal pension
12 benefit guaranty corporation has yet become liable to make any
13 payments with respect to the benefit plan;

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

17 (ix) A portion of a policy or contract to the extent that the
18 assessments required by RCW 48.32A.085 with respect to the policy or
19 contract are preempted by federal or state law;

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

24 (A) Claims based on marketing materials;

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

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

30 (D) Extra-contractual claims; or

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

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

37 (xii) A portion of a policy or contract to the extent it provides
38 for interest or other changes in value to be determined by the use of
39 an index or other external reference stated in the policy or
40 contract, but which have not been credited to the policy or contract,

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

12 (xiii) A policy or contract providing any hospital, medical,
13 prescription drug or other health care benefits pursuant to parts C
14 and D of subchapter XVIII, chapter 7 of Title 42, United States Code
15 (commonly known as medicare parts C and D) or subchapter XIX, chapter
16 7 of Title 42, United States Code (commonly known as medicaid), and
17 any regulations issued pursuant thereto, or chapter 74.09 RCW and any
18 regulations issued pursuant thereto; or

19 (xiv) Structured settlement annuity benefits to which a payee or
20 beneficiary has transferred his or her rights in a structured
21 settlement factoring transaction as defined in 26 U.S.C. Sec.
22 5891(c)(3)(A), regardless of whether the transaction occurred before
23 or after such section became effective.

24 (c) The exclusion from coverage referenced in (b)(iii) of this
25 subsection does not apply to any portion of a policy or contract,
26 including a rider, that provides long-term care or any other health
27 benefits.

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

30 (a) The contractual obligations for which the member insurer is
31 liable or would have been liable if it were not an impaired or
32 insolvent insurer; or

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

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

38 (B) In disability insurance and health benefit plan benefits:

39 (I) Five hundred thousand dollars for coverages not defined as
40 disability income insurance or (~~basic hospital, medical, and~~

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

1 (v) With respect to either: (A) One contract owner provided
2 coverage under subsection (1)(d)(ii) of this section; or (B) one plan
3 sponsor whose plans own directly or in trust one or more unallocated
4 annuity contracts not included in (b)(ii) of this subsection (3)
5 (~~(b)~~), five million dollars in benefits, irrespective of the number
6 of contracts with respect to the contract owner or plan sponsor.
7 However, in the case where one or more unallocated annuity contracts
8 are covered contracts under this chapter and are owned by a trust or
9 other entity for the benefit of two or more plan sponsors, coverage
10 shall be afforded by the association if the largest interest in the
11 trust or entity owning the contract or contracts is held by a plan
12 sponsor whose principal place of business is in this state and in no
13 event shall the association be obligated to cover more than five
14 million dollars in benefits with respect to all these unallocated
15 contracts; (~~(e)~~)

16 (vi) The limitations set forth in this subsection are limitations
17 on the benefits for which the association is obligated before taking
18 into account either its subrogation and assignment rights or the
19 extent to which those benefits could be provided out of the assets of
20 the impaired or insolvent insurer attributable to covered policies.
21 The costs of the association's obligations under this chapter may be
22 met by the use of assets attributable to covered policies or
23 reimbursed to the association pursuant to its subrogation and
24 assignment rights; or

25 (vii) For purposes of this chapter, benefits provided by a long-
26 term care rider to a life insurance policy or annuity contract must
27 be considered the same type of benefits as the base life insurance
28 policy or annuity contract to which it relates.

29 (4) In performing its obligations to provide coverage under RCW
30 48.32A.075, the association is not required to guarantee, assume,
31 reinsure, reissue, or perform, or cause to be guaranteed, assumed,
32 reinsured, reissued, or performed, the contractual obligations of the
33 insolvent or impaired insurer under a covered policy or contract that
34 do not materially affect the economic values or economic benefits of
35 the covered policy or contract.

36 **Sec. 3.** RCW 48.32A.045 and 2001 c 50 s 5 are each amended to
37 read as follows:

38 The definitions in this section apply throughout this chapter
39 unless the context clearly requires otherwise.

1 (1) "Account" means either of the two accounts created under RCW
2 48.32A.055.

3 (2) "Association" means the Washington life and disability
4 insurance guaranty association created under RCW 48.32A.055.

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

10 (4) "Benefit plan" means a specific employee, union, or
11 association of natural persons benefit plan issued pursuant to the
12 requirements of chapter 48.20 RCW.

13 (5) "Called assessment" or the term "called" when used in the
14 context of assessments means that a notice has been issued by the
15 association to member insurers requiring that an authorized
16 assessment be paid within the time frame set forth within the notice.
17 An authorized assessment becomes a called assessment when notice is
18 mailed by the association to member insurers.

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

21 (7) "Contractual obligation" means an obligation under a policy
22 or contract or certificate under a group policy or contract, or
23 portion thereof for which coverage is provided under RCW 48.32A.025.

24 (8) "Covered policy" or "covered contract" means a policy or
25 contract or portion of a policy or contract for which coverage is
26 provided under RCW 48.32A.025.

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

30 (10) "Health benefit plan" means any policy, contract, or
31 agreement offered by a health carrier to provide, arrange, reimburse,
32 or pay for health care services, except the following:

33 (a) Medicare supplemental health insurance governed by chapter
34 48.66 RCW;

35 (b) Coverage supplemental to the coverage provided under chapter
36 55 of Title 10 of the United States Code;

37 (c) Limited health care services offered by limited health care
38 service contractors in accordance with RCW 48.44.035;

39 (d) Disability income;

1 (e) Coverage incidental to a property or casualty liability
2 insurance policy, such as automobile personal injury protection
3 coverage and homeowner guest medical;

4 (f) Workers' compensation coverage;

5 (g) Accident only coverage;

6 (h) Specified disease or illness-triggered fixed payment
7 insurance, hospital confinement fixed payment insurance, or other
8 fixed payment insurance offered as an independent, noncoordinated
9 benefit;

10 (i) Employer-sponsored self-funded health plans;

11 (j) Dental only and vision only coverage;

12 (k) Plans deemed by the commissioner to have a short-term limited
13 purpose or duration, or to be a student-only plan that is guaranteed
14 renewable while the covered person is enrolled as a regular full-time
15 undergraduate or graduate student at an accredited higher education
16 institution, after a written request for such classification by the
17 carrier and subsequent written approval by the commissioner;

18 (l) Civilian health and medical program for the veterans affairs
19 administration (CHAMPVA); and

20 (m) Long-term care insurance as defined under chapter 48.83 or
21 48.84 RCW, or benefits for home health care, community-based care, or
22 any combination thereof.

23 (11) "Impaired insurer" means a member insurer which, after July
24 22, 2001, is not an insolvent insurer, and is placed under an order
25 of rehabilitation or conservation by a court of competent
26 jurisdiction.

27 ~~((11))~~ (12) "Insolvent insurer" means a member insurer which,
28 after July 22, 2001, is placed under an order of liquidation by a
29 court of competent jurisdiction with a finding of insolvency.

30 ~~((12))~~ (13) "Member insurer" means an insurer, health care
31 service contractor, or health maintenance organization licensed, or
32 that holds a certificate of authority, or a certificate of
33 registration, to transact in this state any kind of business related
34 to insurance or a health benefit plan for which coverage is provided
35 under RCW 48.32A.025, and includes an insurer, health care service
36 contractor, or health maintenance organization whose license,
37 certificate of registration, or certificate of authority in this
38 state may have been suspended, revoked, not renewed, or voluntarily
39 withdrawn, but does not include:

1 (a) ~~((A health care service contractor, whether profit or~~
2 ~~nonprofit;~~

3 ~~(b) A health maintenance organization;~~

4 ~~(c))~~ (b) A fraternal benefit society;

5 ~~((d))~~ (b) A mandatory state pooling plan;

6 ~~((e))~~ (c) A mutual assessment company or other person that
7 operates on an assessment basis;

8 ~~((f))~~ (d) An insurance exchange;

9 ~~((g))~~ (e) An organization that has a certificate or license
10 limited to the issuance of charitable gift annuities under RCW
11 48.38.010;

12 (f) A nonrisk-bearing hospital or medical service organization,
13 whether for profit or not for profit;

14 (g) A multiple employer welfare arrangement under chapter 48.125
15 RCW; or

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

17 ~~((13))~~ (14) "Moody's corporate bond yield average" means the
18 monthly average corporates as published by Moody's investors service,
19 inc., or any successor thereto.

20 ~~((14))~~ (15) "Owner" of a policy or contract and "policy
21 holder," "policy owner," and "contract owner" mean the person who is
22 identified as the legal owner under the terms of the policy or
23 contract or who is otherwise vested with legal title to the policy or
24 contract through a valid assignment completed in accordance with the
25 terms of the policy or contract and properly recorded as the owner on
26 the books of the member insurer. "Owner," "policy holder," "contract
27 owner," and "policy owner" do not include persons with a mere
28 beneficial interest in a policy or contract.

29 ~~((15))~~ (16) "Person" means an individual, corporation, limited
30 liability company, partnership, association, governmental body or
31 entity, or voluntary organization.

32 ~~((16))~~ (17) "Plan sponsor" means:

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

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

37 (c) In the case of a benefit plan established or maintained by
38 two or more employers or jointly by one or more employers and one or
39 more employee organizations, the association, committee, joint board

1 of trustees, or other similar group of representatives of the parties
2 who establish or maintain the benefit plan.

3 ~~((17))~~ (18) "Premiums" means amounts or considerations, by
4 whatever name called, received on covered policies or contracts less
5 returned premiums, considerations, and deposits and less dividends
6 and experience credits. "Premiums" does not include amounts or
7 considerations received for policies or contracts or for the portions
8 of policies or contracts for which coverage is not provided under RCW
9 48.32A.025(2), except that assessable premium shall not be reduced on
10 account of RCW 48.32A.025(2)(b)(iii) relating to interest limitations
11 and RCW 48.32A.025(3)(b) relating to limitations with respect to one
12 individual, one participant, and one policy or contract owner.
13 "Premiums" does not include:

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

18 (b) With respect to multiple nongroup policies of life insurance
19 owned by one owner, whether the policy or contract owner is an
20 individual, firm, corporation, or other person, and whether the
21 persons insured are officers, managers, employees, or other persons,
22 premiums in excess of five million dollars with respect to these
23 policies or contracts, regardless of the number of policies or
24 contracts held by the owner.

25 ~~((18))~~ (19) (a) "Principal place of business" of a plan sponsor
26 or a person other than a natural person means the single state in
27 which the natural persons who establish policy for the direction,
28 control, and coordination of the operations of the entity as a whole
29 primarily exercise that function, determined by the association in
30 its reasonable judgment by considering the following factors:

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

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

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

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

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

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

8 However, in the case of a plan sponsor, if more than fifty
9 percent of the participants in the benefit plan are employed in a
10 single state, that state is the principal place of business of the
11 plan sponsor.

12 (b) The principal place of business of a plan sponsor of a
13 benefit plan described in subsection ~~((16))~~ (17)(c) of this section
14 is the principal place of business of the association, committee,
15 joint board of trustees, or other similar group of representatives of
16 the parties who establish or maintain the benefit plan that, in lieu
17 of a specific or clear designation of a principal place of business,
18 is the principal place of business of the employer or employee
19 organization that has the largest investment in the benefit plan in
20 question.

21 ~~((19))~~ (20) "Receivership court" means the court in the
22 insolvent or impaired insurer's state having jurisdiction over the
23 conservation, rehabilitation, or liquidation of the member insurer.

24 ~~((20))~~ (21) "Resident" means a person to whom a contractual
25 obligation is owed and who resides in this state on the date of entry
26 of a court order that determines a member insurer to be an impaired
27 insurer or a court order that determines a member insurer to be an
28 insolvent insurer, whichever occurs first. A person may be a resident
29 of only one state, which in the case of a person other than a natural
30 person is its principal place of business. Citizens of the United
31 States that are either (a) residents of foreign countries, or (b)
32 residents of United States possessions, territories, or protectorates
33 that do not have an association similar to the association created by
34 this chapter, are residents of the state of domicile of the member
35 insurer that issued the policies or contracts.

36 ~~((21))~~ (22) "Structured settlement annuity" means an annuity
37 purchased in order to fund periodic payments for a plaintiff or other
38 claimant in payment for or with respect to personal injury suffered
39 by the plaintiff or other claimant.

1 (~~(22)~~) (23) "State" means a state, the District of Columbia,
2 Puerto Rico, and a United States possession, territory, or
3 protectorate.

4 (~~(23)~~) (24) "Supplemental contract" means a written agreement
5 entered into for the distribution of proceeds under a life,
6 disability, or annuity policy or contract.

7 (~~(24)~~) (25) "Unallocated annuity contract" means an annuity
8 contract or group annuity certificate which is not issued to and
9 owned by an individual, except to the extent of any annuity benefits
10 guaranteed to an individual by (~~(an)~~) a member insurer under the
11 contract or certificate.

12 **Sec. 4.** RCW 48.32A.055 and 2001 c 50 s 6 are each amended to
13 read as follows:

14 (1) There is created a nonprofit unincorporated legal entity to
15 be known as the Washington life and disability insurance guaranty
16 association which is composed of the commissioner ex officio and each
17 member insurer. All member insurers must be and remain members of the
18 association as a condition of their authority to transact the
19 business of insurance, health care service contractor business, or
20 health maintenance organization business in this state. The
21 association shall perform its functions under the plan of operation
22 established and approved under RCW 48.32A.095 and shall exercise its
23 powers through a board of directors established under RCW 48.32A.065.
24 For purposes of administration and assessment, the association shall
25 maintain two accounts:

26 (a) The life insurance and annuity account which includes the
27 following subaccounts:

28 (i) Life insurance account;

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

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

37 (b) The disability insurance account, which includes health
38 benefit plans, disability benefit policies and contracts, and long-
39 term care policies and contracts.

1 (2) The association is under the immediate supervision of the
2 commissioner and is subject to the applicable provisions of the
3 insurance laws of this state. Meetings or records of the association
4 may be opened to the public upon majority vote of the board of
5 directors of the association.

6 **Sec. 5.** RCW 48.32A.065 and 2001 c 50 s 7 are each amended to
7 read as follows:

8 (1) The board of directors of the association consists of the
9 commissioner ex officio and not less than (~~five~~) seven nor more
10 than (~~nine~~) eleven member insurers serving terms as established in
11 the plan of operation. The insurer members of the board are selected
12 by member insurers subject to the approval of the commissioner.

13 Vacancies on the board are filled for the remaining period of the
14 term by a majority vote of the remaining board members, subject to
15 the approval of the commissioner.

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

19 (3) Members of the board may be reimbursed from the assets of the
20 association for expenses incurred by them as members of the board of
21 directors but members of the board are not otherwise compensated by
22 the association for their services.

23 **Sec. 6.** RCW 48.32A.075 and 2001 c 50 s 8 are each amended to
24 read as follows:

25 (1) If a member insurer is an impaired insurer, the association
26 may, in its discretion, and subject to any conditions imposed by the
27 association that do not impair the contractual obligations of the
28 impaired insurer and that are approved by the commissioner:

29 (a) (~~Guaranty~~) Guarantee, assume, reissue, or reinsure, or
30 cause to be guaranteed, reissued, assumed, or reinsured, any or all
31 of the policies or contracts of the impaired insurer; or

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

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

1 (a) (i) (A) (~~Guaranty~~) Guarantee, assume, reissue, or reinsure,
2 or cause to be guaranteed, assumed, reissued, or reinsured, the
3 policies or contracts of the insolvent insurer; or

4 (B) Assure payment of the contractual obligations of the
5 insolvent insurer; and

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

8 (b) Provide benefits and coverages in accordance with the
9 following provisions:

10 (i) With respect to (~~life and disability insurance~~) policies
11 and (~~annuities~~) contracts, assure payment of benefits (~~for~~
12 ~~premiums identical to the premiums and benefits, except for terms of~~
13 ~~conversion and renewability,~~) that would have been payable under the
14 policies or contracts of the insolvent insurer(~~7~~) for claims
15 incurred:

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

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

26 (ii) Make diligent efforts to provide all known insureds,
27 enrollees, or annuitants, for nongroup policies and contracts, or
28 group policy or contract owners with respect to group policies and
29 contracts, thirty days notice of the termination of the benefits
30 provided;

31 (iii) With respect to nongroup (~~life and disability insurance~~)
32 policies (~~and annuities~~) or contracts covered by the association,
33 make diligent efforts to make available to each known insured,
34 enrollee, or annuitant, or owner if other than the insured, enrollee,
35 or annuitant, and with respect to an individual formerly insured,
36 formerly an enrollee, or formerly an annuitant under a group policy
37 who is not eligible for replacement group coverage, make diligent
38 efforts to make available substitute coverage on an individual basis
39 in accordance with the provisions of (b) (iv) of this subsection, if
40 the insureds, enrollees, or annuitants had a right under law or the

1 terminated policy or annuity to convert coverage to individual
2 coverage or to continue an individual policy or annuity in force
3 until a specified age or for a specified time, during which the
4 member insurer, health care service contractor, or health maintenance
5 organization had no right unilaterally to make changes in any
6 provision of the policy, contract, or annuity or had a right only to
7 make changes in premium by class;

8 (iv) (A) The substitute coverage under (b) (iii) of this
9 subsection, must be offered through a solvent, admitted member
10 insurer. In the alternative, the association in its discretion, and
11 subject to any conditions imposed by the association and approved by
12 the commissioner, may reissue the terminated coverage or issue an
13 alternative policy or contract at actuarially justified rates,
14 subject to the prior approval of the commissioner;

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

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

21 (v) If the association elects to reissue terminated coverage at a
22 premium rate different from that charged under the terminated policy
23 or contract, the premium must be actuarially justified and set by the
24 association in accordance with the amount of insurance or coverage
25 provided and the age and class of risk, subject to approval of the
26 (~~domiciliary insurance~~) commissioner (~~and the receivership~~
27 ~~court~~);

28 (vi) If the association elects to issue alternative coverage:

29 (A) Alternative policies or contracts adopted by the association
30 must be subject to the approval of the commissioner. The association
31 may adopt alternative policies or contracts of various types for
32 future issuance without regard to any particular impairment or
33 insolvency.

34 (B) Alternative policies or contracts must contain at least the
35 minimum statutory provisions required in this state and provide
36 benefits that cannot be unreasonable in relation to the premium
37 charged. The association must set the premium in accordance with a
38 table of rates that it must adopt. The premium must reflect the
39 amount of insurance benefits or coverage to be provided and the age
40 and class of risk of each insured, but must not reflect any changes

1 in the health of the insured after the original policy or contract
2 was last underwritten.

3 (C) Any alternative policy or contract issued by the association
4 shall provide coverage of a type similar to that of the policy or
5 contract issued by the impaired or insolvent insurer, as determined
6 by the association;

7 (vii) The association's obligations with respect to coverage
8 under any policy or contract of the impaired or insolvent insurer or
9 under any reissued policy or contract cease on the date the coverage
10 or policy or contract is replaced by another similar policy or
11 contract by the policy or contract owner, the insured, the enrollee,
12 or the association; or

13 ~~((vii))~~ (viii) When proceeding under this subsection (2)(b)
14 with respect to a policy or contract carrying guaranteed minimum
15 interest rates, the association shall assure the payment or crediting
16 of a rate of interest consistent with RCW 48.32A.025(2)(b)(iii).

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

25 (4) Premiums due for coverage after entry of an order of
26 liquidation of an insolvent insurer belong to and are payable at the
27 direction of the association, and the association is liable for
28 unearned premiums due to policy or contract owners arising after the
29 entry of the order.

30 (5) The protection provided by this chapter does not apply when
31 any guaranty protection is provided to residents of this state by the
32 laws of the domiciliary state or jurisdiction of the impaired or
33 insolvent insurer other than this state.

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

36 (a) Subject to approval by a court in this state, impose
37 permanent policy or contract liens in connection with a guarantee,
38 assumption, or reinsurance agreement, if the association finds that
39 the amounts which can be assessed under this chapter are less than
40 the amounts needed to assure full and prompt performance of the

1 association's duties under this chapter, or that the economic or
2 financial conditions as they affect member insurers are sufficiently
3 adverse to render the imposition of such permanent policy or contract
4 liens, are in the public interest; and

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

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

38 (8) If the association fails to act within a reasonable period of
39 time with respect to an insolvent insurer, as provided in subsection
40 (2) of this section, the commissioner has the powers and duties of

1 the association under this chapter with respect to the insolvent
2 insurer.

3 (9) The association may render assistance and advice to the
4 commissioner, upon the commissioner's request, concerning
5 rehabilitation, payment of claims, continuance of coverage, or the
6 performance of other contractual obligations of an impaired or
7 insolvent insurer.

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

24 (11)(a) A person receiving benefits under this chapter is deemed
25 to have assigned the rights under, and any causes of action against
26 any person for losses arising under, resulting from, or otherwise
27 relating to, the covered policy or contract to the association to the
28 extent of the benefits received because of this chapter, whether the
29 benefits are payments of or on account of contractual obligations,
30 continuation of coverage, or provision of substitute or alternative
31 policies, contracts, or coverages. The association may require an
32 assignment to it of such rights and cause of action by any enrollee,
33 payee, policy or contract owner, beneficiary, insured, or annuitant
34 as a condition precedent to the receipt of any right or benefits
35 conferred by this chapter upon the person.

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

1 (c) In addition to (a) and (b) of this subsection, the
2 association has all common law rights of subrogation and any other
3 equitable or legal remedy that would have been available to the
4 impaired or insolvent insurer or owner, enrollee, beneficiary, or
5 payee of a policy or contract with respect to the policy or
6 contracts, including without limitation, in the case of a structured
7 settlement annuity, any rights of the owner, beneficiary, or payee of
8 the annuity, to the extent of benefits received under this chapter,
9 against a person originally or by succession responsible for the
10 losses arising from the personal injury relating to the annuity or
11 payment therefor, excepting any such person responsible solely by
12 reason of serving as an assignee in respect of a qualified assignment
13 under section 130 of the United States Internal Revenue Code.

14 (d) If (a) through (c) of this subsection are invalid or
15 ineffective with respect to any person or claim for any reason, the
16 amount payable by the association with respect to the related covered
17 obligations shall be reduced by the amount realized by any other
18 person with respect to the person or claim that is attributable to
19 the policies or contracts, or portion thereof, covered by the
20 association.

21 (e) If the association has provided benefits with respect to a
22 covered obligation and a person recovers amounts as to which the
23 association has rights as described in this subsection, the person
24 shall pay to the association the portion of the recovery attributable
25 to the policies or contracts, or portion thereof, covered by the
26 association.

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

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

31 (b) Sue or be sued, including taking any legal actions necessary
32 or proper to recover any unpaid assessments under RCW 48.32A.085 and
33 to settle claims or potential claims against it;

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

38 (d) Employ or retain such persons as are necessary or appropriate
39 to handle the financial transactions of the association, and to

1 perform such other functions as become necessary or proper under this
2 chapter;

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

5 (f) Exercise, for the purposes of this chapter and to the extent
6 approved by the commissioner, the powers of a domestic life ~~((~~o~~))~~
7 insurer, disability insurer, health care service contractor, or
8 health maintenance organization, but in no case may the association
9 issue insurance policies or annuity contracts other than those issued
10 to perform its obligations under this chapter;

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

13 (h) Request information from a person seeking coverage from the
14 association in order to aid the association in determining its
15 obligations under this chapter with respect to the person, and the
16 person shall promptly comply with the request; ~~((and))~~

17 (i) In accordance with the terms and conditions of the policy or
18 contract, file for actuarially justified rate or premium increases
19 for any policy or contract for which it provides coverage under this
20 chapter; and

21 (j) Take other necessary or appropriate action to discharge its
22 duties and obligations under this chapter or to exercise its powers
23 under this chapter.

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

27 (14)(a) At any time within one year after the coverage date,
28 which is the date on which the association becomes responsible for
29 the obligations of a member insurer, the association may elect to
30 succeed to the rights and obligations of the member insurer, that
31 accrue on or after the coverage date and that relate to policies,
32 contracts, or annuities, covered ~~((~~r~~))~~ in whole or in part ~~((~~r~~))~~ by the
33 association, under any one or more indemnity reinsurance agreements
34 entered into by the member insurer as a ceding insurer and selected
35 by the association. However, the association may not exercise an
36 election with respect to a reinsurance agreement if the receiver,
37 rehabilitator, or liquidator of the member insurer has previously and
38 expressly disaffirmed the reinsurance agreement. The election is
39 effective when notice is provided to the receiver, rehabilitator, or
40 liquidator and to the affected reinsurers. If the association makes

1 an election, the following provisions apply with respect to the
2 agreements selected by the association:

3 (i) The association is responsible for all unpaid premiums due
4 under the agreements, for periods both before and after the coverage
5 date, and is responsible for the performance of all other obligations
6 to be performed after the coverage date, in each case which relate to
7 policies, contracts, or annuities, covered((~~7~~)) in whole or in
8 part((~~7~~)) by the association. The association may charge policies,
9 contracts, or annuities, covered in part by the association, through
10 reasonable allocation methods, the costs for reinsurance in excess of
11 the obligations of the association;

12 (ii) The association is entitled to any amounts payable by the
13 reinsurer under the agreements with respect to losses or events that
14 occur in periods after the coverage date and that relate to policies,
15 contracts, or annuities, covered by the association((~~7~~)) in whole or
16 in part. However, upon receipt of any such amounts, the association
17 is obliged to pay to the beneficiary under the policy ((~~0~~)),
18 contract, or annuity on account of which the amounts were paid a
19 portion of the amount equal to the excess of: The amount received by
20 the association, over the benefits paid by the association on account
21 of the policy ((~~0~~)), contract, or annuity, less the retention of the
22 impaired or insolvent member insurer applicable to the loss or event;

23 (iii) Within thirty days following the association's election,
24 the association and each indemnity reinsurer shall calculate the net
25 balance due to or from the association under each reinsurance
26 agreement as of the date of the association's election, giving full
27 credit to all items paid by either the member insurer, or its
28 receiver, rehabilitator, or liquidator, or the indemnity reinsurer
29 during the period between the coverage date and the date of the
30 association's election. Either the association or indemnity reinsurer
31 shall pay the net balance due the other within five days of the
32 completion of this calculation. If the receiver, rehabilitator, or
33 liquidator has received any amounts due the association pursuant to
34 (a)(ii) of this subsection, the receiver, rehabilitator, or
35 liquidator shall remit the same to the association as promptly as
36 practicable; and

37 (iv) If the association, within sixty days of the election, pays
38 the premiums due for periods both before and after the coverage date
39 that relate to policies, contracts, or annuities, covered by the
40 association((~~7~~)) in whole or in part, the reinsurer is not entitled

1 to terminate the reinsurance agreements, insofar as the agreements
2 relate to policies, contracts, or annuities, covered by the
3 association((7)) in whole or in part, and is not entitled to set off
4 any unpaid premium due for periods prior to the coverage date against
5 amounts due the association;

6 (b) In the event the association transfers its obligations to
7 another member insurer, and if the association and the other member
8 insurers agree, the other member insurer succeeds to the rights and
9 obligations of the association under (a) of this subsection effective
10 as of the date agreed upon by the association and the other member
11 insurers and regardless of whether the association has made the
12 election referred to in (a) of this subsection. However:

13 (i) The indemnity reinsurance agreements automatically terminate
14 for new reinsurance unless the indemnity reinsurer and the other
15 member insurers agree to the contrary;

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

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

22 (c) The provisions of this subsection supersede the provisions of
23 any law of this state or of any affected reinsurance agreement that
24 provides for or requires any payment of reinsurance proceeds, on
25 account of losses or events that occur in periods after the coverage
26 date, to the receiver, liquidator, or rehabilitator of the insolvent
27 (~~member~~) insurer. The receiver, rehabilitator, or liquidator
28 remains entitled to any amounts payable by the reinsurer under the
29 reinsurance agreement with respect to losses or events that occur in
30 periods prior to the coverage date, subject to applicable setoff
31 provisions; and

32 (d) Except as set forth under this subsection, this subsection
33 does not alter or modify the terms and conditions of the indemnity
34 reinsurance agreements of the insolvent (~~member~~) insurer. This
35 subsection does not abrogate or limit any rights of any reinsurer to
36 claim that it is entitled to rescind a reinsurance agreement. This
37 subsection does not give a policy or contract owner, an enrollee, or
38 a beneficiary an independent cause of action against an indemnity
39 reinsurer that is not otherwise set forth in the indemnity
40 reinsurance agreement.

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

5 (16) When the association has arranged or offered to provide the
6 benefits of this chapter to a covered person under a plan or
7 arrangement that fulfills the association's obligations under this
8 chapter, the person is not entitled to benefits from the association
9 in addition to or other than those provided under the plan or
10 arrangement.

11 (17) Venue in a suit against the association arising under this
12 chapter is in the county in which liquidation or rehabilitation
13 proceedings have been filed in the case of a domestic member insurer.
14 In other cases, venue is in King county or Thurston county. The
15 association is not required to give an appeal bond in an appeal that
16 relates to a cause of action arising under this chapter.

17 (18) In carrying out its duties in connection with guaranteeing,
18 assuming, reissuing, or reinsuring policies or contracts under
19 subsection (1) or (2) of this section, the association may(~~(, subject~~
20 ~~to approval of the receivership court,)~~) issue substitute coverage
21 for a policy or contract that provides an interest rate, crediting
22 rate, or similar factor determined by use of an index or other
23 external reference stated in the policy or contract employed in
24 calculating returns or changes in value by issuing an alternative
25 policy or contract in accordance with the following provisions:

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

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

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

36 **Sec. 7.** RCW 48.32A.085 and 2001 c 50 s 9 are each amended to
37 read as follows:

38 (1) For the purpose of providing the funds necessary to carry out
39 the powers and duties of the association, the board of directors

1 shall assess the member insurers, separately for each account, at
2 such time and for such amounts as the board finds necessary.
3 Assessments are due not less than thirty days after prior written
4 notice to the member insurers and accrue interest at twelve percent
5 per annum on and after the due date.

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

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

11 (b) Class B assessments are authorized and called to the extent
12 necessary to carry out the powers and duties of the association under
13 RCW 48.32A.075 with regard to an impaired or an insolvent insurer.

14 (3) (a) The amount of a class A assessment is determined by the
15 board and may be authorized and called on a pro rata or nonpro rata
16 basis. If pro rata, the board may provide that it be credited against
17 future class B assessments. ~~((The total of all nonpro rata
18 assessments may not exceed one hundred fifty dollars per member
19 insurer in any one calendar year.))~~

20 (b) The amount of a class B assessment ((may)), except for
21 assessments related to long-term care insurance, must be allocated
22 for assessment purposes ((among)) between the accounts and among the
23 subaccounts of the life insurance and annuity accounts, pursuant to
24 an allocation formula which may be based on the premiums or reserves
25 of the impaired or insolvent insurer or any other standard determined
26 by the board to be fair and reasonable under the circumstances.

27 ~~((b))~~ (c) The amount of the class B assessment for long-term
28 care insurance written by an impaired or insolvent insurer must be
29 allocated according to a methodology included in the plan of
30 operation and approved by the commissioner. The methodology must
31 provide for fifty percent of the assessment to be allocated to
32 disability and health member insurers and fifty percent to be
33 allocated to life and annuity member insurers.

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

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

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

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

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

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

1 average annual premiums for the applicable subaccount or account as
2 calculated under this section.

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

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

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

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

29 (7) Any member insurer may when determining its premium rates and
30 policy owner dividends, as to any kind of insurance, health care
31 service contractor business, or health maintenance organization
32 business within the scope of this chapter, consider the amount
33 reasonably necessary to meet its assessment obligations under this
34 chapter.

35 (8) The association shall issue to each member insurer paying an
36 assessment under this chapter, other than a class A assessment, a
37 certificate of contribution, in a form prescribed by the
38 commissioner, for the amount of the assessment paid. All outstanding
39 certificates must be of equal dignity and priority without reference
40 to amounts or dates of issue. A certificate of contribution may be

1 shown by the member insurer in its financial statement as an asset in
2 such form and for such amount, if any, and period of time as the
3 commissioner may approve.

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

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

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

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

26 (e) If the protest or appeal on the assessment is upheld, the
27 amount paid in error or excess must be returned to the member
28 (~~(company)~~) insurer. Interest on a refund due a protesting member
29 must be paid at the rate actually earned by the association.

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

33 **Sec. 8.** RCW 48.32A.095 and 2001 c 50 s 10 are each amended to
34 read as follows:

35 (1) (a) The association shall submit to the commissioner a plan of
36 operation and any amendments necessary or suitable to assure the
37 fair, reasonable, and equitable administration of the association.
38 The plan of operation and any amendments are effective upon the

1 commissioner's written approval or unless it has not been disapproved
2 within thirty days.

3 (b) If the association fails to submit a suitable plan of
4 operation within one hundred twenty days following July 22, 2001, or
5 if at any time thereafter the association fails to submit suitable
6 amendments to the plan, the commissioner shall, after notice and
7 hearing, adopt reasonable rules as necessary or advisable to
8 effectuate the provisions of this chapter. The rules continue in
9 force until modified by the commissioner or superseded by a plan
10 submitted by the association and approved by the commissioner.

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

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

14 (a) Establish procedures for handling the assets of the
15 association;

16 (b) Establish the amount and method of reimbursing members of the
17 board of directors under RCW 48.32A.065;

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

20 (d) Establish procedures for records to be kept of all financial
21 transactions of the association, its agents, and the board of
22 directors;

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

25 (f) Establish any additional procedures for assessments under RCW
26 48.32A.085; (~~and~~)

27 (g) Establish procedures whereby a director may be removed for
28 cause, including in the case where a member insurer becomes an
29 impaired or insolvent insurer;

30 (h) Require the board of directors to establish policies and
31 procedures for addressing conflicts of interests among the board of
32 directors and the member insurers they represent; and

33 (i) Contain additional provisions necessary or proper for the
34 execution of the powers and duties of the association.

35 (4) The plan of operation may provide that any or all powers and
36 duties of the association, except those under RCW 48.32A.075(12)(c)
37 and 48.32A.085, are delegated to a corporation, association, or other
38 organization which performs or will perform functions similar to
39 those of this association, or its equivalent, in two or more states.
40 Such a corporation, association, or organization must be reimbursed

1 for any payments made on behalf of the association and must be paid
2 for its performance of any function of the association. A delegation
3 under this subsection takes effect only with the approval of both the
4 board of directors and the commissioner, and may be made only to a
5 corporation, association, or organization which extends protection
6 not substantially less favorable and effective than that provided by
7 this chapter.

8 **Sec. 9.** RCW 48.32A.115 and 2001 c 50 s 12 are each amended to
9 read as follows:

10 The commissioner shall aid in the detection and prevention of
11 member insurer insolvencies or impairments.

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

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

18 (i) Revocation of license;

19 (ii) Suspension of license; or

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

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

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

36 (d) Furnish to the board of directors the national association of
37 insurance commissioners insurance regulatory information system
38 ratios and listings of companies not included in the ratios developed
39 by the national association of insurance commissioners, and the board

1 may use the information contained therein in carrying out its duties
2 and responsibilities under this section. The report and the
3 information must be kept confidential by the board of directors until
4 such time as made public by the commissioner or other lawful
5 authority.

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

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

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

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

25 **Sec. 10.** RCW 48.32A.135 and 2001 c 50 s 14 are each amended to
26 read as follows:

27 (1) This chapter does not reduce the liability for unpaid
28 assessments of the insureds of an impaired or insolvent insurer
29 operating under a plan with assessment liability.

30 (2) Records must be kept of all meetings of the board of
31 directors to discuss the activities of the association in carrying
32 out its powers and duties under RCW 48.32A.075. The records of the
33 association with respect to an impaired or insolvent insurer may not
34 be disclosed prior to the termination of a liquidation,
35 rehabilitation, or conservation proceeding involving the impaired or
36 insolvent insurer, upon the termination of the impairment or
37 insolvency of the insurer, or upon the order of a court of competent
38 jurisdiction. This subsection does not limit the duty of the

1 association to render a report of its activities under RCW
2 48.32A.145.

3 (3) For the purpose of carrying out its obligations under this
4 chapter, the association is a creditor of the impaired or insolvent
5 insurer to the extent of assets attributable to covered policies
6 reduced by any amounts to which the association is entitled as
7 subrogee under RCW 48.32A.075(11). Assets of the impaired or
8 insolvent insurer attributable to covered policies must be used to
9 continue all covered policies and pay all contractual obligations of
10 the impaired or insolvent insurer as required by this chapter. Assets
11 attributable to covered policies, as used in this subsection, are
12 that proportion of the assets which the reserves that should have
13 been established for such policies bear to the reserves that should
14 have been established for all policies of insurance written by the
15 impaired or insolvent insurer.

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

29 (5)(a) Prior to the termination of any liquidation,
30 rehabilitation, or conservation proceeding, the court may take into
31 consideration the contributions of the respective parties, including
32 the association, ~~((the))~~ shareholders, contract owners, certificate
33 holders, enrollees, and ~~((the))~~ policy owners of the insolvent
34 insurer, and any other party with a bona fide interest, in making an
35 equitable distribution of the ownership rights of the insolvent
36 insurer. In such a determination, consideration must be given to the
37 welfare of the policy owners, contract owners, certificate holders,
38 and enrollees of the continuing or successor member insurer.

39 (b) A distribution to stockholders, if any, of an impaired or
40 insolvent insurer shall not be made until and unless the total amount

1 of valid claims of the association with interest thereon for funds
2 expended in carrying out its powers and duties under RCW 48.32A.075
3 with respect to the member insurer have been fully recovered by the
4 association.

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

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

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

26 (d) The maximum amount recoverable under this subsection is the
27 amount needed in excess of all other available assets of the
28 insolvent insurer to pay the contractual obligations of the insolvent
29 insurer.

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

35 **Sec. 11.** RCW 48.32A.175 and 2001 c 50 s 18 are each amended to
36 read as follows:

37 All proceedings in which the insolvent insurer is a party in any
38 court in this state are stayed ((sixty)) one hundred eighty days from
39 the date an order of liquidation, rehabilitation, or conservation is

1 final to permit proper legal action by the association on any matters
2 germane to its powers or duties. As to judgment under any decision,
3 order, verdict, or finding based on default the association may apply
4 to have such a judgment set aside by the same court that made such a
5 judgment and must be permitted to defend against the suit on the
6 merits.

7 **Sec. 12.** RCW 48.32A.185 and 2005 c 274 s 313 are each amended to
8 read as follows:

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

25 (2) ~~((Within one hundred eighty days after July 22, 2001, the))~~
26 The association shall prepare a summary document describing the
27 general purposes and current limitations of this chapter and
28 complying with subsection (3) of this section. This summary document
29 must be submitted to the commissioner for approval. The summary
30 document must also be available upon request by a policy owner,
31 contract owner, certificate owner, or enrollee. The distribution,
32 delivery, contents, or interpretation of this document does not
33 guarantee that either the policy or the contract or the ~~((owner of~~
34 ~~the policy or contract))~~ policy owner, contract owner, certificate
35 holder, or enrollee is covered in the event of the impairment or
36 insolvency of a member insurer. The ~~((description))~~ summary document
37 must be revised by the association as amendments to this chapter may
38 require. Failure to receive this document does not give the policy

1 owner, contract owner, certificate holder, enrollee, or insured any
2 greater rights than those stated in this chapter.

3 (3) The summary document prepared under subsection (2) of this
4 section must contain a clear and conspicuous disclaimer on its face.
5 The commissioner shall establish the form and content of the
6 disclaimer. The disclaimer must:

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

9 (b) Prominently warn the (~~policy or contract owner~~) policy
10 owner, contract owner, certificate holder, or enrollee that the life
11 and disability insurance guaranty association may not cover the
12 policy or contract or, if coverage is available, it is subject to
13 substantial limitations and exclusions and conditioned on continued
14 residence in this state;

15 (c) State the types of policies or contracts for which guaranty
16 funds provide coverage;

17 (d) State that the member insurer and its agents are prohibited
18 by law from using the existence of the life and disability insurance
19 guaranty association for the purpose of sales, solicitation, or
20 inducement to purchase any form of insurance, health care service
21 contractor coverage, or health maintenance organization coverage;

22 (e) State that the policy (~~or~~) owner, contract owner,
23 certificate holder, insured, or enrollee should not rely on coverage
24 under the life and disability insurance guaranty association when
25 selecting an insurer, health care service contractor, or health
26 maintenance organization;

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

30 (g) Provide other information as directed by the commissioner
31 including but not limited to, sources for information about the
32 financial condition of member insurers provided that the information
33 is not proprietary and is subject to disclosure under chapter 42.56
34 RCW.

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

38 Correct the title.

EFFECT: (1) Adjusts the methodology for allocating class B assessments for long-term care insurance from 25% for disability and health member insurers and 75% for life and annuity member insurers, to 50% for disability and health member insurers and 50% for life and annuity member insurers.

(2) Modifies the definitions of "benefit plan" and "member insurer."

(3) Makes technical changes such as modifying terms and reordering sentences.

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