

1 AN ACT relating to the Kentucky Life and Health Insurance Guaranty Association
2 Act.

3 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

4 ➔Section 1. KRS 304.42-020 is amended to read as follows:

5 The purpose of this subtitle is to protect the persons specified in KRS 304.42-030(1),
6 subject to certain limitations, against failure in the performance of contractual obligations
7 under life, ~~and~~ health ~~insurance policies~~ and annuity ***policies, plans, or*** contracts
8 specified in KRS 304.42-030(2) because of the impairment or insolvency of the member
9 insurer that issued the policies, ***plans,*** or contracts. To provide this protection:

10 (1) An association of ***member*** insurers is created to pay benefits and to continue
11 coverages as limited by this subtitle; and

12 (2) ***Member insurers***~~[Members]~~ of the association are subject to assessment to provide
13 funds to carry out the purpose of this subtitle.

14 ➔Section 2. KRS 304.42-030 is amended to read as follows:

15 (1) This subtitle shall provide coverage for the policies and contracts specified in
16 subsection (2) of this section:

17 (a) To persons who, regardless of where they reside (except for nonresident
18 certificate holders ***or enrollees*** under group policies or contracts), are the
19 beneficiaries, assignees, or payees, ***including health care providers rendering***
20 ***services covered under a health insurance policy, contract, or certificate,*** of
21 the persons covered under paragraph (b) of this subsection.

22 (b) To persons who are the owners of or certificate holders ***or enrollees*** under
23 such policies or contracts, other than structured settlement annuities, who:

24 1. Are residents; or

25 2. Are not residents, but only under the following conditions:

26 a. The ***member*** insurer which issued the policies or contracts is
27 domiciled in this state;

- 1 b. The states in which the persons reside have associations similar to
2 the association created by this subtitle; and
- 3 c. The persons are not eligible for coverage by an association in any
4 other state due to the fact that the insurer *or health maintenance*
5 *organization* was not licensed in the state at the time specified in
6 the state's guaranty association law.

7 (c) For structured settlement annuities covered in subsection (2) of this section,
8 paragraphs (a) and (b) of this subsection shall not apply and this subtitle shall,
9 except as provided in paragraphs (d) and (e) of this subsection, provide
10 coverage to a person who is a payee under a structured settlement annuity, or
11 beneficiary of a payee if the payee is deceased, if the payee is a resident,
12 regardless of where the contract owner resides. If the payee is not a resident,
13 this subtitle shall provide coverage but only under both of the following
14 conditions:

- 15 1. a. The contract owner of the structured settlement annuity is a
16 resident; or
- 17 b. The contract owner of the structured settlement annuity is not a
18 resident, but the insurer that issued the structured settlement
19 annuity is domiciled in this state and the state in which the contract
20 owner resides has an association similar to the association created
21 by this subtitle; and
- 22 2. Neither the payee, the beneficiary, nor the contract owner is eligible for
23 coverage by the association of the state in which the payee or contract
24 owner resides.

25 (d) This subtitle shall not provide coverage to:

- 26 *1.* A person who is a payee or beneficiary of a contract owner resident of
27 this state, if the payee or beneficiary is afforded any coverage by the

1 association of another state; or

2 2. A person who acquires rights to receive payments through a
 3 structured settlement factoring transaction as defined in 26 U.S.C. sec.
 4 5891(c)(3)(A), regardless of whether the transaction occurred before
 5 or after the section became effective.

6 (e) This subtitle is intended to provide coverage to a person who is a resident of
 7 this state and, in special circumstances, to a nonresident. In order to avoid
 8 duplicate coverage, if a person who would otherwise receive coverage in this
 9 subtitle is provided coverage under the laws of any other state, the person
 10 shall not be provided coverage under this subtitle. In determining the
 11 application of the provisions of this paragraph in situations where a person
 12 could be covered by the association of more than one (1) state, whether as an
 13 owner, payee, enrollee, beneficiary, or assignee, this subtitle shall be
 14 construed in conjunction with other state laws to result in coverage by only
 15 one (1) association.

16 (2) (a) This subtitle shall provide coverage to the persons specified in subsection (1)
 17 of this section for policies and contracts of direct, nongroup life insurance,
 18 health insurance, which for purposes of this subtitle includes health
 19 maintenance organization subscriber contracts and certificates, or
 20 annuities~~[annuity policies or contracts]~~ and supplemental contracts to any of
 21 these and for certificates issued under direct group policies and contracts.

22 (b) This subtitle shall not provide coverage for:

- 23 1. Any portion of a policy or contract not guaranteed by the member
- 24 insurer, or under which the risk is borne by the policy or contract owner;
- 25 2. Any policy or contract of reinsurance, unless assumption certificates
- 26 have been issued pursuant to the reinsurance policy or contract;
- 27 3. Except as otherwise provided in paragraph (c) of this subsection, any

- 1 portion of a policy or contract to the extent that the rate of interest on
2 which it is based:
- 3 a. Averaged over the period of four (4) years prior to the date on
4 which the association becomes obligated with respect to such
5 policy or contract, exceeds a rate of interest determined by
6 subtracting two (2) percentage points from Moody's corporate
7 bond yield average averaged for that same four (4) year period or
8 for such lesser period if the policy or contract was issued less than
9 four (4) years before the association became obligated; and
- 10 b. On and after the date on which the association becomes obligated
11 with respect to the policy or contract, exceeds the rate of interest
12 determined by subtracting three (3) percentage points from
13 Moody's corporate bond yield average as most recently available;
- 14 4. Any portion of a policy or contract issued to a plan or program of an
15 employer, association, or other person to provide life, health, or annuity
16 benefits to its employees, members, or others to the extent that such plan
17 or program is self-funded or uninsured including, but not limited to,
18 benefits payable by an employer, association, or other person under:
- 19 a. A multiple employer welfare arrangement as defined in 29 U.S.C.
20 sec. 1144;
- 21 b. A minimum premium group insurance plan;
- 22 c. A stop-loss group insurance plan; or
- 23 d. An administrative services only contract;
- 24 5. Any portion of a policy or contract to the extent that it provides for:
- 25 a. Dividends or experience rating credits;
- 26 b. Payment of any fees or allowances to any person, including the
27 policy or contract owner, in connection with the service to or

- 1 administration of such policy or contract; or
- 2 c. Voting rights;
- 3 6. Any policy or contract issued in this state by a member insurer at a time
- 4 when it did not have a certificate of authority to issue such policy or
- 5 contract in this state;
- 6 7. Any unallocated annuity contract;
- 7 8. A portion of a policy or contract to the extent that the assessments
- 8 required by KRS 304.42-090 with respect to the policy or contract are
- 9 preempted by federal or state law;
- 10 9. An obligation that does not arise under the express written terms of the
- 11 policy or contract issued by the member insurer to the enrollee,
- 12 certificate holder, policyholder, contract owner, or policy owner,
- 13 including without limitation:
- 14 a. Claims based on marketing materials;
- 15 b. Claims based on side letters, riders, or other documents that were
- 16 issued by the member insurer without meeting applicable policy or
- 17 contract form filing or approval requirements;
- 18 c. Misrepresentations of or regarding policy or contract benefits;
- 19 d. Extracontractual claims; or
- 20 e. A claim for penalties or consequential or incidental damages;
- 21 10. A contractual agreement that establishes the member insurer's
- 22 obligations to provide a book value accounting guaranty for defined
- 23 contribution benefit plan participants by reference to a portfolio of assets
- 24 that is owned by the benefit plan or its trustee which in each case is not
- 25 an affiliate of the member insurer; ~~and~~
- 26 11. A policy or contract providing any hospital, medical, prescription drug
- 27 or other health care benefits pursuant to:

- 1 b. Three hundred thousand dollars (\$300,000) for disability ***income***
2 insurance and ~~three hundred thousand dollars (\$300,000) for~~
3 long-term care insurance; and
- 4 c. Five hundred thousand dollars (\$500,000) for ***health benefit***
5 ***plans*** ~~[basic hospital, medical, and surgical insurance or major~~
6 ~~medical insurance]; and~~
- 7 3. In annuity benefits, two hundred fifty thousand dollars (\$250,000) in the
8 present value of annuity benefits, including net cash surrender and net
9 cash withdrawal values; except with respect to each payee of a
10 structured settlement annuity or beneficiary or beneficiaries of the payee
11 if deceased, two hundred fifty thousand dollars (\$250,000) in present
12 value annuity benefits, in the aggregate, including net cash surrender and
13 net cash withdrawal values.
- 14 (b) In no event shall the association be obligated to cover more than:
- 15 1. An aggregate of three hundred thousand dollars (\$300,000) in benefits
16 with respect to any one (1) life under subparagraphs 2. and 3. of
17 paragraph (a) of this subsection, except with respect to benefits for
18 ***health benefit plans*** ~~[basic hospital, medical, and surgical insurance and~~
19 ~~major medical insurance]~~ as stated in paragraph (a) of this subsection, in
20 which case the aggregate liability of the association shall not exceed five
21 hundred thousand dollars (\$500,000) with respect to any one (1)
22 individual; or
- 23 2. With respect to one (1) owner of multiple nongroup policies of life
24 insurance, whether the policy owner is an individual, firm, corporation,
25 or other person, and whether the persons insured are officers, managers,
26 employees, or other persons, more than five million dollars (\$5,000,000)
27 in benefits, regardless of the number of policies and contracts held by

1 the owner.

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

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

14 (4) In performing its obligations to provide coverage under KRS 304.42-080, the
15 association shall not be required to guarantee, assume, reinsure, **reissue**, or perform,
16 or cause to be performed, assumed, reinsured, **reissued**, or performed, the
17 contractual obligations of the insolvent or impaired insurer under a covered policy
18 or contract that do not materially affect the economic values or economic benefits of
19 the covered policy or contract.

20 ➔Section 3. KRS 304.42-050 is amended to read as follows:

21 As used in this subtitle:

- 22 (1) "Account" means either of the three (3) accounts created under KRS 304.42-060;
- 23 (2) "Association" means the Kentucky Life and Health Insurance Guaranty Association
24 created under KRS 304.42-060;
- 25 (3) "Authorized assessment" or the term "authorized" when used in the context of
26 assessments means a resolution by the board of directors has been passed whereby
27 an assessment will be called immediately or in the future from member insurers for

1 a specific amount. An assessment is authorized when the resolution is passed;

2 (4) "Benefit plan" means a specific employee, union, or association of natural persons
3 benefit plan;

4 (5) "Called assessment" or the term "called" when used in the context of assessments
5 means that a notice has been issued by the association to member insurers requiring
6 that an authorized assessment be paid within the time frame set forth within the
7 notice. An authorized assessment becomes a called assessment when notice is
8 mailed by the association to member insurers;

9 ~~(6) ["Commissioner" means the commissioner of the Department of Insurance of this
10 state;~~

11 ~~(7)~~ "Contractual obligation" means any obligation under a policy or contract or a
12 certificate under a group policy or contract, or portion thereof, for which coverage is
13 provided under KRS 304.42-030;

14 ~~(7)~~~~(8)~~ **"Covered contract" or "covered policy" mean**~~[means]~~ any policy or contract
15 or portion of a policy or contract for which coverage is provided under KRS 304.42-
16 030;

17 ~~(8)~~~~(9)~~ "Extracontractual claims" include but are not limited to claims relating to bad
18 faith in the payment of claims, punitive or exemplary damages, and attorneys' fees
19 and costs;

20 **(9) "Health benefit plan" means any hospital or medical expense policy or
21 certificate, or health maintenance organization subscriber contract or any other
22 similar health contract, except:**

23 **(a) Accident only insurance;**

24 **(b) Credit insurance;**

25 **(c) Dental only insurance;**

26 **(d) Vision only insurance;**

27 **(e) Medicare Supplement insurance;**

1 (f) Benefits for long-term care, home health care, community-based care, or
 2 any combination thereof;

3 (g) Disability income insurance;

4 (h) Coverage for on-site medical clinics; or

5 (i) Specified disease, hospital confinement indemnity, or limited benefit health
 6 insurance if the coverage:

7 1. Does not provide coordination of benefits; and

8 2. Is provided under separate policies or certificates;

9 (10) "Impaired insurer" means a member insurer which, after June 17, 1978, is not an
 10 insolvent insurer and is placed under an order of rehabilitation or conservation by a
 11 court of competent jurisdiction;

12 (11) "Insolvent insurer" means a member insurer which after June 17, 1978, is placed
 13 under an order of liquidation by a court of competent jurisdiction with a finding of
 14 insolvency;

15 (12) "Member insurer" means any insurer or health maintenance organization licensed
 16 or authorized to transact in this state any kind of insurance or health maintenance
 17 organization business for which coverage is provided under KRS 304.42-030, and
 18 includes any insurer or health maintenance organization whose license or
 19 certificate of authority in this state may have been suspended, revoked, not renewed,
 20 or voluntarily withdrawn, but does not include:

21 (a) A nonprofit hospital, medical-surgical, dental, and health service corporation,
 22 as defined by Subtitle 32 of this chapter;

23 (b) ~~[A health maintenance organization;~~

24 ~~(c)—]A fraternal benefit society;~~

25 ~~(d)[(d)]~~ A mandatory state pooling plan;

26 ~~(e)[(e)]~~ An assessment or cooperative insurer or any entity that operates on an
 27 assessment basis;

- 1 ~~(e)~~~~(f)~~ An insurance exchange;
- 2 ~~(f)~~~~(g)~~ Any entity similar to the above;
- 3 ~~{(h) Health insurance where such insurance is written by a member of the~~
4 ~~Kentucky Insurance Guaranty Association;}~~ or
- 5 ~~(g)~~~~(i)~~ A limited health service organization;
- 6 (13) "Moody's corporate bond yield average" means the monthly average corporates as
7 published by Moody's Investors Service, Inc., or any successor thereto;
- 8 (14) "Owner" of a policy or contract, "policyholder,"~~{and}~~ "policy owner," and
9 "contract owner" mean the person who is identified as the legal owner under the
10 terms of the policy or contract or who is otherwise vested with legal title to the
11 policy or contract through a valid assignment completed in accordance with the
12 terms of the policy or contract and properly recorded as the owner on the books of
13 the member insurer. The terms "owner," "contract owner," "policyholder," and
14 "policy owner" do not include persons with a mere beneficial interest in a policy or
15 contract;
- 16 ~~(15) {"Premiums" means amounts or considerations, by whatever name called, received~~
17 ~~on covered policies or contracts less returned premiums, considerations, and~~
18 ~~deposits, and less dividends and experience credits. "Premiums" does not include~~
19 ~~amounts or considerations received for any policies or contracts or for the portions~~
20 ~~of policies or contracts for which coverage is not provided under KRS 304.42-~~
21 ~~030(2), except that assessable premium shall not be reduced on account of KRS~~
22 ~~304.42-030(2)(b)3. Relative to interest limitations and KRS 304.42-030(3)(b)~~
23 ~~relating to limitations with respect to one (1) individual and one (1) contract owner.~~
24 ~~"Premiums" shall not include with respect to multiple nongroup policies of life~~
25 ~~insurance owned by one (1) owner, whether the policy owner is an individual, firm,~~
26 ~~corporation, or other person, and whether the persons insured are officers,~~
27 ~~managers, employees, or other persons, premiums in excess of one million dollars~~

1 ~~(\$1,000,000) with respect to these policies or contracts, regardless of the number of~~
2 ~~policies or contracts held by the owner;~~

3 ~~(16)~~—"Person" means any individual, corporation, limited liability company, partnership,
4 association, governmental body or entity, or voluntary organization;

5 ~~(16)~~~~(17)~~ "Plan sponsor" means:

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

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

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

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

18 ~~(b)~~ **"Premiums" does not include:**

19 **1. Amounts or considerations received for any policies or contracts or for**
20 **the portions of policies or contracts for which coverage is not provided**
21 **under KRS 304.42-030(2), except that assessable premium shall not be**
22 **reduced on account of KRS 304.42-030(2)(b)3. relating to interest**
23 **limitations and KRS 304.42-030(3)(b) relating to limitations with**
24 **respect to one (1) individual and one (1) policy or contract owner; and**

25 **2. With respect to multiple nongroup policies of life insurance owned by**
26 **one (1) owner, whether the policy or contract owner is an individual,**
27 **firm, corporation, or other person, and whether the persons insured**

1 are officers, managers, employees, or other persons, premiums in
2 excess of one million dollars (\$1,000,000) with respect to these policies
3 or contracts, regardless of the number of policies or contracts held by
4 the owner;

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

- 10 1. The state in which the primary executive and administrative
11 headquarters of the entity is located;
- 12 2. The state in which the principal office of the chief executive officer of
13 the entity is located;
- 14 3. The state in which the board of directors or similar governing person or
15 persons of the entity conducts the majority of its meetings;
- 16 4. The state in which the executive or management committee of the board
17 of directors or similar governing person or persons of the entity conducts
18 the majority of its meetings;
- 19 5. The state from which the management of the overall operations of the
20 entity is directed; and
- 21 6. In the case of a benefit plan sponsored by affiliated companies
22 comprising a consolidated corporation, the state in which the holding
23 company or controlling affiliate has its principal place of business as
24 determined using the above factors.

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

- 1 (b) The principal place of business of a plan sponsor of a benefit plan described in
2 subsection ~~(16)~~~~(17)~~(c) of this section shall be deemed to be the principal
3 place of business of the association, committee, joint board of trustees, or
4 other similar group of representatives of the parties who establish or maintain
5 the benefit plan that, in lieu of a specific or clear designation of a principal
6 place of business, shall be deemed to be the principal place of business of the
7 employer or employee organization that has the largest investment in the
8 benefit plan or question;
- 9 (19) "Receivership court" means the court in the insolvent or impaired insurer's state
10 having jurisdiction over the conservation, rehabilitation, or liquidation of the
11 member insurer;
- 12 (20) "Resident" means any person to whom a contractual obligation is owed and who
13 resides in this state on the date when a member insurer is determined to be an
14 impaired or insolvent insurer, whichever occurs first. A person may be a resident of
15 only one (1) state, which in the case of a person other than a natural person shall be
16 its principal place of business. Citizens of the United States that are either residents
17 of foreign countries or residents of United States possessions, territories, or
18 protectorates that do not have an association similar to the association created by
19 this subtitle shall be deemed residents of the state of domicile of the member
20 insurer that issued the policies or contracts;
- 21 (21) "Structured settlement annuity" means an annuity purchased in order to fund
22 periodic payments for a plaintiff or other claimant in payment for or with respect to
23 personal injury suffered by the plaintiff or other claimant;
- 24 (22) "State" means a state, the District of Columbia, Puerto Rico, and a United States
25 possession, territory, or protectorate;
- 26 (23) "Supplemental contract" means a written agreement entered into for the distribution
27 of proceeds under a life, health, or annuity policy or contract; and

1 (24) "Unallocated annuity contract" means any annuity contract or group annuity
2 certificate which is not issued to and owned by an individual, except to the extent of
3 any annuity benefits guaranteed to an individual by an insurer under such contract
4 or certificate.

5 ➔Section 4. KRS 304.42-060 is amended to read as follows:

6 (1) There is created a nonprofit legal entity to be known as the Kentucky Life and
7 Health Insurance Guaranty Association. All member insurers shall be and remain
8 members of the association as a condition of their license or authority to transact
9 insurance or health maintenance organization business in this state. The
10 association shall perform its functions under the plan of operation established and
11 approved under KRS 304.42-100 and shall exercise its powers through a board of
12 directors established under KRS 304.42-070. For purposes of administration and
13 assessment, the association shall maintain three (3) accounts:

- 14 (a) The health~~[-insurance]~~ account;
15 (b) The life insurance account; and
16 (c) The annuity account.

17 (2) The association shall come under the immediate supervision of the commissioner
18 and shall be subject to the applicable provisions of the insurance laws of this state.

19 ➔Section 5. KRS 304.42-080 is amended to read as follows:

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

- 24 (a) Guarantee, assume, reissue, or reinsure, or cause to be guaranteed, assumed,
25 reissued, or reinsured, any or all of the policies or contracts of the impaired
26 insurer; or
27 (b) Provide such monies, pledges, loans, notes, guarantees, or other means as are

1 proper to effectuate paragraph (a) of this subsection and assure payment of the
2 contractual obligations of the impaired insurer pending action under paragraph
3 (a) of this subsection.

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

6 (a) 1. Guarantee, assume, reissue, or reinsure, or cause to be guaranteed,
7 assumed, reissued, or reinsured, the policies or contracts of the insolvent
8 insurer; or

9 2. Assure payment of the contractual obligations of the insolvent insurer;
10 and

11 3. Provide such monies, pledges, loans, notes, guarantees, or other means
12 as are reasonably necessary to discharge such duties; or

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

14 1. ~~[With respect to life and health insurance policies and annuities,]~~Assure
15 payment of benefits~~[for premiums identical to the premiums and~~
16 ~~benefits (except for terms of conversion and renewability)]~~ that would
17 have been payable under policies or contracts of the insolvent insurer,
18 for claims incurred:

19 a. With respect to group policies and contracts, not later than the
20 earlier of the next renewal date under such policies or contracts or
21 forty-five (45) days, but in no event less than thirty (30) days, after
22 the date on which the association becomes obligated with respect
23 to such policies or contracts;

24 b. With respect to nongroup policies, contracts, and annuities not
25 later than the earlier of the next renewal date (if any) under such
26 policies or contracts or one (1) year, but in no event less than thirty
27 (30) days, from the date on which the association becomes

- 1 obligated with respect to such policies or contracts;
- 2 2. Make diligent efforts to provide all known insureds, enrollees, or
3 annuitants for nongroup policies and contracts, or group policy or
4 contract owners with respect to group policies and contracts thirty (30)
5 days' notice of the termination under subparagraph 1. of this paragraph
6 of the benefits provided;
- 7 3. With respect to individual ~~health and life insurance~~ policies~~,~~ and
8 contracts~~annuities~~ covered by the association, make available to each
9 known insured, enrollee, or annuitant, or owner if other than the insured,
10 enrollee, or annuitant, and with respect to an individual formerly an
11 insured, enrollee, or ~~formerly and~~ annuitant under a group policy or
12 contract who is not eligible for replacement group coverage, make
13 available substitute coverage on an individual basis in accordance with
14 the provisions of subparagraph 4. of this paragraph, if the insureds,
15 enrollees, or annuitants had a right under law or the terminated policy,
16 contract, or annuity to convert coverage to individual coverage or to
17 continue an individual policy, contract, or annuity in force until a
18 specified age or for a specified time, during which the insurer or health
19 maintenance organization had no right unilaterally to make changes in
20 any provision of the policy, contract, or annuity or had a right only to
21 make changes in premium by class;
- 22 4. a. In providing substitute coverage required under subparagraph 3. of
23 this paragraph the association may offer either to reissue the
24 terminated coverage or to issue an alternative policy or contract at
25 actuarially justified rates.
- 26 b. Alternative or reissued policies or contracts shall be offered
27 without requiring evidence of insurability, and shall not provide

- 1 for any waiting period or exclusion that would not have applied
2 under the terminated policy or contract.
- 3 c. The association may reinsure any alternative or reissued policy or
4 contract;
- 5 5. a. Alternative policies or contracts adopted by the association shall
6 be subject to approval by the [~~domiciliary insurance~~]
7 commissioner[~~or receivership court~~]. The association may adopt
8 alternative policies or contracts of various types for future
9 issuance without regard to any particular impairment or
10 insolvency.
- 11 b. Alternative policies or contracts shall contain at least the
12 minimum statutory provisions required in this state and provide
13 benefits that shall not be unreasonable in relation to the premium
14 charged. The association shall set the premium in accordance with
15 a table of rates which it shall adopt. The premium shall reflect the
16 amount of insurance or coverage to be provided and the age and
17 class of risk of each insured, but shall not reflect any changes in
18 the health of the insured or enrollee after the original policy or
19 contract was last underwritten.
- 20 c. Any alternative policy or contract issued by the association shall
21 provide coverage of a type similar to that of the policy or contract
22 issued by the impaired or insolvent insurer, as determined by the
23 association;
- 24 6. If the association elects to reissue terminated coverage at a premium rate
25 different from that charged under the terminated policy or contract, the
26 premium shall be actuarially justified and set by the association in
27 accordance with the amount of insurance or coverage provided and the

1 age and class of risk, subject to approval by the ~~domiciliary insurance~~
2 commissioner ~~or by the receivership court~~; and

3 7. The association's obligations with respect to coverage under any policy
4 **or contract** of the impaired or insolvent insurer or under any reissued or
5 alternative policy **or contract** shall cease on the date such coverage,
6 **contract**, or policy is replaced by another similar policy **or contract** by
7 the policy **or contract** owner, **enrollee**, the insured, or the association.

8 (3) When proceeding under subsection (2)(b) of this section with respect to any policy
9 or contract carrying guaranteed minimum interest rates, the association shall assure
10 the payment or crediting of a rate of interest consistent with KRS 304.42-
11 030(2)(b)3.

12 (4) Nonpayment of premiums within thirty-one (31) days after the date required under
13 the terms of any guaranteed, assumed, alternative, or reissued policy or contract for
14 substitute coverage shall terminate the association's obligations under such policy,
15 **contract**, or coverage under this subtitle with respect to such policy, **contract**, or
16 coverage, except with respect to any claims incurred or any net cash surrender value
17 which may be due in accordance with the provisions of this subtitle.

18 (5) Premiums due for coverage after entry of an order of liquidation of an insolvent
19 insurer shall belong to and be payable at the direction of the association, and the
20 association shall be liable for unearned premiums due to policy or contract owners
21 arising after the entry of such order.

22 (6) The protection provided by this subtitle shall not apply where any guaranteed
23 protection is provided to residents of this state by the laws of the domiciliary state
24 or jurisdiction of the impaired or insolvent insurer other than this state.

25 (7) In carrying out its duties under subsection (2) of this section, the association may:

26 (a) Subject to approval by a court in this state, impose permanent policy or
27 contract liens in connection with any guarantee, assumption, or reinsurance

1 agreement, if the association finds that the amounts which can be assessed
2 under this subtitle are less than the amounts needed to assure full and prompt
3 performance of the association's duties under this subtitle, or that the
4 economic or financial conditions as they affect member insurers are
5 sufficiently adverse to render the imposition of such permanent policy or
6 contract liens to be in the public interest; and

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

20 (8) A deposit in this state, held under law or required by the commissioner for the
21 benefit of creditors, including policy or contract owners, not turned over to the
22 domiciliary liquidator upon the entry of a final order of liquidation or order
23 approving a rehabilitation plan of a member~~[an]~~ insurer domiciled in this state or in
24 a reciprocal state, shall be promptly paid to the association. The association:

25 (a) Shall be entitled to retain a portion of any amount so paid to it equal to the
26 percentage determined by dividing the aggregate amount of policy or contract
27 owners' claims related to that insolvency for which the association has

1 provided statutory benefits by the aggregate amount of all policy or contract
2 owners' claims in this state related to that insolvency; and

3 (b) Shall remit to the domiciliary receiver the amount so paid to the association
4 and retained in accordance with paragraph (a) of this subsection. Any amount
5 so paid to the association less the amount retained by it in accordance with
6 paragraph (a) of this subsection shall be treated as a distribution of estate
7 assets under KRS 304.33-440 or similar provision of the state of domicile of
8 the impaired or insolvent insurer.

9 (9) If the association fails to act within a reasonable period of time with respect to an
10 insolvent insurer as provided in subsection (2) of this section, the commissioner
11 shall have the powers and duties of the association under this subtitle with respect
12 to the insolvent insurer.

13 (10) The association may render assistance and advice to the commissioner, upon his or
14 her request, concerning rehabilitation, payment of claims, continuance of coverage,
15 or the performance of other contractual obligations of any impaired or insolvent
16 insurer.

17 (11) The association shall have standing to appear or intervene before any court or
18 agency in this state with jurisdiction over an impaired or insolvent insurer
19 concerning which the association is or may become obligated under this subtitle or
20 with jurisdiction over any person or property against whom the association may
21 have rights through subrogation or otherwise. Such standing shall extend to all
22 matters germane to the powers and duties of the association, including, but not
23 limited to, proposals for reinsuring, reissuing, modifying, or guaranteeing the
24 policies or contracts of the impaired or insolvent insurer and the determination of
25 the policies or contracts and contractual obligations. The association shall also have
26 the right to appear or intervene before a court or agency in another state with
27 jurisdiction over an impaired or insolvent insurer for which the association is or

1 may become obligated or with jurisdiction over any person or property against
2 whom the association may have rights through subrogation or otherwise.

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

13 (b) The subrogation rights of the association under this subsection shall have the
14 same priority against the assets of the impaired or insolvent insurer as that
15 possessed by the person entitled to receive benefits under this subtitle.

16 (c) In addition to paragraphs (a) and (b) of this subsection, the association shall
17 have all common law rights of subrogation and any other equitable or legal
18 remedy that would have been available to the impaired or insolvent insurer or
19 owner, beneficiary, *enrollee*, or payee of a policy or contract with respect to
20 such policy or contract, including without limitation, in the case of a
21 structured settlement annuity, any rights of the owner, beneficiary, *enrollee*, or
22 payee of the annuity, to the extent of benefits received under this subtitle
23 against a person originally or by succession responsible for the losses arising
24 from the personal injury relating to the annuity or payment therefor.

25 (d) If the preceding provisions of this subsection are invalid or ineffective with
26 respect to any person or claim for any reason, the amount payable by the
27 association with respect to the related covered obligations shall be reduced by

1 the amount realized by any other person with respect to the person or claim
2 that is attributable to the policies, contracts, or portion thereof covered by the
3 association.

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

- 9 (13) In addition to the rights and powers elsewhere in this subtitle, the association may:
- 10 (a) Enter into such contracts as are necessary or proper to carry out the provisions
11 and purposes of this subtitle;
- 12 (b) Sue or be sued, including taking any legal actions necessary or proper to
13 recover any unpaid assessments under KRS 304.42-090 and to settle claims or
14 potential claims against it;
- 15 (c) Borrow money to effect the purposes of this subtitle; any notes or other
16 evidence of indebtedness of the association not in default shall be legal
17 investments for domestic member insurers and may be carried as admitted
18 assets;
- 19 (d) Employ or retain such persons as are necessary or appropriate to handle the
20 financial transactions of the association, and to perform such other functions
21 as may become necessary or proper under this subtitle;
- 22 (e) Take such legal action as may be necessary or appropriate to avoid or recover
23 payment of improper claims;
- 24 (f) Exercise, for the purposes of this subtitle and to the extent approved by the
25 commissioner, the powers of a domestic life insurer, ~~or~~ health insurer, or
26 health maintenance organization, but in no case may the association issue
27 ~~insurance~~ policies or ~~annuity~~ contracts other than those issued to perform its

- 1 obligations under this subtitle;
- 2 (g) Organize itself as a corporation or in other legal form permitted by the laws of
3 the state;
- 4 (h) Request information from a person seeking coverage from the association in
5 order to aid the association in determining its obligations under this subtitle
6 with respect to the person, and the person shall promptly comply with the
7 request;~~and~~
- 8 (i) Unless prohibited by law, in accordance with the terms and conditions of
9 the policy or contract, file for actuarially justified rate or premium increases
10 for any policy or contract for which it provides coverage under this subtitle;
11 and
- 12 (j) Take other necessary or appropriate action to discharge its duties and
13 obligations under this subtitle or to exercise its powers under this subtitle.
- 14 (14) The association may join an organization of one (1) or more other state associations
15 of similar purposes, to further the purposes and administer the powers and duties of
16 the association.
- 17 (15) (a) At any time within one (1) year after the date on which the association
18 becomes responsible for the obligations of a member insurer, the association
19 may elect to succeed to the rights and obligations of the member insurer that
20 accrue on or after that date and that relate to policies, contracts, or annuities
21 covered in whole or in part by the association, under any one (1) or more
22 indemnity reinsurance agreements entered into by the member insurer as a
23 ceding member insurer and selected by the association. The association may
24 not exercise any such election with respect to a reinsurance agreement if the
25 receiver, rehabilitator, or liquidator of the member insurer has previously and
26 expressly disaffirmed the reinsurance agreement. The election shall be
27 effected by a notice to the receiver, rehabilitator, or liquidator and to the

1 affected reinsurer. If the association makes an election, subparagraphs 1. to 4.
2 of this paragraph shall apply with respect to the agreements selected by the
3 association:

- 4 1. The association shall be responsible for all unpaid premiums due under
5 the agreements for periods both before and after the date, and shall be
6 responsible for the performance of all other obligations to be performed
7 after the coverage date, in each case which relate to policies, contracts,
8 or annuities covered, in whole or in part, by the association. The
9 association may charge policies, contracts, or annuities covered in part
10 by the association, through reasonable allocation methods, the costs for
11 reinsurance in excess of the obligations of the association;
- 12 2. The association shall be entitled to any amounts payable by the reinsurer
13 under the agreements with respect to losses or events that occur in
14 periods after the coverage date and that relate to policies, contracts, or
15 annuities covered by the association, in whole or in part. Upon receipt
16 of any such amounts the association shall be obliged to pay to the
17 beneficiary under the policy, ~~or~~ contract, or annuity on account of
18 which the amounts were paid a portion of the amount equal to the excess
19 of:
 - 20 a. The amount received by the association, over
 - 21 b. The benefits paid by the association on account of the policy, ~~or~~
22 contract, or annuity less the retention of the impaired or insolvent
23 member insurer applicable to the loss or event;
- 24 3. Within thirty (30) days following the association's election, the
25 association and each indemnity reinsurer shall calculate the net balance
26 due to or from the association under each such reinsurance agreement as
27 of the date of the association's election with respect to policies,

1 contracts, or annuities covered in whole or in part by the association,
2 which calculation shall give full credit to all items paid by either the
3 member insurer or its receiver, rehabilitator, or liquidator, or the
4 indemnity reinsurer during the period between the coverage date and the
5 date of the association's election. Either the association or indemnity
6 reinsurer shall pay the net balance due the other within five (5) days of
7 the completion of the calculation. If the receiver, rehabilitator, or
8 liquidator has received any amounts due the association under
9 subparagraph 2. of this paragraph, the receiver, rehabilitator, or
10 liquidator shall remit those amounts to the association as promptly as
11 practicable; and

12 4. If the association, within sixty (60) days of the election, pays the
13 premiums due for periods both before and after the coverage date that
14 relate to policies, contracts, or annuities covered by the association in
15 whole or in part, the member insurer shall not be entitled to terminate
16 the reinsurance agreements insofar as the agreements relate to policies,
17 contracts, or annuities covered by the association in whole or in part
18 and shall not be entitled to set off any unpaid premium due for periods
19 prior to the coverage date against amounts due the association.

20 (b) If the association transfers its obligations to another insurer, and if the
21 association and the other insurer agree, the other insurer shall succeed to the
22 rights and obligations of the association under paragraph (a) of this subsection
23 effective as of the date agreed upon by the association and the other insurer
24 and regardless of whether the association has made the election referred to in
25 paragraph (a) of this subsection if:

26 1. The indemnity reinsurance agreements automatically terminate for new
27 reinsurance unless the indemnity reinsurer and the other member insurer

1 agree to the contrary;

2 2. The obligations described in subparagraph 2. of paragraph (a) of this
3 subsection no longer apply on and after the date the indemnity
4 reinsurance agreement is transferred to the third party ***member*** insurer;
5 and

6 3. The association has not previously expressly determined in writing that
7 it will not exercise the election referred to in paragraph (a) of this
8 subsection.

9 (c) The provisions of this subsection shall supersede the provisions of any ***state***
10 law~~[of this state]~~ or of any affected reinsurance agreements that provide for or
11 require any payment of reinsurance proceeds, on account of losses or events
12 that occur in periods after the coverage date, to the receiver, liquidator, or
13 rehabilitator of the insolvent member insurer. The receiver, rehabilitator, or
14 liquidator shall remain entitled to any amounts payable by the reinsurer under
15 the reinsurance agreements with respect to losses or events that occur in
16 periods prior to the coverage date, subject to applicable setoff provisions.

17 (d) Except as otherwise expressly provided in this subsection, nothing in this
18 subsection shall alter or modify the terms and conditions of the indemnity
19 reinsurance agreements of the insolvent member insurer. Nothing in this
20 subsection shall abrogate or limit any rights of any reinsurer to claim that it is
21 entitled to rescind a reinsurance agreement. Nothing in this subsection shall
22 give a ***policyholder, contract***~~[policy]~~ owner, ***enrollee, certificate holder***, or
23 beneficiary an independent cause of action against an indemnity reinsurer that
24 is not otherwise set forth in the indemnity reinsurance agreement.

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

1 (17) If the association has arranged or offered to provide the benefits of this subtitle to a
2 covered person under a plan or arrangement that fulfills the association's obligations
3 under this subtitle, the person shall not be entitled to benefits from the association
4 in addition to or other than those provided under the plan or arrangement.

5 (18) Venue in a suit against the association under this subtitle shall be in Franklin
6 County. The association shall not be required to give an appeal bond in an appeal
7 that relates to a cause of action arising under this subtitle.

8 ➔Section 6. KRS 304.42-090 is amended to read as follows:

9 (1) For the purpose of providing the funds necessary to carry out the powers and duties
10 of the association, the board of directors shall assess the member insurers,
11 separately for each account, at such time and for such amounts as the board finds
12 necessary. Assessments shall be due not less than thirty (30) days after prior written
13 notice to the member insurers and shall accrue interest at eight percent (8%) per
14 annum on and after the due date.

15 (2) There shall be two (2) classes of assessments:

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

19 (b) Class B assessments shall be authorized and called to the extent necessary to
20 carry out the powers and duties of the association under KRS 304.42-080 with
21 regard to an impaired or insolvent insurer.

22 (3) (a) The amount of any Class A assessment shall be determined by the board and
23 may be authorized and called on a pro rata or non-pro rata basis. If pro rata,
24 the board may provide that it be credited against future Class B assessments. ~~]~~
25 ~~The total of all non-pro rata assessments shall not exceed one hundred fifty~~
26 ~~dollars (\$150) per member insurer in any one (1) calendar year.]~~ The amount
27 of any Class B assessment, *except for assessments related to long-term care*

1 insurance, shall be allocated for assessment purposes among the accounts
2 pursuant to an allocation formula which may be based on the premiums or
3 reserves of the impaired or insolvent insurer or any other standard deemed by
4 the board in its sole discretion as being fair and reasonable under the
5 circumstances.

6 (b) The amount of the Class B assessment for long-term care insurance written
7 by the impaired or insolvent insurer shall be allocated according to a
8 methodology included in the plan of operation and approved by the
9 commissioner. The methodology shall provide for fifty percent (50%) of the
10 assessment to be allocated to accident and health member insurers and fifty
11 percent (50%) to be allocated to life and annuity member insurers.

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

22 ~~(d)~~~~(e)}~~ Assessments for funds to meet the requirements of the association with
23 respect to an impaired or insolvent insurer shall not be made until necessary to
24 implement the purposes of this subtitle. Classification of assessments under
25 subsection (2) of this section and computation of assessments under this
26 subsection shall be made with a reasonable degree of accuracy, recognizing
27 that exact determinations may not always be possible. The association shall

1 notify each member insurer of its anticipated pro rata share of an authorized
2 assessment not yet called within one hundred eighty (180) days after the
3 assessment is authorized.

4 (4) The association may abate or defer, in whole or in part, the assessment of a member
5 insurer if, in the opinion of the board, payment of the assessment would endanger
6 the ability of the member insurer to fulfill its contractual obligations. In the event an
7 assessment against a member insurer is abated, or deferred in whole or in part, the
8 amount by which such assessment is abated or deferred may be assessed against the
9 other member insurers in a manner consistent with the basis for assessments set
10 forth in this section. Once the conditions that caused a deferral have been removed
11 or rectified, the member shall pay all assessments that were deferred under a
12 repayment plan approved by the association.

13 (5) (a) Subject to the provisions of paragraph (b) of this subsection, the total of all
14 assessments authorized by the association with respect to a member insurer
15 for each account shall not in any one (1) calendar year exceed two percent
16 (2%) of the *member* insurer's average annual premiums received in this state
17 on the policies and contracts covered by the account during the three (3)
18 calendar years preceding the year in which the *member* insurer became an
19 impaired or insolvent insurer. If the maximum assessment, together with the
20 other assets of the association in any other account, does not provide in any
21 one (1) year in any other account an amount sufficient to carry out the
22 responsibilities of the association, the necessary additional funds shall be
23 assessed as soon thereafter as permitted by this subtitle.

24 (b) If two (2) or more assessments are authorized in one (1) calendar year with
25 respect to *member* insurers that become impaired or insolvent in different
26 calendar years, the average annual premiums for purposes of the aggregate
27 assessment percentage limitation referenced in paragraph (a) of this subsection

1 shall be equal and limited to the higher of the three (3) year average annual
2 premiums for the applicable account as calculated under this section.

3 (c) The board may provide in the plan of operation a method of allocating funds
4 among claims, whether relating to one (1) or more impaired or insolvent
5 insurers, when the maximum assessment will be insufficient to cover
6 anticipated claims.

7 *(d) If the maximum assessment for the life insurance account or the annuity*
8 *account in one year does not provide an amount sufficient to carry out the*
9 *responsibilities of the association, then pursuant to paragraph (c) of this*
10 *subsection, the board shall access the other account for the necessary*
11 *additional amount, subject to the maximum stated in paragraph (a) of this*
12 *subsection.*

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

21 (7) It shall be proper for any member insurer, in determining its premium rates and
22 policy owner dividends as to any kind of insurance *or health maintenance*
23 *organization business* within the scope of this subtitle, to consider the amount
24 reasonably necessary to meet its assessment obligations under this subtitle.

25 (8) The association shall issue to each *member* insurer paying an assessment under this
26 subtitle, other than a Class A assessment, a certificate of contribution, in a form
27 prescribed by the commissioner, for the amount of the assessment so paid. All

1 outstanding certificates shall be of equal dignity and priority without reference to
2 amounts or dates of issue. A certificate of contribution may be shown by the
3 member insurer in its financial statement as an asset in such form and for such
4 amount, if any, and period of time as the commissioner may approve.

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

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

17 (c) Within thirty (30) days after a final decision has been made, the association
18 shall notify the protesting member insurer in writing of that final decision.
19 Within sixty (60) days of receipt of notice of the final decision, the protesting
20 member insurer may appeal the final action to the commissioner, in
21 accordance with KRS 304.42-110(3).

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

26 (e) If the protest or appeal on the assessment is upheld, the amount paid in error
27 or excess shall be returned to the member insurer[company]. Interest on a

1 refund due a protesting member insurer shall be paid at the rate actually
2 earned by the association.

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

6 ➔Section 7. KRS 304.42-110 is amended to read as follows:

7 In addition to the duties and powers enumerated elsewhere in this subtitle:

8 (1) The commissioner shall:

9 (a) Upon request of the board of directors, provide the association with a
10 statement of the premiums in the appropriate states for each member insurer;

11 (b) When an impairment is declared and the amount of the impairment is
12 determined, serve a demand upon the impaired insurer to make good the
13 impairment within a reasonable time. Notice to the impaired insurer shall
14 constitute notice to its shareholders, if any. The failure of the impaired insurer
15 to promptly comply with the demand shall not excuse the association from the
16 performance of its powers and duties under this subtitle; and

17 (c) In any liquidation or rehabilitation proceeding involving a domestic member
18 insurer, be appointed as the liquidator or rehabilitator. If a foreign or alien
19 member insurer is subject to a liquidation proceeding in its domiciliary
20 jurisdiction or state of entry, the commissioner may be appointed conservator.

21 (2) The commissioner may suspend or revoke, after notice and hearing conducted in
22 accordance with KRS Chapter 13B, the certificate of authority or license to transact
23 business~~insurance~~ in this state of any member insurer which fails to pay an
24 assessment when due or fails to comply with the plan of operation. As an alternative
25 the commissioner may levy a forfeiture on any member insurer which fails to pay an
26 assessment when due. A forfeiture shall not exceed five percent (5%) of the unpaid
27 assessment per month, but no forfeiture shall be less than one hundred dollars

1 (\$100) per month.

2 (3) Any final action of the board of directors or the association may be appealed to the
3 commissioner by any member insurer if the appeal is taken within sixty (60) days of
4 its receipt of notice of the action being appealed. Any final order of the
5 commissioner shall be subject to judicial review as set forth in Subtitle 2 of this
6 chapter and KRS Chapter 13B.

7 (4) The liquidator, rehabilitator, or conservator of any impaired insurer may notify all
8 interested persons of the effect of this subtitle.

9 ➔Section 8. KRS 304.42-120 is amended to read as follows:

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

11 (1) It shall be the duty of the commissioner:

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

- 15 1. Revocation of license;
- 16 2. Suspension of license;
- 17 3. Makes any formal order that the member insurer~~[such company]~~ restrict
18 its premium writing, obtain additional contributions to surplus, withdraw
19 from the state, reinsure all or any part of its business, or increase capital,
20 surplus, or any other account for the security of policy owners, contract
21 owners, certificate holders, or creditors.

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

24 (b) To report to the board of directors when he or she has taken any of the actions
25 set forth in paragraph (a) of this subsection or has received a report from any
26 other commissioner indicating that any such action has been taken in another
27 state. Such report to the board of directors shall contain all significant details

- 1 of the action taken or the report received from another commissioner;
- 2 (c) To report to the board of directors when he or she has reasonable cause to
3 believe from any examination, whether completed or in process, of any
4 member insurer that **the member**~~[such]~~ insurer may be an impaired or
5 insolvent insurer; and
- 6 (d) To furnish to the board of directors the NAIC insurance regulatory
7 information system information developed by the National Association of
8 Insurance Commissioners, and the board may use the information contained
9 therein in carrying out its duties and responsibilities under this section. Such
10 report and the information contained therein shall be kept confidential by the
11 board of directors until such time as made public by the commissioner or
12 other lawful authority.
- 13 (2) The commissioner may seek the advice and recommendations of the board of
14 directors concerning any matter affecting his or her duties and responsibilities
15 regarding the financial condition of member **insurers**~~[companies]~~ and **insurers or**
16 **health maintenance organizations**~~[companies]~~ seeking admission to transact~~[~~
17 ~~insurance]~~ business in this state.
- 18 (3) The board of directors may, upon majority vote, make reports and recommendations
19 to the commissioner upon any matter germane to the solvency, liquidation,
20 rehabilitation, or conservation of any member insurer or germane to the solvency of
21 any **insurer or health maintenance organization**~~[company]~~ seeking to do~~[an~~
22 ~~insurance]~~ business in this state. **These**~~[Such]~~ reports and recommendations **are**
23 **confidential by law and** shall not be considered public **records**~~[documents]~~.
- 24 (4) The board of directors may, upon majority vote, notify the commissioner of any
25 information indicating any member insurer may be an impaired or insolvent insurer.
- 26 (5) The board of directors may, upon majority vote, make recommendations to the
27 commissioner for the detection and prevention of **member** insurer insolvencies.

1 ➔Section 9. KRS 304.42-130 is amended to read as follows:

2 (1) A member insurer, other than a nonprofit hospital, medical, surgical, dental, or
3 health service corporation, may offset its tax liability to this state imposed against it
4 under KRS 136.320(3) and (4), 136.330, 136.340, or 136.350, whichever may be
5 applicable, against the assessment described in subsection (8) of KRS 304.42-090 to
6 the extent of twenty percent (20%) of the amount of the assessment for each of the
7 five (5) calendar years following the year in which the assessment was paid. If a
8 member insurer should cease doing business, all uncredited assessments may be
9 credited against its tax liability for the year in which it ceases doing business.

10 (2) *A member insurer that is exempt from taxes referenced in subsection (1) of this*
11 *section may recoup its assessments by a surcharge on its premiums in a sum*
12 *reasonably calculated to recoup the assessments over a reasonable period of time,*
13 *as approved by the commissioner. Amounts recouped shall not be considered*
14 *premiums for any other purpose, including the computation of gross premium*
15 *tax, the medical loss ratio, or agent commission. If a member insurer collects*
16 *excess surcharges, the member insurer shall remit the excess amount to the*
17 *association, and the excess amount shall be applied to reduce future assessments*
18 *in the appropriate account.*

19 (3) Any sums acquired by refund, pursuant to KRS 304.42-090(6), from the association
20 which have theretofore been written off by contributing *member* insurers and offset
21 against taxes as provided in this section, and are not then needed for purposes of
22 this subtitle, shall be paid by the association to the commissioner and by the
23 commissioner deposited with the State Treasurer for credit to the general fund of
24 this state.

25 ➔Section 10. KRS 304.42-140 is amended to read as follows:

26 (1) Nothing in this subtitle shall be construed to reduce the liability for unpaid
27 assessments of the insureds on an impaired or insolvent insurer operating under a

- 1 plan with assessment liability.
- 2 (2) Records shall be kept of all meetings of the board of directors to discuss the
3 activities of the association in carrying out its powers and duties under KRS 304.42-
4 080. The records of the association with respect to an impaired or insolvent insurer
5 shall not be disclosed prior to the termination of a liquidation, rehabilitation, or
6 conservation proceeding involving the impaired or insolvent insurer, prior to the
7 termination of the impairment or insolvency of the member insurer, or prior to the
8 order of a court of competent jurisdiction. Nothing in this subsection shall limit the
9 duty of the association to render a report of its activities under KRS 304.42-150.
- 10 (3) For the purpose of carrying out its obligations under this subtitle, the association
11 shall be deemed to be a creditor of the impaired or insolvent insurer to the extent of
12 assets attributable to covered policies reduced by any amounts to which the
13 association is entitled as subrogee pursuant to subsection (8) of KRS 304.42-080.
14 Assets of the impaired or insolvent insurer attributable to covered policies and
15 contracts shall be used to continue all covered policies and contracts and pay all
16 contractual obligations of the impaired or insolvent insurer as required by this
17 subtitle. Assets attributable to covered policies or contracts, as used in this
18 subsection, is that proportion of the assets which the reserves that should have been
19 established for ~~the~~^{such} policies or contracts bear to the reserves that should have
20 been established for all policies or contracts or health benefit plans~~[of insurance]~~
21 written by the impaired or insolvent insurer.
- 22 (4) As a creditor of the impaired or insolvent insurer as established in subsection (3) of
23 this section and consistent with KRS 304.33-440, the association and other similar
24 associations shall be entitled to receive a disbursement of assets out of the
25 marshaled assets, from time to time as the assets become available to reimburse it,
26 as a credit against contractual obligations under this subtitle. If the liquidator has
27 not, within one hundred twenty (120) days of a final determination of insolvency of

1 a member~~[an]~~ insurer by the receivership court, made an application to the court for
2 the approval of a proposal to disburse assets out of marshaled assets to guaranty
3 associations having obligations because of the insolvency, then the association shall
4 be entitled to make application to the receivership court for approval of its own
5 proposal to disburse these assets.

6 (5) (a) Prior to the termination of any liquidation, rehabilitation, or conservation
7 proceeding, the court may take into consideration the contributions of the
8 respective parties, including the association, the shareholders, enrollees,
9 certificate holders, contract owners, and policy owners~~[policyowners]~~ of the
10 insolvent insurer, and any other party with a bona fide interest, in making an
11 equitable distribution of the ownership rights of such insolvent insurer. In
12 such a determination, consideration shall be given to the welfare of the
13 enrollees, certificate holders, contract owners, and policy owners of the
14 continuing or successor member insurer;

15 (b) No distribution to stockholders, if any, of an impaired or insolvent insurer
16 shall be made until and unless the total amount of valid claims of the
17 association for funds expended in carrying out its powers and duties under
18 KRS 304.42-080 with respect to the member~~[such]~~ insurer have been fully
19 recovered by the association.

20 (6) (a) If an order for liquidation or rehabilitation of a member~~[an]~~ insurer domiciled
21 in this state has been entered, the receiver appointed under such order shall
22 have a right to recover on behalf of the member insurer, from any affiliate that
23 controlled it, the amount of distributions, other than stock dividends paid by
24 the member insurer on its capital stock, made at any time during the five (5)
25 years preceding the petition for liquidation or rehabilitation subject to the
26 limitations of paragraphs (b) to (d) of this subsection;

27 (b) No~~[such]~~ distribution shall be recoverable if the member insurer shows that

1 when paid the distribution was lawful and reasonable, and that the member
2 insurer did not know and could not reasonably have known that the
3 distribution might adversely affect the ability of the member insurer to fulfill
4 its contractual obligations;

5 (c) Any person who was an affiliate that controlled the member insurer at the
6 time the distributions were paid shall be liable up to the amount of
7 distributions he received. Any person who was an affiliate that controlled the
8 member insurer at the time the distributions were declared, shall be liable up
9 to the amount of distributions which would have been received if they had
10 been paid immediately. If two (2) persons are liable with respect to the same
11 distributions, they shall be jointly and severally liable;

12 (d) The maximum amount recoverable under this subsection shall be the amount
13 needed in excess of all other available assets of the insolvent insurer to pay the
14 contractual obligations of the insolvent insurer;

15 (e) If any person liable under paragraph (c) of this subsection is insolvent, all its
16 affiliates that controlled it at the time the dividend was paid shall be jointly
17 and severally liable for any resulting deficiency in the amount recovered from
18 the insolvent affiliate.

19 ➔Section 11. KRS 304.42-190 is amended to read as follows:

20 No person, including a member~~[an]~~ insurer, agent, affiliate of a member~~[an]~~ insurer, life
21 settlement provider, or life settlement broker shall make, publish, disseminate, circulate,
22 or place before the public, or cause directly or indirectly, to be made, published,
23 disseminated, circulated, or placed before the public, in any newspaper, magazine, or
24 other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over
25 any radio station or television station, or in any other way, any advertisement,
26 announcement, or statement which uses the existence of the Insurance Guaranty
27 Association of this state for the purpose of sales, solicitation, or inducement to purchase

1 any form of insurance or other coverage covered by the Kentucky Life and Health
2 Insurance Guaranty Association Act. This section shall not apply to the Kentucky Life
3 and Health Insurance Guaranty Association or any other entity which does not sell or
4 solicit insurance or coverage by a health maintenance organization.