CONFERENCE COMMITTEE REPORT

MR. SPEAKER and MR. PRESIDENT: Your committee on conference on Senate amendments to **HB 2787** submits the following report:

The House accedes to all Senate amendments to the bill, and your committee on conference further agrees to amend the bill as printed with Senate Committee amendments, as follows:

On page 1, following line 11, by inserting:

"New Section 1. (a) All matters relating to the insolvency or impairment of any member insurer placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency before the effective date, or for which the association otherwise exercises its powers and duties under K.S.A. 40-3008, and amendments thereto, before July 1, 2024, including past, present and future assessments and credits, shall be governed by the provisions of this act that were in effect before July 1, 2024.

(b) All matters relating to the insolvency or impairment of any member insurer placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency on or after the effective date of this section, or for which the association otherwise exercises its powers and duties under K.S.A. 40-3008, and amendments thereto, on or after July 1, 2024, shall be governed by the provisions of the act in effect on the date such actions are officially taken.";

On page 6, following line 42, by inserting:

"Sec. 6. K.S.A. 40-3002 is hereby amended to read as follows: 40-3002. (a) The purpose of this act is to protect, subject to certain limitations, the persons specified in ~~subsection (a) of~~ K.S.A. 40-3003, and amendments thereto, against failure in the performance of contractual obligations, under life ~~and,~~ health ~~insurance policies~~ and annuity policies, plans and contracts specified in ~~subsection (b) of~~ K.S.A. 40-3003, and amendments thereto, because of the impairment or insolvency of the member insurer that issued the policies or contracts.

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

Sec. 7. K.S.A. 40-3003 is hereby amended to read as follows: 40-3003. (a) This act shall provide coverage~~,~~ for the policies, plans and contracts specified in subsection (b), for:

(1) Persons who, regardless of where they reside, except for nonresident certificate holders under group policies or contracts, are the beneficiaries, assignees, payees or providers of the persons covered under paragraph (2); and

(2) persons who are ~~owners~~ policyholders or contract holders of or certificate holders or enrollees under such policies or contracts other than structured settlement annunities, and who are:

(A) ~~Are~~ Residents;

(B) ~~are~~ not residents, but only with respect to an annuity contract awarded pursuant to K.S.A. 60-3407 or 60-3409, and amendments thereto, an annuity contract for future economic loss procured pursuant to a settlement agreement in a medical malpractice liability action, as defined by K.S.A. 60-3401, and amendments thereto, or fixed-return accounts of the Kansas public employees deferred compensation plan under K.S.A. 74-49b08 through 74-49b14, and amendments thereto; or

(C) ~~are~~ not residents, but only under all of the following conditions:

(i) The member insurers ~~which~~ that issued such policies or contracts are domiciled in this state;

(ii) the states in which such persons reside have one or more associations similar to the association created by this act; and

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

(3) (A) Paragraphs (1) and (2) ~~of this subsection~~ shall not apply to structured settlement annuities.

(B) Except as provided in paragraphs (4) and (5) ~~of this subsection~~, this act shall provide coverage to a person who is a payee under a structured settlement annuity, or beneficiary of a payee if the payee is deceased, if the payee:

(i) (a) Is a resident, regardless of where the contract holder resides; or

(b) is not a resident, but only under both of the following conditions:

(1) The contract holder of the structured settlement annuity is a resident; or

(2) the contract holder of the structured settlement annuity is not a resident~~;~~, but:

(A) The insurer that issued the structured settlement annuity is domiciled in this state; and

(B) the state in which the contract holder resides has an association similar to the association created by this act; and

(ii) neither the payee or beneficiary nor the contract holder is eligible for coverage by the association of the state in which the payee or contract holder resides.

(4) This act shall not provide coverage to a person who:

(A) Is a payee or beneficiary of a contract holder resident of this state, if the payee or beneficiary is afforded any coverage by the association of another state; or

(B) acquires rights to receive payments though a structured settlement factoring transaction as defined in 26 U.S.C. 5891(c)(3)(A), regardless of whether the transaction occurred before or after such section became effective.

(5) This act is intended to provide coverage to a person who is a resident of this state and, in special circumstances, to a nonresident. In order to avoid duplicate coverage, if a person who would otherwise receive coverage under this act is provided coverage under the laws of any other state, the person shall not be provided coverage under this act. In determining the application of the provisions of this paragraph in situations where a person could be covered by the association of more than one state, whether as a policyholder, contract holder, payee, enrollee, beneficiary or assignee, this act shall be construed in conjunction with other state laws to result in coverage by only one association.

(b) (1) This act shall provide coverage to the persons specified in subsection (a) for policies or contracts of direct, nongroup life insurance, health, insurance or ~~annuity policies or contracts,~~ annuities and supplemental contracts or unallocated annuity contracts covering individuals participating in a governmental deferred compensation plan established under section 457 of the U.S. internal revenue code pursuant to K.S.A. 74-49b08 through 74-49b14, and amendments thereto, whether or not a resident, or the beneficiaries of each such individual if deceased, and for certificates under direct group policies and contracts issued by member insurers, except as limited by this act.

(2) As used in this act, health insurer includes health maintenance organization subscriber contracts and certificates.

Sec. 8. K.S.A. 40-3005 is hereby amended to read as follows: 40-3005. As used in this act:

(a) "Account" means ~~either~~ any of the three accounts created under K.S.A. 40-3006, and amendments thereto;

(b) "association" means the Kansas life and health insurance guaranty association created under K.S.A. 40-3006, and amendments thereto;

(c) "commissioner" means the commissioner of insurance of this state;

(d) "contractual obligation" means any obligation of a policy or contract or certificate under a group policy or contract, or portion thereof, for which coverage is provided under K.S.A. 40-3003, and amendments thereto;

(e) "covered contract" or "covered policy" means any policy or contract ~~within the scope of this act~~ for which coverage is provided under K.S.A. 40-3003, and amendments thereto;

(f) "extra-contractual claims" shall include, for example, claims relating to bad faith in the payment of claims, punitive or exemplary damages or attorney fees and costs;

(g) "health benefit plan" means any hospital or medical expense policy or certificate, or health maintenance organization subscriber contract or any other similar health contract. "Health benefit plan" does not include:

(1) Accident only insurance;

(2) credit insurance;

(3) dental only insurance;

(4) vision only insurance;

(5) medicare supplement insurance;

(6) benefits for long-term care, home healthcare, community-based care or any combination thereof;

(7) disability income insurance;

(8) coverage for on-site medical clinics; and

(9) specified disease, hospital confinement indemnity or limited benefit health insurance if the types of coverage do not provide coordination of benefits and are provided under separate policies or certificates;

(h) "impaired insurer" means a member insurer ~~which,~~ that, after the effective date of this act, is not an insolvent insurer~~,~~ and is placed under an order of rehabilitation or conservation by a court of competent jurisdiction;

~~(g)~~(i) "insolvent insurer" means a member insurer ~~which,~~ that, after the effective date of this act, is placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency;

~~(h)~~(j) "member insurer" means any insurer or health maintenance organization licensed or holding a certificate of authority to transact in this state any kind of insurance or health maintenance organization business for which coverage is provided under K.S.A. 40-3003, and amendments thereto, and includes any insurer or health maintenance organization whose license or certificate of authority in this state may have been suspended, revoked, nonrenewed or

voluntarily withdrawn, but does not include:

(1) A hospital or medical service organization regardless of whether such hospital or medical service organization is organized for profit or not-for-profit;

(2) ~~a health maintenance organization;~~

~~(3)~~ a fraternal benefit society;

~~(4)~~(3) a mandatory state pooling plan;

~~(5)~~(4) a mutual assessment company or any entity that operates on an assessment basis;

~~(6)~~(5) an insurance exchange, except a reciprocal or interinsurance exchange governed by the provisions of article 16 of chapter 40 of the Kansas Statutes Annotated, and amendments thereto; ~~or~~

(6) an organization that has a certificate or license limited to the issuance of charitable gift annuities; or

(7) any entity similar to any of the organizations listed in paragraphs (1) through (6) ~~inclusive~~;

~~(i)~~(k) "Moody's corporate bond yield average" means the monthly average corporates as published by Moody's investors service, inc., or any successor thereto;

~~(j)~~(l) "person" means any individual, corporation, partnership, association, voluntary organization or provider;

~~(k)~~(m) "policyholder" and "contract holder" means the person who is identified as the legal owner under the terms of the policy or contract or who is otherwise vested with legal title to the policy or contract through a valid assignment completed in accordance with the terms of the

policy or contract and properly recorded as the owner on the books of the member insurer. The terms "policyholder" and "contract holder" do not include persons with a mere beneficial interest in a policy or contract;

~~(l)~~(n) "provider" means a person who is entitled to receive compensation for providing medical services to an insured or enrollee covered under any health insurance or health maintenance organization contract, certificate or policy issued by a member insurer, regardless of whether the provider is obligated by statute or by agreement with the member insurer to hold any insured or enrollee covered by any health insurance or health maintenance organization contract, certificate or policy harmless from liability for services;

~~(m)~~(o) "premiums" means amounts received on covered policies or contracts less premiums, considerations and deposits returned thereon, and less dividends and experience credits thereon. Premiums does not include any amounts received for any policies or contracts or for the portions of any policies or contracts for which coverage is not provided under ~~subsection (b) of~~ K.S.A. 40-3003, and amendments thereto, except that assessable premiums shall not be reduced on accounts for ~~subsection (n)(3) of~~ K.S.A. 40-3008, and amendments thereto, relating to interest limitations and ~~subsection (o)(2) of~~ K.S.A. 40-3008, and amendments thereto, relating to limitations with respect to any one life and any one policyholder or contract holder. Premiums shall not include:

(1) Any premiums on any unallocated annuity contract; or

(2) any premiums in excess of $5,000,000 with respect to multiple nongroup policies of life insurance owned by one policyholder or contract holder, regardless of the number of policies

or contracts held by the policyholder or contract holder and regardless of whether:

(A) The policyholder is an individual, firm, corporation or other person; and

(B) the persons insured are officers, managers, employees or other persons;

~~(n)~~(p) "resident" means any person who resides in this state at the time a member insurer is determined by court order to be an impaired or insolvent insurer and to whom a contractual obligation is owed. A person may be a resident of only one state, which, in the case of a person other than a natural person, shall be its principal place of business. Citizens of the United States that are either residents of foreign countries or residents of United States possessions, territories or protectorates that do not have an association similar to the association created by this act, shall be deemed residents of the state of domicile of the member insurer that issued the policies or contracts;

~~(o)~~(q) "structured settlement annuity" means an annuity purchased in order to fund periodic payments for a plaintiff or other claimant in payment for or with respect to personal injury suffered by the plaintiff or other claimant, but excludes an annuity policy or contract awarded pursuant to K.S.A. 60-3407 or 60-3409, and amendments thereto;

~~(p)~~(r) "supplemental contract" means any written agreement entered into for the distribution of proceeds under a life, health or annuity policy or contract; and

~~(q)~~(s) "unallocated annuity contract" means any annuity contract or group annuity certificate ~~which~~ that is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under such contract or certificate.

Sec. 9. K.S.A. 40-3006 is hereby amended to read as follows: 40-3006. (a) There is

hereby created a nonprofit legal entity to be known as the Kansas life and health insurance guaranty association. All member insurers shall be and remain members of the association as a condition of their license or authority to transact insurance or health maintenance organization business in this state. The association shall perform its functions under the plan of operation established and approved under K.S.A. 40-3010, and amendments thereto, and shall exercise its powers through a board of directors established under K.S.A. 40-3007, and amendments thereto. For purposes of administration and assessment, the association shall maintain three accounts:

(1) ~~The~~ Health ~~insurance~~ account;

(2) ~~the~~ life insurance account; and

(3) ~~the~~ annuity account, excluding unallocated annuities.

(b) The association shall come under the immediate supervision of the commissioner and shall be subject to the applicable provisions of the insurance laws of this state. Meetings or records of the association may be opened upon majority vote of the board of directors of the association.

Sec. 10. K.S.A. 40-3007 is hereby amended to read as follows: 40-3007. (a) The board of directors of the association shall consist of not ~~less~~ fewer than five nor more than nine member insurers serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the commissioner. Vacancies on the board shall be filled for the remaining periods of the terms by a majority vote of the remaining board members, subject to the approval of the commissioner. ~~To select the initial board of directors, and initially organize the association, the commissioner shall give notice to all~~

~~member insurers of the time and place of the organizational meeting. In determining voting rights at the organizational meeting each member insurer shall be entitled to one vote in person or by proxy. If the board of directors is not selected within 60 days after notice of the organizational meeting, the commissioner may appoint the initial members.~~

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

(c) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors but members of the board shall not otherwise be compensated by the association for their services.

(d) The terms of each member appointed and serving on the board of directors as of July 1, 2024, shall continue until the expiration of each member's current term. Upon expiration of each member's term, the commissioner shall decide whether to continue each member's position on the board or reduce the number of members of the board of directors in accordance with paragraph (e).

(e) On and after January 1, 2025, the board of directors shall consist of not fewer than five but not more than nine members appointed in accordance with this paragraph. Members of the board of directors shall be selected by member insurers subject to the approval of the commissioner. Each member of the board of directors shall be appointed for a term of three years, except that members shall be removable by the commissioner for inefficiency, neglect of duty or malfeasance.

Sec. 11. K.S.A. 40-3008 is hereby amended to read as follows: 40-3008. (a) If a

member insurer is an impaired insurer, the association may, in its discretion and subject to any conditions imposed by the association that do not impair the contractual obligations of the impaired insurer and that are approved by the commissioner that:

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

(2) provide such moneys, pledges, loans, notes, guarantees or other means as are proper to effectuate the provisions of paragraph (1) and assure payment of the contractual obligations of the impaired insurer pending action under paragraph (1).

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

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

(ii) assure payment of the contractual obligations of the insolvent insurer; and

(B) provide such moneys, pledges, loans, notes, guarantees or other means as are reasonably necessary to discharge such duties; or

(2) with respect to ~~life and health insurance policies and annuities~~ policies and contracts, provide benefits and coverages in accordance with subsection (c).

(c) When proceeding under ~~paragraph (2) of~~ subsection (b)(2), the association shall:

(1) Assure payment of benefits for premiums identical to the premiums and benefits, ~~except for terms of conversion and renewability,~~ that would have been payable under the policies or contracts of the insolvent insurer, for claims incurred:

(A) With respect to group policies and contracts, not later than the earlier of the next renewal date under such policies or contracts or 45 days, but in no event less than 30 days, after the date on which the association becomes obligated with respect to such policies and contracts;

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

(2) make diligent efforts to provide all known insureds, enrollees, annuitants or group policyholders or contract holders with respect to group policies and contracts, 30 days' notice of the termination of the benefits provided; and

(3) with respect to nongroup ~~life and health insurance policies and annuities~~ policies and contracts covered by the association, make available to each known insured, enrollee or annuitant, or owner if other than the insured or annuitant, and with respect to an individual formerly an insured, enrollee, or an annuitant under a group policy or contract who is not eligible for replacement group coverage, make available substitute coverage on an individual basis in accordance with the provisions of paragraph (4), if the insureds, enrollees or annuitants had a right under law or the terminated policy, contract or annuity to convert coverage to individual coverage or to continue an individual policy, contract or annuity in force until a specified age or for a specified time, during which the insurer or health maintenance organization had no right unilaterally to make changes in any provision of the policy, contract or annuity or had a right only to make changes in premium by class;

(4) (A) in providing the substitute coverage required under paragraph (3), the association may offer either to reissue the terminated coverage or to issue an alternative policy or contract at actuarially justified rates;

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

(C) the association may reinsure any alternative or reissued policy or contract;

(5) (A) alternative policies or contracts adopted by the association shall be subject to the approval of the commissioner. The association may adopt alternative policies or contracts of various types for future issuance without regard to any particular impairment or insolvency;

(B) alternative policies or contracts shall contain at least the minimum statutory provisions required in this state and provide benefits that shall not be unreasonable in relation to the premiums charged. The association shall set the premiums in accordance with a table of rates ~~which~~ that it shall adopt. The premiums shall reflect the amount of insurance or coverage to be provided and the age and class of risk of each insured~~,~~ or enrollee but shall not reflect any changes in the health of the insured or enrollee after the original policy or contract was last underwritten;

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

(6) if the association elects to reissue the insured's terminated coverage at a premium

rate different from that charged under the terminated policy or contract, the premium shall be actuarially justified and set by the association in accordance with the amount of insurance or coverage provided and the age and class of risk, subject to prior approval of the ~~domiciliary insurance~~ commissioner ~~and the receivership court~~.

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

(e) When proceeding under ~~paragraph (2) of~~ subsection (b)(2) with respect to any policy or contract carrying guaranteed minimum interest rates, the association shall assure the payment or crediting of a rate of interest consistent with subsection ~~(n)(3)~~ (o)(3).

(f) Nonpayment of premiums within 31 days after the date required under the terms of any guaranteed, assumed, alternative or reissued policy or contract or substitute coverage shall terminate the association's obligations under such policy, contract or coverage under this act with respect to such policy, contract or coverage, except with respect to any claims incurred or any net cash surrender value ~~which~~ that may be due in accordance with the provisions of this act.

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

(h) The protection provided by this act shall not apply where any guaranty protection is

provided to residents of this state by the laws of the domiciliary state or jurisdiction of the impaired or insolvent insurer other than this state.

(i) In carrying out its duties under subsection (b), the association may, subject to approval by a court in this state:

(1) Impose permanent policy or contract liens in connection with any guarantee, assumption or reinsurance agreement, if the association finds that the amounts ~~which~~ that can be assessed under this act are less than the amounts needed to assure full and prompt performance of the association's duties under this act, or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of such permanent policy or contract liens to be in the public interest; and

(2) impose temporary moratoriums or liens on payments of cash values and policy loans, or any other right to withdraw funds held in conjunction with policies or contracts, in addition to any contractual provisions for deferral of cash or policy loan value. In addition, in the event of a temporary moratorium or moratorium charge imposed by the receivership court on payment of cash values or policy loans or on any other right to withdraw funds held in conjunction with policies or contracts, out of the assets of the impaired or insolvent insurer, the association may defer the payment of cash values, policy loans or other rights by the association for the period of the moratorium or moratorium charge imposed by the receivership court, except for claims covered by the association to be paid in accordance with a hardship procedure established by the liquidator or rehabilitator and approved by the receivership court.

(j) A deposit in this state, held pursuant to law or required by the commissioner for the

benefit of creditors, including policyholders or contract holders, not turned over to the domiciliary liquidator upon the entry of a final order of liquidation or order approving a rehabilitation plan of a member insurer domiciled in this state or in a reciprocal state, pursuant to K.S.A. 40-222b, and amendments thereto, shall be promptly paid to the association. The association shall be entitled to retain a portion of any amount so paid equal to the percentage determined by dividing the aggregate amount of policyholders' or contract holders' claims related to that insolvency for which the association has provided statutory benefits by the aggregate amount of all policyholders' or contract holders' claims in this state related to that insolvency and shall remit to the domiciliary receiver the amount so paid to the association less the amount retained pursuant to this subsection. Any amount so paid to the association and retained by such association shall be treated as a distribution of estate assets pursuant to applicable state receivership law dealing with early access disbursements.

(k) If the association fails to act within a reasonable period of time as provided in subsections (b) and (c), the commissioner shall have the powers and duties of the association under this act with respect to impaired or insolvent insurers.

~~(k)~~(l) The association may render assistance and advice to the commissioner, upon request, concerning rehabilitation, payment of claims, continuance of coverage or the performance of other contractual obligations of any impaired or insolvent insurer.

~~(l)~~(m) (1) The association shall have standing to appear or intervene before any court in this state with jurisdiction over:

(A) An impaired or insolvent insurer concerning that which the association is or may

become obligated under this act; or

(B) any person or property against which the association may have rights through subrogation or otherwise.

(2) Such standing shall extend to all matters germane to the powers and duties of the association, including, but not limited to, proposals for reinsuring, reissuing or guaranteeing the covered policies of the impaired or insolvent insurer and the determination of the covered policies or contracts and contractual obligations.

(3) The association shall also have the right to appear or intervene before a court in another state with jurisdiction over an impaired or insolvent insurer for which the association is or may become obligated or with jurisdiction over ~~a third party~~ any person or property against whom the association may have rights through subrogation ~~of the insurer's policyholders~~ or otherwise.

~~(m)~~(n) (1) Any person receiving benefits under this act shall be deemed to have assigned the rights under, and any cause of action relating to, the covered policy or contract to the association to the extent of the benefits received because of this act, whether the benefits are payments of or on account of contractual obligations, continuation of coverage or provision of substitute or alternative policies, contracts or coverages. The association may require an assignment to it of such rights and cause of action by any enrollee, payee, ~~policy or contract owner~~ policyholder, contract holder, beneficiary, insured or annuitant as a condition precedent to the receipt of any right or benefits conferred by this act upon such person.

(2) The subrogation rights of the association under this subsection shall have the same

priority against the assets of the impaired or insolvent insurer as that possessed by the person entitled to receive benefits under this act.

(3) In addition to paragraphs (1) and (2), the association shall have all common-law rights of subrogation and any other equitable or legal remedy ~~which~~ that would have been available to the impaired or insolvent insurer or ~~holder of a policy~~ policyholder or contract holder, beneficiary, enrollee or payee of a policy or contract with respect to such policy or contracts, including, without limitation, in the case of a structured settlement annuity, any rights of the owner, beneficiary or payee of the annuity, to the extent of benefits received pursuant to this act, against a person originally or by succession responsible for the losses arising from the personal injury relating to the annuity or payment therefor, excepting any such person responsible solely by reason of serving as an assignee regarding a qualified assignment pursuant to 26 U.S.C. § 130.

(4) If the preceding provisions of this subsection are invalid or ineffective with respect to any person or claim for any reason, the amount payable by the association with respect to the related covered obligations shall be reduced by the amount realized by any other person with respect to the person or claim that is attributable to the policies or contracts, or portion thereof, covered by the association.

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

~~(n)~~(o) ~~The contractual obligations of the impaired or insolvent insurer for which the association becomes, or may become, liable shall be as great as but no greater than the contractual obligations of the impaired or insolvent insurer would have been in the absence of an impairment or insolvency unless such obligations are reduced as permitted by this act but~~Except for subsection (p), the association shall not provide coverage for:

(1) Any portion of a policy or contract not guaranteed by the member insurer, or under which the risk is borne by the ~~policy~~ policyholder or contract holder;

(2) any policy or contract of reinsurance, unless assumption certificates have been issued;

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

(A) Averaged over the period of four years prior to the date on which the association becomes obligated with respect to such policy or contract, exceeds a rate of interest determined by subtracting two percentage points from Moody's corporate bond yield average averaged for that same four-year period or for such lesser period if the policy or contract was issued less than four years before the association became obligated; and

(B) on and after the date on which the association becomes obligated with respect to such policy or contract, exceeds the rate of interest determined by subtracting three percentage points from Moody's corporate bond yield average as most recently available;

(4) any plan or program of an employer, association or similar entity to provide life, health or annuity benefits to its employees or members to the extent that such plan or program is self-funded or uninsured, including, but not limited to, benefits payable by an employer, association or similar entity under:

(A) A multiple employer welfare arrangement as defined in ~~section 3 (40) of the employee retirement income security act of 1974 (,29 U.S.C. § 1002(40))~~ 29 U.S.C. § 1144;

(B) a minimum premium group insurance plan;

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

(D) an administrative services only contract;

(5) any portion of a policy or contract to the extent that it provides dividends or experience rating credits, voting rights or provides that any fees or allowances be paid to any person, including the ~~policy~~ policyholder or contract holder, in connection with the service to or administration of such policy or contract;

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

(7) any unallocated annuity contract, except as provided in ~~subsection (b) of~~ K.S.A. 40-3003, and amendments thereto;

(8) a portion of a policy or contract to the extent that the assessments required by K.S.A. 40-3009, and amendments thereto, with respect to the policy or contract are preempted by federal or state law;

(9) an obligation that does not arise under the express written terms of the policy or

contract issued by the member insurer to the enrollee, certificate holder, contract holder or policyholder, including, without limitation:

(A) Claims based on marketing materials;

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

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

(D) extra contractual claims; or

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

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

(11) a policy or contract providing any hospital, medical, prescription drug or other ~~health care~~ healthcare benefits pursuant to part C or part D of subchapter XVIII, chapter 7 of title 42 of the United States code ~~(~~, commonly known as medicare part C ~~&~~ and D~~)~~, or subchapter xix, chapter 7 of title 42 of the United States code, commonly known as medicaid, or any regulations issued pursuant thereto; ~~or~~

~~(9)~~(12) (A) any portion of a policy or contract:

(i) To the extent it provides for interest or other changes in value to be determined by the use of an index or other external reference stated in the policy or contract~~,~~ but which have not

been credited to the policy or contract; or

(ii) as to which the ~~policy~~ policyholder or contract ~~owner's~~ holder's rights are subject to forfeiture, as of the date the member insurer becomes an impaired or insolvent insurer under this act~~;~~, whichever is earlier.

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

(13) structured settlement annuity benefits to which a payee or beneficiary has transferred such payee's or beneficiary's rights in a structured settlement factoring transaction, as defined in 26 U.S.C. § 5891(c)(3)(A), regardless of whether the transaction occurred before or after such section became effective.

(p) The exclusion from coverage reference in subsection (o)(3) shall not apply to any portion of a policy or contract, including a rider, that provides long-term care or any other health insurance benefits.

~~(o)~~(q) The benefits for which the association may become liable shall in no event exceed the lesser of:

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

(2) with respect to any one life, regardless of the number of policies or contracts: (A) $300,000 in life insurance death benefits, but not more than $100,000 in net cash surrender and net cash withdrawal values for life insurance;

(B) ~~in~~for health insurance benefits:

(i) $100,000 for coverages not defined as disability income insurance or ~~basic hospital, medical and surgical insurance or major medical insurance~~ health benefit plans or long-term care insurance including any net cash surrender and net cash withdrawal values;

(ii) $300,000 for disability income insurance and $300,000 for long-term care insurance;

(iii) $500,000 for ~~basic hospital, medical and surgical insurance or major medical insurance~~ health benefit plans;

(C) $250,000 in the present value of annuity benefits, including net cash surrender and net cash withdrawal values;

(D) with respect to each payee of a structured settlement annuity ~~(~~or beneficiary or beneficiaries of the payee if deceased~~)~~, $250,000 in present value annuity benefits, in the aggregate, including net cash surrender and net cash withdrawal values;

(E) however, in no event shall the association be obligated to cover more than:

~~(1)~~(i) An aggregate of $300,000 in benefits with respect to any one life as provided in ~~paragraphs~~ subparagraphs (A), (B), (C) and (D) ~~of this subsection~~ except with respect to benefits for ~~basic hospital, medical and surgical insurance and major medical insurance~~ health benefit plans under ~~(o)~~ subsection (q)(2)(B)(iii) ~~of this subsection~~, in which case the aggregate liability

of the association shall not exceed $500,000 with respect to any one individual; or

~~(2)~~(ii) with respect to one ~~owner~~ holder of multiple nongroup policies or contracts of life insurance, whether the ~~policy owner~~ policyholder or contract holder is an individual, firm, corporation or other person~~,~~ and whether the persons insured are officers, managers, employees or other persons, more than $5,000,000 in benefits, regardless of the number of policies and contracts held by the ~~owner~~ policyholder or contract holder;

(F) the limitations set forth in this paragraph are limitations on the benefits for which the association is obligated before taking into account either its subrogation and assignment rights or the extent to which those benefits could be provided out of the assets of the impaired or insolvent insurer attributable to covered policies. The costs of the association's obligations under this act may be met by the use of assets attributable to covered policies or reimbursed to the association pursuant to its subrogation and assignment rights;

(G) the guaranty association's limits of liability with respect to the obligations of any impaired or insolvent insurer shall be the limits of liability in effect under this act on the date the guaranty association became liable for that impaired or insolvent insurer;

(H) for purposes of this act, benefits provided by a long-term care rider to a life insurance policy or annuity contract shall be considered the same type of benefits as the base life insurance policy or annuity contract to which it relates;

(I) in performing its obligations to provide coverage under this section, the association shall not be required to guarantee, assume, reinsure, reissue or perform, or cause to be guaranteed, assumed, reinsured, reissued or performed, the contractual obligations of the

insolvent or impaired insurer under a covered policy or contract that do not materially affect the economic values or economic benefits of the covered policy or contract.

The provisions of subsection ~~(o)~~(q) shall not apply to annuity contracts for future economic loss procured pursuant to a judgment or settlement agreement in a medical malpractice liability action.

~~(p)~~(r) The association may:

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

(2) sue or be sued, including taking any legal actions necessary or proper to recover any unpaid assessments under K.S.A. 40-3009, and amendments thereto, and to settle claims or potential claims against it;

(3) borrow money to effect the purposes of this act. Any notes or other evidence of indebtedness of the association not in default shall be legal investments for domestic insurers and may be carried as admitted assets;

(4) employ or retain such persons as are necessary to handle the financial transactions of the association, and to perform such other functions as become necessary or proper under this act;

(5) take such legal action as may be necessary to avoid or recover payment of improper claims; or

(6) exercise, for the purposes of this act and to the extent approved by the commissioner, the powers of a domestic life ~~or~~ insurer, health insurer or health maintenance

organization, but in no case may the association issue ~~insurance~~ policies or ~~annuity~~ contracts other than those issued to perform its obligations under this act;

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

(8) request information from a person seeking coverage from the association in order to aid the association in determining its obligations under this act with respect to the person, and such person shall promptly comply with the request;

(9) in accordance with the terms and conditions of the policy or contract, file for actuarially justified rate or premium increases for any policy or contract for which it provides coverage under this act; and

(10) take other necessary or appropriate action to discharge its duties and obligations under this act or to exercise its powers under this act.

~~(q)~~(s) The association may join an organization of one or more other state associations of similar purposes to further the purposes and administer the powers and duties of the association.

~~(r) The association shall pay any and all persons who, as a provider, may have claims as a result of a member insurer being found insolvent between March 1, 1999 and June 1, 1999.~~

(t) (1) (A) At any time within 180 days of the date of the order of liquidation, the association may elect to succeed to the rights and obligations of the ceding member insurer that relate to policies, contracts or annuities covered, in whole or in part, by the association, in each case under any one or more reinsurance contracts entered into by the insolvent insurer and its

reinsurers and selected by the association. Any such assumption shall be effective as of the date of the order of liquidation. The election shall be effected by the association or the national organization of life and health insurance guaranty associations (NOLHGA), on its behalf, sending written notice with return receipt requested to the affected reinsurers.

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

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

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

(C) The following subparagraphs shall apply to reinsurance contracts so assumed by the association:

(i) The association shall be responsible for all unpaid premiums due under the reinsurance contracts for periods both before and after the date of the order of liquidation and shall be responsible for the performance of all other obligations to be performed after the date of the order of liquidation, in each case relating to policies, contracts or annuities covered, in whole or in part, by the association. The association may charge policies, contracts or annuities covered in part by the association, through reasonable allocation methods, the costs for reinsurance in

excess of the obligations of the association and shall provide notice and an accounting of these charges to the liquidator;

(ii) the association shall be entitled to any amounts payable by the reinsurer under the reinsurance contracts with respect to losses or events that occur in periods after the date of the order of liquidation and that relate to policies, contracts or annuities covered, in whole or in part, by the association, provided that, upon receipt of any such amounts, the association shall be obliged to pay to the beneficiary under the policy, contract or annuity on account of which the amounts were paid a portion of the amount equal to the lesser of:

(a) The amount received by the association; and

(b) the excess of the amount received by the association over the amount equal to the benefits paid by the association on account of the policy, contract or annuity less the retention of the insurer applicable to the loss or event.

(iii) Within 30 days following the association's election, the "election date," the association and each reinsurer under contracts assumed by the association shall calculate the net balance due to or from the association under each reinsurance contract as of the election date with respect to policies, contracts or annuities covered, in whole or in part, by the association. Such calculation shall give full credit to all items paid by either the member insurer or its receiver or the reinsurer prior to the election date. The reinsurer shall pay the receiver any amounts due for losses or events prior to the date of the order of liquidation, subject to any set-off for premiums unpaid for periods prior to the date, and the association or reinsurer shall pay any remaining balance due the other, in each case within five days of the completion of the

aforementioned calculation. Any disputes over the amounts due to either the association or the reinsurer shall be resolved by arbitration pursuant to the terms of the affected reinsurance contracts or, if the contract contains no arbitration clause, as otherwise provided by law. If the receiver has received any amounts due the association pursuant to subparagraph (C)(ii), the receiver shall remit such amounts to the association as promptly as practicable.

(iv) If the association or receiver, on the association's behalf, within 60 days of the election date, pays the unpaid premiums due for periods both before and after the election date that relate to policies, contracts or annuities covered, in whole or in part, by the association, the reinsurer shall not be entitled to terminate the reinsurance contracts for failure to pay premiums insofar as the reinsurance contracts relate to policies, contracts or annuities covered, in whole or in part, by the association, and shall not be entitled to set off any unpaid amounts due under other contracts or unpaid amounts due from parties other than the association against amounts due the association.

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

(A) (i) Neither the association nor the reinsurer shall have any rights or obligations under reinsurance contracts that the association has the right to assume under paragraph (1), whether for periods prior to or after the date of the order of liquidation; and

(ii) the reinsurer, the receiver and the association shall, to the extent practicable, provide each other data and records reasonably requested;

(B) provided that once the association has elected to assume a reinsurance contract, the

parties' rights and obligations shall be governed by paragraph (1).

(3) If the association does not elect to assume a reinsurance contract by the election date pursuant to paragraph (1), the association shall have no rights or obligations, in each case for periods both before and after the date of the order of liquidation, with respect to the reinsurance contract.

(4) When policies, contracts or annuities, or covered obligations with respect thereto are transferred to an assuming insurer, reinsurance on the policies, contracts or annuities may also be transferred by the association, in the case of contracts assumed under subsection (t)(1), subject to the following:

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

(B) the obligations described in subsection (t)(1) shall no longer apply with respect to matters arising after the effective date of the transfer; and

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

(5) The provisions of this subsection shall supersede the provisions of any state law or any affected reinsurance contract that provides for or requires any payment of reinsurance proceeds, on account of losses or events that occur in periods after the date of the order of liquidation, to the receiver of the insolvent insurer or any other person. The receiver shall remain entitled to any amounts payable by the reinsurer under the reinsurance contracts with respect to

losses or events that occur in periods prior to the date of the order of liquidation, subject to applicable setoff provisions.

(6) Except as otherwise provided in this subsection, nothing in this subsection shall alter or modify the terms and conditions of any reinsurance contract. Nothing in this section shall abrogate or limit any rights of any reinsurer to claim that such reinsurer is entitled to rescind a reinsurance contract. Nothing in this section shall give a policyholder, contract owner, enrollee, certificate holder or beneficiary an independent cause of action against a reinsurer that is not otherwise set forth in the reinsurance contract. Nothing in this section shall limit or affect the association's rights as a creditor of the estate against the assets of the estate. Nothing in this section shall apply to reinsurance agreements covering property or casualty risks.

(u) The board of directors of the association shall have discretion and may exercise reasonable business judgment to determine the means by which the association is to provide the benefits of this act in an economical and efficient manner.

(v) Where the association has arranged or offered to provide the benefits of this act to a covered person under a plan or arrangement that fulfills the association's obligations under this act, the person shall not be entitled to benefits from the association in addition to or other than those provided under the plan or arrangement.

(w) Venue in a suit against the association arising under this act shall be in Shawnee County. The association shall not be required to give an appeal bond in an appeal that relates to a cause of action arising under this act.

~~(s) Regarding covered policies for which the association becomes obligated after an~~

~~entry of an order of liquidation, to the extent such contract provides coverage for losses occurring after the date of the order of liquidation, the association may elect to succeed to the rights of the insolvent insurer arising after the order of liquidation under any contract of reinsurance to which the insolvent insurer was a party. As a condition to making such election, the association must pay all unpaid premiums due under the contract for coverage relating to periods before and after the date on which the order of liquidation was entered.~~

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

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

~~(i)~~(A) A fixed interest rate;

~~(ii)~~(B) payment of dividends with minimum guarantees; or

~~(iii)~~(C) a different method for calculating interest or changes in value.

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

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

Sec. 12. K.S.A. 40-3009 is hereby amended to read as follows: 40-3009. (a) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account, at such time and for such amounts as the board finds necessary. Assessments shall be due not less than 30 days after prior written notice to the member insurers and shall accrue interest at 15% per annum on and after the due date.

(b) There shall be two classes of assessments, as follows: (1) Class A assessments shall be made for the purpose of meeting administrative and legal costs and other expenses and examinations conducted under the authority of subsection (e) of K.S.A. 40-3012, and amendments thereto. Class A assessments may be made whether or not related to a particular impaired or insolvent insurer.

(2) Class B assessments shall be made to the extent necessary to carry out the powers and duties of the association under K.S.A. 40-3008, and amendments thereto, with regard to an impaired or an insolvent insurer.

(c) (1) The amount of any class A assessment shall be determined by the board and may be made on a pro rata or non-pro rata basis. If pro rata, the board may provide that it be credited against future class B assessments. ~~A non-pro rata assessment shall not exceed $300 per member insurer in any one calendar year.~~ The amount of any class B assessment, except for assessments related to long-term care insurance, shall be allocated for assessment purposes among the accounts pursuant to an allocation formula ~~which~~ that may be based on the premiums or reserves of the impaired or insolvent insurer or any other standard deemed by the board in its sole

discretion as being fair and reasonable under the circumstances.

(2) The amount of the class B assessment for long-term care insurance written by the impaired or insolvent insurer shall be allocated according to a methodology included in the plan of operation and approved by the commissioner. The methodology shall provide for 50% of the assessment to be allocated to accident and health member insurers and 50% to be allocated to life and annuity member insurers.

(3) Class B assessments against member insurers for each account shall be in the proportion that the premiums received on business in this state by each assessed member insurer on policies or contracts covered by each account for the three most recent calendar years for which information is available preceding the year in which the member insurer became impaired or insolvent, as the case may be, bears to such premiums received on business in this state for such calendar years by all assessed member insurers.

~~(3)~~(4) Assessments for funds to meet the requirements of the association with respect to an impaired or insolvent insurer shall not be made until necessary to implement the purposes of this act. Classification of assessments under subsection (b) and computation of assessments under this subsection shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

(d) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. In the event an assessment against a member insurer is abated, or deferred in whole or in part, the amount by which such assessment

is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. Once the conditions that caused a deferral have been removed or rectified, the member insurer shall pay all assessments that were deferred pursuant to a repayment plan approved by the association.

(e) (1) The total of all assessments upon a member insurer for each account shall not in any one calendar year exceed 2% of such member insurer's average premiums received in this state on the policies and contracts covered by the account during the three calendar years preceding the years in which the member insurer became an impaired or insolvent insurer.

(2) If two or more assessments are authorized in one calendar year with respect to member insurers that become impaired or insolvent in different calendar years, the average annual premiums for purposes of the aggregate assessment percentage limitation referenced in this subsection shall be equal and limited to the higher of the three-year average annual premiums for the applicable account as calculated pursuant to this section.

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

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

(f) The board, by an equitable method as established in the plan of operation, may

refund to member insurers, in proportion to the contribution of each insurer to that account, the amount by which the assets of the account exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to that account, including assets accruing from assignment, subrogation, net realized gains and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future losses.

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

(h) The association shall issue to each member insurer paying an assessment under this act, other than a class A assessment, a certificate of contribution, in a form prescribed by the commissioner, for the amount of the assessment paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the member insurer in its financial statement as an asset in such form and for such amount, if any, and period of time as the commissioner may approve.

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

protest.

(2) Within 60 days following the payment of an assessment under protest by a member insurer, the association shall notify the member insurer, in writing, of its determination with respect to the protest unless the association notifies the member insurer that additional time is required to resolve the issues raised by the protest.

(3) Within 30 days after a final decision has been made, the association shall notify the protesting member insurer in writing of that final decision. Within 60 days of receipt of notice of the final decision, the protesting member insurer may appeal that final action to the commissioner.

(4) As an alternative to rendering a final decision with respect to a protest based on a question regarding the assessment base, the association may refer protests to the commissioner for a final decision, with or without a recommendation from the association.

(5) If the protest or appeal on the assessment is upheld, the amount paid in error or excess shall be returned to the member insurer. Interest on a refund due a protesting member insurer shall be paid at the rate actually earned by the association.

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

Sec. 13. K.S.A. 40-3010 is hereby amended to read as follows: 40-3010. (a) (1) The association shall submit to the commissioner a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable and equitable administration of the

association. The plan of operation and any amendments thereto shall become effective upon the commissioner's written approval or unless the commissioner has not disapproved it within 30 days.

(2) If the association fails to submit a suitable plan of operation within 120 days following the effective date of this act, or, if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner, after notice and hearing, shall adopt and promulgate such reasonable rules and regulations as are necessary or advisable to effectuate the provisions of this act. Such rules and regulations shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

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

(c) The plan of operation shall, in addition to requirements enumerated elsewhere in this act:

(1) Establish procedures for handling the assets of the association;

(2) establish the amount and method of reimbursing members of the board of directors under K.S.A. 40-3007, and amendments thereto;

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

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

(5) establish the procedures whereby selections for the board of directors will be made

and submitted to the commissioner;

(6) establish any additional procedures for assessments under K.S.A. 40-3009, and amendments thereto; ~~and~~

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

(8) establish procedures whereby a director may be removed for cause, including in the case where a member insurer director becomes an impaired or insolvent insurer; and

(9) require the board of directors to establish a policy and procedures for addressing conflicts of interests.

(d) The plan of operation may provide that any or all powers and duties of the association, except those under ~~subsection (p)(3) of~~ K.S.A. 40-3008 and 40-3009, and amendments thereto, are delegated to a corporation, association or other organization ~~which~~ that performs or will perform functions similar to those of this association, or its equivalent, in two or more states. Such a corporation, association or organization shall be reimbursed for any payments made on behalf of the association and shall be paid for its performance of any function of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the commissioner, and may be made only to a corporation, association or organization ~~which~~ that extends protection not substantially less favorable and effective than that provided by this act.

Sec. 14. K.S.A. 40-3011 is hereby amended to read as follows: 40-3011. In addition to the duties and powers enumerated in this act:

(a) The commissioner shall:

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

(2) when an impairment is declared and the amount of the impairment is determined, serve a demand upon the impaired insurer to make good the impairment within a reasonable time; notice to the impaired insurer shall constitute notice to its shareholders, if any; the failure of the impaired insurer to promptly comply with such demand shall not excuse the association from the performance of its powers and duties under this act;

(3) in any liquidation or rehabilitation proceeding involving a domestic insurer, be appointed as the liquidator or rehabilitator.

(b) The commissioner may suspend or revoke, after notice and hearing in accordance with the provisions of the Kansas administrative procedure act, the certificate of authority to transact insurance business in this state of any member insurer ~~which~~ that fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative the commissioner may levy a forfeiture on any member insurer ~~which~~ that fails to pay an assessment when due. Such forfeiture shall not exceed 5% of the unpaid assessment per month, but ~~no~~ a forfeiture shall be not less than $100 per month.

(c) Any final action of the board of directors or the association may be appealed to the commissioner by any member insurer if such appeal is taken within 60 days of the final action being appealed. ~~If a member company is appealing an assessment, the amount assessed shall be paid to the association and available to meet association obligations during the pendancy of an~~

~~appeal. If the appeal on the assessment is upheld, the amount paid in error shall be returned to the member insurer~~ A final action or order of the commissioner shall be subject to judicial review in a court of competent jurisdiction in accordance with the laws of this state that apply to the actions or orders of the commissioner.

(d) The liquidator, rehabilitator or conservator of any impaired insurer may notify all interested persons of the effect of this act.

Sec. 15. K.S.A. 40-3012 is hereby amended to read as follows: 40-3012. To aid in the detection and prevention of member insurer impairments or insolvencies:

(a) It shall be the duty of the commissioner to:

(1) Notify the commissioners of all other states, territories of the United States and the District of Columbia when the commissioner takes any of the following actions against a member insurer:

(A) Revocation of license or certificate of authority;

(B) suspension of license or certificate of authority; or

(C) makes any formal order that such ~~company~~ member insurer restricts its premium writing, obtain additional contributions to surplus, withdraw from the state, reinsure all or any part of its business, or increase capital, surplus or any other account for the security of policyholders, contract holders, certificate holders or creditors.

Such notice shall be mailed to all commissioners within 30 days following the action taken or the date on which such action occurs;

(2) report to the board of directors when the commissioner has taken any of the actions

set forth in paragraph (1) ~~of this subsection~~ or has received a report from any other commissioner indicating that any such action has been taken in another state. Such report to the board of directors shall contain all significant details of the action taken or the report received from another commissioner;

(3) report to the board of directors when the commissioner has reasonable cause to believe from any examination, whether completed or in process, of any member company that such ~~company~~ member insurer may be an impaired or insolvent insurer. Such report and information shall be kept confidential by the board of directors until such time as made public by the commissioner or other lawful authority;

(4) furnish to the board of directors the national association of insurance commissioners' insurance regulatory information system ratios and listings of companies not included in the ratios developed by the national association of insurance commissioners, and the board may use the information contained therein in carrying out its duties and responsibilities under this section. Such report and the information contained therein shall be kept confidential by the board of directors until such time as made public by the commissioner or other lawful authority.

(b) The commissioner may seek the advice and recommendations of the board of directors concerning any matter affecting the commissioner's duties and responsibilities regarding the financial condition of member insurers and ~~companies~~ health maintenance organization seeking admission to transact ~~insurance~~ business in this state.

(c) The board of directors, upon majority vote, may make reports and recommendations

to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation or conservation of any member insurer or germane to the solvency of any ~~company~~ insurer or health maintenance organization seeking to do ~~any insurance~~ business in this state. Such reports and recommendations shall not be considered public documents.

(d) It shall be the duty of the board of directors, upon majority vote, to notify the commissioner of any information indicating any member insurer may be an impaired or insolvent insurer.

~~(e) The board of directors, upon majority vote, may request that the commissioner order an examination of any member insurer which the board in good faith believes may be an impaired or insolvent insurer. The examination may be conducted as a national association of insurance commissioners' examination or may be conducted by such persons as the commissioner designates. The cost of such examination shall be paid by the association and the examination report shall be treated as are other examination reports. In no event shall such examination report be released to the board of directors prior to its release to the public, but this shall not preclude the commissioner from complying with subsection (a).~~

~~The commissioner shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the commissioner but it shall not be open to public inspection prior to the release of the examination report to the public.~~

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

~~(g) The board of directors, at the conclusion of any insurer insolvency in which the~~

~~association was obligated to pay covered claims, shall prepare a report to the commissioner containing such information as it may have in its possession bearing on the history and causes of such insolvency. The board shall cooperate with the board of directors of guaranty associations in other states in preparing a report on the history and causes of insolvency of a particular insurer and may adopt, by reference, any report prepared by such other associations.~~

Sec. 16. K.S.A. 40-3013 is hereby amended to read as follows: 40-3013. (a) Nothing in this act shall be construed to reduce the liability for unpaid assessments of the insureds or enrollees of an impaired or insolvent insurer operating under a plan with assessment liability.

(b) Records shall be kept of all negotiations and meetings in which the association or its representatives are involved to discuss the activities of the association in carrying out its powers and duties under K.S.A. 40-3008, and amendments thereto. Records of such negotiations or meetings shall be made public only upon the termination of a liquidation, rehabilitation or conservation proceeding involving the impaired or insolvent insurer, upon the termination of the impairment or insolvency of the member insurer, or upon the order of a court of competent jurisdiction. Nothing in this subsection shall limit the duty of the association to render a report of its activities under K.S.A. 40-3014, and amendments thereto.

(c) For the purpose of carrying out its obligations under this act, the association shall be deemed to be a creditor of the impaired or insolvent insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled as subrogee pursuant to ~~subsection (l) of~~ K.S.A. 40-3008, and amendments thereto. Assets of the impaired or insolvent insurer attributable to covered policies shall be used to continue all covered policies

and pay all contractual obligations of the impaired or insolvent insurer as required by this act. Assets attributable to covered policies or contracts, as used in this subsection, are that proportion of the assets ~~which~~ that the reserves that should have been established for such policies or contracts bear to the reserve that should have been established for all policies or contracts of insurance or health benefit plans written by the impaired or insolvent insurer.

(d) As a creditor of the impaired or insolvent insurer, as established in subsection (c) and consistent with K.S.A. 40-3635, and amendments thereto, the association and other similar associations shall be entitled to receive a disbursement of assets out of the marshaled assets, from time to time as the assets become available to reimburse it, as a credit against contractual obligations under this act. If the liquidator has not, within 120 days of a final determination of insolvency of a member insurer by the receivership court, made an application to the court for the approval of a proposal to disburse assets out of marshaled assets to guaranty associations having obligations because of the insolvency, then the association shall be entitled to make application to the receivership court for approval of its own proposal to disburse these assets.

(e) (1) Prior to the termination of any liquidation, rehabilitation, or conservation proceeding, the court may take into consideration the contributions of the respective parties, including the association, the shareholders ~~and policyowners~~, policyholders, contract holders, certificate holders and enrollees of the insolvent insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of such insolvent insurer. In such a determination, consideration shall be given to the welfare of the policyholders, contract holders, certificate holders and enrollees of the continuing or successor member insurer.

(2) No distribution to stockholders, if any, of an impaired or insolvent insurer shall be made until and unless the total amount of valid claims of the association with interest thereon for funds expended in carrying out its powers and duties under K.S.A. 40-3008, and amendments thereto, with respect to such member insurer have been fully recovered by the association.

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

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

(3) Any person who was an affiliate that controlled the member insurer at the time the distributions were paid shall be liable up to the amount of distributions such person received. Any person who was an affiliate that controlled the member insurer at the time the distributions were declared, shall be liable up to the amount of distributions such person would have received if such person had been paid immediately. If two or more persons are liable with respect to the same distributions, such person shall be jointly and severally liable.

(4) The maximum amount recoverable under this subsection shall be the amount

needed in excess of all other available assets of the insolvent insurer to pay the contractual obligations of the insolvent insurer.

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

Sec. 17. K.S.A. 40-3013a is hereby amended to read as follows: 40-3013a. (a) No person, including ~~an~~ a member insurer, agent or affiliate of ~~an~~ a member insurer shall make, publish, disseminate, circulate or place before the public, or cause directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in any newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio station or television station, or in any other way, any advertisement, announcement or statement, written or oral, which uses the existence of the insurance guaranty association of this state for the purpose of sales, solicitation or inducement to purchase any form of insurance or other coverage covered by the Kansas life and health insurance guaranty association act. This section shall not apply to the Kansas life and health insurance guaranty association or any other entity ~~which~~ that does not sell or solicit insurance or coverage by a health maintenance organization.

(b) Within 180 days of the effective date of this act, the association shall prepare a summary document describing the general purposes and current limitations of this act in complying with subsection (c). This summary document ~~should~~ shall be submitted to the commissioner for approval. Sixty days after receiving such approval, no member insurer may

deliver a policy or contract ~~described in subsection (b) of K.S.A. 40-3003, and amendments thereto,~~ to a ~~policy or~~ policyholder, contract holder, certificate holder or enrollee unless the summary document is delivered to the ~~policy or~~ policyholder, contract holder ~~prior to or~~, certificate holder or enrollee at the time of delivery of the policy or contract ~~except if subsection (d) applies~~. The summary document ~~should~~ shall also be available upon request by a policyholder, contract holder, certificate holder or enrollee. The distribution, delivery or contents or interpretation of this summary document shall not mean that either the policy or the contract or the policyholder, contract holder, certificate holder or enrollee thereof would be covered in the event of the impairment or insolvency of a member insurer. The ~~description~~ summary document shall be revised by the association as amendments to this act may require. Failure to receive this document does not give the policyholder, contract holder, certificate holder, enrollee or insured any greater rights than those stated in this act.

(c) The summary document prepared under subsection (b) shall contain a clear and conspicuous disclaimer on its face. The commissioner shall promulgate a rule establishing the form and content of the disclaimer. The disclaimer shall:

(1) State the name and address of the life and health insurance guaranty association and insurance department;

(2) prominently warn the ~~policy or~~ policyholder, contract holder, certificate holder or enrollee that the life and health insurance guaranty association may not cover the policy or contract or, if coverage is available, it will be subject to substantial limitations, exclusions and conditioned on continued residence in the state;

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

(4) state that the member insurer and its agents are prohibited by law from using the existence of the life and health insurance guaranty association for the purpose of sales, solicitation or inducement to purchase any form of insurance or health maintenance organization coverage;

~~(4)~~(5) ~~emphasize~~state that the ~~policy or~~ policyholder, contract holder, certificate holder or enrollee should not rely on coverage under the life and health insurance guaranty association when selecting an insurer~~; and~~ or health maintenance organization;

(6) explain rights available and procedures for filing a complaint to allege a violation of any provisions of this act; and

~~(5)~~(7) provide other information as directed by the commissioner, including, but not limited to, sources for information about the financial condition of insurers, provided that the information is not proprietary and is subject to disclosure under that state's public records law.

(d) ~~No insurer or agent may deliver a policy or contract described in subsection (b) of K.S.A. 40-3003, and amendments thereto, and excluded under subsection (n)(1) of K.S.A. 40-3008, and amendments thereto, from coverage under this act unless the insurer or agent, prior to or at the time of delivery, gives the policy or contract holder a separate written notice which clearly and conspicuously discloses that the policy or contract is not covered by the life and health insurance guaranty association. The commissioner, by rule, shall specify the form and content of the notice~~A member insurer shall retain evidence of compliance with subsection (b)

for so long as the policy or contract for which the notice is given remains in effect.

Sec. 18. K.S.A. 40-3016 is hereby amended to read as follows: 40-3016. (a) Unless a longer period has been allowed by the commissioner, a member insurer shall at its option have the right to show a certificate of contribution as an asset in the form approved by the commissioner pursuant to ~~subsection (h) of~~ K.S.A. 40-3009, and amendments thereto, at percentages of the original face amount approved by the commissioner, for calendar years as follows:

(1) ~~One hundred percent~~100% for the calendar year of issuance;

(2) ~~eighty percent~~80% for the first calendar year after the year of issuance;

(3) ~~sixty percent~~60% for the second calendar year after the year of issuance;

(4) ~~forty percent~~40% for the third calendar year after the year of issuance;

(5) ~~twenty percent~~20% for the fourth calendar year after the year of issuance.

(b) The member insurer may offset the amount written off by it in a calendar year under subsection (a) ~~above~~, against its premium tax liability to this state accrued with respect to business transacted in such year.

(c) A member insurer that is exempt from taxes referenced in subsection (a) may recoup its assessments by a surcharge on its premiums in a sum reasonably calculated to recoup the assessments over a reasonable period of time, as approved by the commissioner. Amounts recouped shall not be considered premiums for any other purpose, including the computation of gross premium tax, the medical loss ratio, or agent commission. If a member insurer collects excess surcharges, the member insurer shall remit the excess amount to the association, and the

excess amount shall be applied to reduce future assessments in the appropriate account.

(d) Any sums acquired by refund, pursuant to ~~subsection (f) of~~ K.S.A. 40-3009, and amendments thereto, from the association ~~which~~ that have theretofore been written off by contributing member insurers and offset against premium taxes as provided in subsection (b) ~~above~~, and ~~is~~ are not then needed for purposes of this act, shall be paid by the association to the commissioner and the commissioner shall remit such moneys to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

Sec. 19. K.S.A. 40-3018 is hereby amended to read as follows: 40-3018. All proceedings in which the impaired or insolvent insurer is a party in any court in this state shall be stayed ~~60~~ 180 days from the date an order of liquidation, rehabilitation or conservation is final to permit proper legal action by the association on any matters germane to its powers or duties. As to a judgment under any decision, order, verdict or finding based on default the association may apply to have such judgment set aside by the same court that made such judgment and shall be permitted to defend against such suit on the merits.";

Also on page 6, in line 43, by striking "and" and inserting a comma; also in line 43, after "40-2910" by inserting ", 40-3002, 40-3003, 40-3004, 40-3005, 40-3006, 40-3007, 40-3008, 40-3009, 40-3010, 40-3011, 40-3012, 40-3013, 40-3013a, 40-3016 and 40-3018";

On page 7, in line 3, by striking "Kansas register" and inserting "statute book";

And by renumbering sections accordingly;

On page 1, in the title, in line 1, by striking "property and casualty"; in line 2, after "act" by inserting "and the Kansas life and health insurance guaranty association"; in line 5, after the semicolon by inserting "including health maintenance organization as member insurers; broadening the assessment base for long-term care insolvencies;"; in line 8, by striking the first "and" and inserting a comma; also in line 8, after "40-2910" by inserting ", 40-3002, 40-3003, 40-3005, 40-3006, 40-3007, 40-3008, 40-3009, 40-3010, 40-3011, 40-3012, 40-3013, 40-3013a, 40-3016 and 40-3018"; in line 9, after "sections" by inserting "; also repealing K.S.A. 40-3004";

And your committee on conference recommends the adoption of this report.

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Conferees on part of Senate

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Conferees on part of House