



General Assembly

January Session, 2001

Raised Bill No. 1247

LCO No. 3999

Referred to Committee on Insurance and Real Estate

Introduced by:
(INS)

**AN ACT CONCERNING THE CONNECTICUT LIFE AND HEALTH
INSURANCE GUARANTY ASSOCIATION ACT.**

Be it enacted by the Senate and House of Representatives in General
Assembly convened:

1 Section 1. Section 38a-860 of the general statutes is repealed and the
2 following is substituted in lieu thereof:

3 (a) Sections 38a-858 to 38a-875, inclusive, as amended by this act,
4 shall provide coverage for the policies and contracts specified in
5 subsection [(b)] (f) of this section: [(1) To persons who, regardless of
6 where they reside, except for nonresident certificate holders under
7 group policies or contracts, are the beneficiaries, assignees or payees of
8 the persons covered under subdivision (2), and (2) to persons who are
9 owners of or certificate holders under such policies or contracts or, in
10 the case of unallocated annuity contracts, to the persons who are the
11 contract holders, and who (A) are residents, or (B) are not residents,
12 but only under all of the following conditions: (i) The insurers which
13 issued such policies or contracts domiciled in this state; (ii) such
14 insurers never held a license or certificate or authority in the states in
15 which such persons reside; (iii) such states have associations similar to
16 the association created by this section and sections 38a-837, 38a-838,

17 38a-845, 38a-853, 38a-862, 38a-863, 38a-865 and 38a-866 and (iv) such
18 persons are not eligible for coverage by such associations.] (1) To any
19 person, except for a nonresident certificate holder under a group
20 policy or contract, who is the beneficiary, assignee or payee of the
21 person covered under subdivision (2) of this subsection, regardless of
22 where the person resides, and (2) any person who is the owner of, or
23 certificate holder under, such policy or contract and in each case who
24 (A) is a resident, or (B) is not a resident, provided (i) the insurer that
25 issued such policy or contract is domiciled in this state, (ii) the state in
26 which the person resides has an association similar to the association
27 created by this section and sections 38a-837, 38a-838, 38a-845, 38a-853,
28 38a-862, as amended by this act, 38a-863, as amended by this act, 38a-
29 865, as amended by this act, and 38a-866, as amended by this act, and
30 (iii) the person is not eligible for coverage by an association in any
31 other state because the insurer was not licensed in the state at the time
32 specified in the state's guaranty association law.

33 (b) For unallocated annuity contracts specified in subsection (f) of
34 this section, subdivisions (1) and (2) of subsection (a) of this section
35 shall not apply, and except as provided in subsections (d) and (e) of
36 this section, sections 38a-858 to 38a-875, inclusive, as amended by this
37 act, shall apply to: (1) Any person who is the owner of the unallocated
38 annuity contract if the contract is issued to, or in connection with, a
39 specific benefit plan whose plan sponsor has its principal place of
40 business in this state; and (2) any person who is the owner of an
41 unallocated annuity contract issued to, or in connection with,
42 government lotteries if the owners are residents.

43 (c) For structured settlement annuities specified in subsection (f) of
44 this section, subdivisions (1) and (2) of subsection (a) of this section
45 shall not apply, and except as provided in subsections (d) and (e) of
46 this section, sections 38a-858 to 38a-875, inclusive, as amended by this
47 act, shall apply to a person who is a payee under a structured
48 settlement annuity, or to a beneficiary of a payee if the payee is
49 deceased, if the payee: (1) Is a resident, regardless of where the

50 contract owner resides, or (2) is not a resident, provided: (A) (i) The
51 contract owner of the structured settlement annuity is a resident, or (ii)
52 the contract owner of the structured settlement annuity is not a
53 resident, but the insurer that issued the structured settlement annuity
54 is domiciled in this state, and the state in which the contract owner
55 resides has an association similar to the association created by sections
56 38a-858 to 38a-875, inclusive, as amended by this act; and (B) neither
57 the payee, beneficiary or contract owner is eligible for coverage by the
58 association of the state in which the payee, beneficiary or contract
59 owner resides.

60 (d) Sections 38a-858 to 38a-875, inclusive, as amended by this act,
61 shall not provide coverage to: (1) A person who is a payee or
62 beneficiary of a contract owner resident of this state, if the payee or
63 beneficiary is afforded any coverage by the association of another state;
64 or (2) a person covered under subsection (b) of this section, if any
65 coverage is provided by the association of another state to the person.

66 (e) Sections 38a-858 to 38a-875, inclusive, as amended by this act,
67 shall provide coverage to a person who is a resident and, in special
68 circumstances, to a nonresident. In order to avoid duplicate coverage,
69 if a person who would otherwise receive coverage under sections 38a-
70 858 to 38a-875, inclusive, as amended by this act, is provided coverage
71 under the laws of any other state, the person shall not be provided
72 coverage under sections 38a-858 to 38a-875, inclusive, as amended by
73 this act. In determining the application of the provisions of this
74 subsection in situations where a person could be covered by the
75 association of more than one state, whether as an owner, payee,
76 beneficiary or assignee, sections 38a-858 to 38a-875, inclusive, as
77 amended by this act, shall be construed in conjunction with the laws of
78 other states to result in coverage by only one association.

79 [(b)] (f) (1) Sections 38a-858 to 38a-875, inclusive, as amended by this
80 act, shall provide coverage to the persons specified in [subsection (a)]
81 subsections (a) to (d), inclusive, of this section for direct, nongroup life,

82 health [,] or annuity policies or contracts and supplemental [policies
83 or] contracts to such policies or contracts, for certificates under direct
84 group policies and contracts, and for unallocated annuity contracts
85 issued by member insurers, except as limited by said sections. Annuity
86 contracts and certificates under group annuity contracts include, but
87 are not limited to, guaranteed investment contracts, deposit
88 administration contracts, unallocated funding agreements, allocated
89 funding agreements, structured settlement [agreements, lottery
90 contracts] annuities, annuities issued to or in connection with
91 government lotteries and any immediate or deferred annuity contracts.
92 (2) Said sections 38a-858 to 38a-875, inclusive, as amended by this act,
93 shall not provide coverage for: (A) Any portion of a policy or contract
94 not guaranteed by the insurer, or under which the risk is borne by the
95 policy or contract holder; (B) any policy or contract of reinsurance,
96 unless assumption certificates have been issued; (C) any portion of a
97 policy or contract to the extent that the rate of interest on which it is
98 based or the interest rate, crediting rate or similar factor determined by
99 use of an index or other external reference stated in the policy or
100 contract employed in calculating returns or changes in value (i)
101 averaged over the period of four years prior to the date on which the
102 [association becomes obligated with respect to such policy or contract]
103 member insurer becomes an impaired or insolvent insurer under
104 sections 38a-858 to 38a-875, inclusive, as amended by this act, exceeds
105 [a] the rate of interest determined by subtracting two percentage points
106 from Moody's corporate bond yield average averaged for that same
107 four-year period or for such lesser period if the policy or contract was
108 issued less than four years before the [association became obligated]
109 member insurer becomes an impaired or insolvent insurer under
110 sections 38a-858 to 38a-875, inclusive, as amended by this act,
111 whichever is earlier; and (ii) on and after the date on which the
112 [association becomes obligated with respect to such policy or contract]
113 member insurer becomes an impaired or insolvent insurer under
114 sections 38a-858 to 38a-875, inclusive, as amended by this act,
115 whichever is earlier, exceeds the rate of interest determined by

116 subtracting three percentage points from Moody's corporate bond
117 yield average as most recently available; (D) any plan or program of an
118 employer, association or similar entity to provide life, health or
119 annuity benefits to its employees or members to the extent that such
120 plan or program is self-funded or uninsured, including, but not limited
121 to, benefits payable by an employer, association or similar entity under
122 (i) a multiple employer welfare arrangement as defined in Section 514
123 of the federal Employee Retirement Income Security Act of 1974, as
124 amended from time to time; (ii) a minimum premium group insurance
125 plan; (iii) a stop-loss group insurance plan; or (iv) an administrative
126 services only contract; (E) any portion of a policy or contract to the
127 extent that it provides dividends, [or] experience rating credits, voting
128 rights or provides that any fees or allowances be paid to any person,
129 including, but not limited to, the policy or contract holder, in
130 connection with the service to or administration of such policy or
131 contract; (F) any policy or contract issued in this state by a member
132 insurer at a time when it was not licensed or did not have a certificate
133 of authority to issue such policy or contract in this state; (G) any
134 unallocated annuity contract issued to an employee benefit plan
135 protected under the federal Pension Benefit Guaranty Corporation,
136 regardless of whether the federal Pension Benefit Guaranty
137 Corporation has yet become liable to make any payments with respect
138 to the benefit plan; (H) any portion of [any] an unallocated annuity
139 contract [which] that is not issued to, or in connection with a specific
140 employee, union or association of natural persons benefit plan or a
141 government lottery; (I) any subscriber contract issued by a health care
142 center; [and] (J) a contractual agreement that establishes the insurer's
143 obligation by reference to a portfolio of assets that is not owned or
144 possessed by the insurance company; (K) an obligation that does not
145 arise under the express written terms of the policy or contract issued
146 by the insurer to the contract owner or policy owner, including, but
147 not limited to: (i) Claims based on marketing materials; (ii) claims
148 based on side letters, riders or other documents that were issued by the
149 insurer without meeting applicable policy form filing or approval

150 requirements; (iii) misrepresentations of or regarding policy benefits;
151 (iv) extra-contractual claims; or (v) a claim for penalties or
152 consequential or incidental damages; (L) a contractual agreement that
153 establishes the member insurer's obligations to provide a book value
154 accounting guaranty for defined contribution benefit plan participants
155 by reference to a portfolio of assets that is owned by the benefit plan or
156 its trustee, which in each case is not an affiliate of the member insurer;
157 and (M) a portion of a policy or contract to the extent it provides for
158 interest or other changes in value to be determined by the use of an
159 index or other external reference stated in the policy or contract, but
160 which have not been credited to the policy or contract, or as to which
161 the policy or contract owner's rights are subject to forfeiture, as of the
162 date the member insurer becomes an impaired or insolvent insurer
163 under sections 38a-858 to 38a-875, inclusive, as amended by this act,
164 whichever is earlier. If a policy's or contract's interest or changes in
165 value are credited less frequently than annually, then for purposes of
166 determining the values that have been credited and are not subject to
167 forfeiture under this subparagraph, the interest or change in value
168 determined by using the procedures defined in the policy or contract
169 will be credited as if the contractual date of crediting interest or
170 changing values was the date of impairment or insolvency, whichever
171 is earlier, and will not be subject to forfeiture.

172 [(c)] (g) The benefits for which the association may become liable
173 shall in no event exceed the lesser of: (1) The contractual obligations
174 for which the insurer is liable or would have been liable if it were not
175 an impaired insurer, or (2) (A) with respect to any one life, regardless
176 of the number of policies or contracts: (i) Three hundred thousand
177 dollars in life insurance death benefits, but no more than one hundred
178 thousand dollars in net cash surrender and net cash withdrawal values
179 for life insurance; (ii) five hundred thousand dollars in health
180 insurance benefits, including, but not limited to, any net cash
181 surrender and net cash withdrawal values; (iii) one hundred thousand
182 dollars in the present value of annuity benefits, including, but not
183 limited to, net cash surrender and net cash withdrawal values; (B) with

184 respect to each individual participating in a governmental retirement
185 plan established under Section [401(k)] 401, 403(b) or 457 of the United
186 States Internal Revenue Code covered by an unallocated annuity
187 contract or the beneficiaries of each such individual if deceased, in the
188 aggregate, one hundred thousand dollars in present value annuity
189 benefits, including, but not limited to, net cash surrender and net cash
190 withdrawal values; (C) with respect to each payee of a structured
191 settlement annuity, or beneficiary or beneficiaries of the payee if
192 deceased, one hundred thousand dollars in present value annuity
193 benefits, in the aggregate, including, but not limited to, net cash
194 surrender and net cash withdrawal values, if any, provided [, however,
195 that] (i) in no event shall the association be liable to expend more than
196 the five hundred thousand dollars in the aggregate with respect to any
197 one individual under subparagraphs (A), [and] (B) and (C) of this
198 [subsection] subdivision except with respect to health insurance
199 benefits under subparagraph (A) of this subdivision, in which case the
200 aggregate liability of the association shall not exceed five hundred
201 thousand dollars with respect to any one individual, and (ii) with
202 respect to one owner of multiple nongroup policies of life insurance,
203 whether the policy owner is an individual, firm, corporation or other
204 person, and whether the persons insured are officers, managers,
205 employees or other persons, more than five million dollars in benefits,
206 regardless of the number of policies and contracts held by the owner; [.
207 (C) With respect to any one contract holder covered by any unallocated
208 annuity contract not included in subparagraph (B) of this subsection,
209 five million dollars in benefits, irrespective of the number of such
210 contracts held by that contract holder] (D) with respect to either (i) one
211 contract owner provided coverage under subparagraph (B) of
212 subdivision (2) of subsection (b) of this section, or (ii) one plan sponsor
213 whose plans own directly or in trust one or more unallocated annuity
214 contracts not included in subdivision (2) of subsection (f) of this
215 section, five million dollars in benefits regardless of the number of
216 contracts with respect to the contract owner or plan sponsor, except
217 that in the case where one or more unallocated annuity contracts are

218 covered contracts under sections 38a-858 to 38a-875, inclusive, as
219 amended by this act, and are owned by a trust or other entity for the
220 benefit of two or more plan sponsors, coverage shall be afforded by the
221 association if the largest interest in the trust or entity owning the
222 contract or contracts is held by a plan sponsor whose principal place of
223 business is in this state and in no event shall the association be
224 obligated to cover more than five million dollars in benefits with
225 respect to all such unallocated contracts.

226 (h) The limits set forth in subsection (g) of this section are limits on
227 the benefits for which the association is obligated before taking into
228 account either the association's subrogation and assignment rights or
229 the extent to which those benefits could be provided out of the assets
230 of the impaired or insolvent insurer that are attributable to covered
231 policies. The costs of the association's obligations under sections 38a-
232 858 to 38a-875, inclusive, as amended by this act, may be met by the
233 use of assets attributable to covered policies or reimbursed to the
234 association pursuant to the association's subrogation and assignment
235 rights.

236 (i) In performing its obligation to provide coverage under section
237 38a-865, as amended by this act, the association shall not be required to
238 guarantee, assume, reinsure or perform, or cause to be guaranteed,
239 assumed, reinsured or performed, the contractual obligations of the
240 insolvent or impaired insurer under a covered policy or contract that
241 does not materially affect the economic value or economic benefit of
242 the covered policy or contract.

243 Sec. 2. Section 38a-862 of the general statutes is repealed and the
244 following is substituted in lieu thereof:

245 As used in sections 38a-858 to 38a-875, inclusive, as amended by this
246 act:

247 [(a)] (1) "Account" means either of the two accounts created under
248 section 38a-863, as amended by this act;

249 [(b)] (2) "Association" means the Connecticut Life and Health
250 Insurance Guaranty Association created under [said] section 38a-863,
251 as amended by this act;

252 (3) "Authorized assessment" or "authorized" when used in the
253 context of assessments means a resolution that has been passed by the
254 board of directors of the association whereby an assessment will be
255 called immediately or in the future from member insurers for a
256 specified amount. An assessment is authorized when the resolution is
257 passed.

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

260 (5) "Called assessment" or "called" when used in the context of
261 assessments means that a notice has been issued by the association to
262 member insurers requiring that an authorized assessment be paid
263 within the time frame set forth in the notice. An authorized assessment
264 becomes a called assessment when notice is mailed by the association
265 to member insurers.

266 [(c)] (6) "Commissioner" means the Insurance Commissioner of this
267 state;

268 [(d)] (7) "Contractual obligation" means any obligation under a
269 policy or contract or certificate under a group policy or contract, or
270 portion thereof for which coverage is provided under section 38a-860,
271 as amended by this act;

272 [(e)] (8) "Covered policy" means any policy or contract within the
273 scope of section 38a-860, as amended by this act;

274 (9) "Entity" means a person other than a natural person;

275 [(f)] "Impaired insurer" means: (1) A licensed insurer which, after
276 October 1, 1972, becomes insolvent and is placed under a final order of
277 liquidation, rehabilitation, or conservation by a court of competent

278 jurisdiction, or (2) an insurer deemed by the commissioner after
279 October 1, 1972, to be unable or potentially unable to fulfill its
280 contractual obligations;]

281 (10) "Impaired insurer" means a member insurer that, after October
282 1, 1972, is not an insolvent insurer, and is placed under an order of
283 rehabilitation or conservation by a court of competent jurisdiction;

284 (11) "Insolvent insurer" means a member insurer that after October
285 1, 1972, is placed under an order of liquidation by a court of competent
286 jurisdiction with a finding of insolvency;

287 [(g)] (12) "Member insurer" means any insurer licensed or who
288 holds a certificate of authority to issue in this state any kind of
289 insurance to which sections 38a-858 to 38a-875, inclusive, as amended
290 by this act, apply under section 38a-860, as amended by this act, and
291 may include an insurer whose license in this state has been suspended,
292 revoked or voluntarily withdrawn. "Member insurer" [shall] does not
293 include a health care center;

294 [(h)] (13) "Moody's corporate bond yield average" means the
295 monthly average corporates as published by Moody's Investors
296 Service, Inc., or any successor thereto;

297 (14) "Owner", "policy owner" or "contract owner" means the person
298 who is identified as the legal owner under the terms of the policy or
299 contract or who is otherwise vested with legal title to the policy or
300 contract through a valid assignment completed in accordance with the
301 terms of the policy or contract and properly recorded as the owner on
302 the books of the insurer. "Owner", "contract owner" and "policy owner"
303 does not include a person with a mere beneficial interest in a policy or
304 contract;

305 (15) "Plan sponsor" means: (A) The employer in the case of a benefit
306 plan established or maintained by a single employer; (B) the employee
307 organization in the case of a benefit plan established or maintained by

308 an employee organization; or (C) in the case of a benefit plan
309 established or maintained by two or more employers or jointly by one
310 or more employers and one or more employee organizations, the
311 association, committee, joint board of trustees or other similar group of
312 representatives of the parties who establish or maintain the benefit
313 plan;

314 [(i)] (16) "Premiums" means amounts or considerations, by whatever
315 name called, received on covered policies or contracts less premiums,
316 considerations and deposits returned thereon, and less dividends and
317 experience credits thereon. "Premiums" does not include (A) any
318 amounts or considerations received for any policies or contracts or for
319 the portions of any policies or contracts for which coverage is not
320 provided under subsection [(b)] (f) of section 38a-860, as amended by
321 this act, except that assessable premium shall not be reduced on
322 account of subparagraph (C) of subdivision (2) of subsection [(b)] (f) of
323 section 38a-860, as amended by this act, relating to interest limitations,
324 and subdivision (2) of subsection [(c)] (g) of section 38a-860, as
325 amended by this act, relating to limitations with respect to any one
326 individual, any one participant and any one contract [holder] owner;
327 provided that "premiums" shall not include any premiums in excess of
328 five million dollars on any unallocated annuity contract not issued
329 under a governmental retirement benefit plan established under
330 Section [401(k)] 401, 403(b) or 457 of the [United States Internal
331 Revenue Code] Internal Revenue Code of 1986, or any subsequent
332 corresponding internal revenue code of the United States, as from time
333 to time amended, or (B) with respect to multiple nongroup policies of
334 life insurance owned by one owner, whether the policy owner is an
335 individual, firm, corporation or other person, and whether the persons
336 insured are officers, managers, employees or other persons, premiums
337 in excess of five million dollars with respect to such policies or
338 contracts, regardless of the number of policies or contracts held by the
339 owner;

340 [(j)] (17) "Person" means any individual, corporation, limited

341 liability company, partnership, association or voluntary organization;

342 (18) "Principal place of business" of a plan sponsor or an entity
343 means the single state in which the natural persons who establish
344 policy for the direction, control and coordination of the operations of
345 the plan sponsor or entity as a whole primarily exercises that function,
346 as determined by the association in its reasonable judgment by
347 considering the factors set forth in subparagraphs (A) to (G), inclusive,
348 of this subdivision: (A) The state in which the primary executive and
349 administrative headquarters of the plan sponsor or entity is located;
350 (B) the state in which the principal office of the chief executive officer
351 of the plan sponsor or entity is located; (C) the state in which the board
352 of directors, or similar governing person or persons, of the plan
353 sponsor or entity conducts the majority of its meetings; (D) the state in
354 which the executive or management committee of the board of
355 directors, or similar governing person or persons, of the plan sponsor
356 or entity conducts the majority of its meetings; (E) the state from which
357 the management of the overall operations of the plan sponsor or entity
358 is directed; (F) in the case of a benefit plan sponsored by affiliated
359 companies comprising a consolidated corporation, the state in which
360 the holding company or controlling affiliate has its principal place of
361 business as determined using the factors set forth in subparagraphs
362 (A) to (E), inclusive, of this subdivision; and (G) notwithstanding
363 subparagraphs (A) to (F), inclusive, of this subdivision, in the case of a
364 plan sponsor, if more than fifty per cent of the participants in the
365 benefit plan are employed in a single state, that state shall be deemed
366 to be the principal place of business of the plan sponsor. The principal
367 place of business of a plan sponsor of a benefit plan described in
368 subparagraph (C) of subdivision (15) of this section shall be deemed to
369 be the principal place of business of the association, committee, joint
370 board of trustees or other similar group of representatives of the
371 parties who establish or maintain the benefit plan that, in lieu of a
372 specific or clear designation of a principal place of business, shall be
373 deemed to be the principal place of business of the employer or
374 employee organization that has the largest investment in the benefit

375 plan in question;

376 (19) "Receivership court" means the court in the insolvent or
377 impaired insurer's state having jurisdiction over the conservation,
378 rehabilitation or liquidation of the insurer;

379 ~~[(k)]~~ (20) "Resident" means [any person who resides in this state at
380 the time a member insurer is determined to be an impaired insurer and
381 to whom a contractual obligation is owed. A person may be a resident
382 of only one state, which in the case of a person other than a natural
383 person shall be its principal place of business] a person to whom a
384 contractual obligation is owed and who resides in this state on the date
385 of entry of a court order that determines a member insurer to be an
386 impaired insurer or a court order that determines a member insurer to
387 be an insolvent insurer, whichever occurs first. A person may be a
388 resident of only one state, which in the case of an entity shall be its
389 principal place of business. Citizens of the United States that are either
390 (A) residents of foreign countries, or (B) residents of United States
391 possessions, territories or protectorates that do not have an association
392 similar to the association created by sections 38a-858 to 38a-875,
393 inclusive, as amended by this act, shall be deemed residents of the
394 state of domicile of the insurer that issued the policies or contracts;

395 (21) "Structured settlement annuity" means an annuity purchased to
396 fund periodic payments for a plaintiff or other claimant in payment for
397 or with respect to personal injury suffered by the plaintiff or other
398 claimant;

399 ~~[(l)]~~ (22) "Supplemental contract" means any agreement entered into
400 for the distribution of policy or contract proceeds under a life, health
401 or annuity policy or contract; and

402 ~~[(m)]~~ (23) "Unallocated annuity contract" means any annuity
403 contract or group annuity certificate [which] that is not issued to and
404 owned by an individual, except to the extent of any annuity benefits
405 guaranteed to an individual by an insurer under such contract or

406 certificate.

407 Sec. 3. Section 38a-863 of the general statutes is repealed and the
408 following is substituted in lieu thereof:

409 (a) There is created a nonprofit legal entity to be known as the
410 Connecticut Life and Health Insurance Guaranty Association. All
411 member insurers shall be and remain members of the association as a
412 condition of their authority to transact insurance in this state. The
413 association shall perform its functions under the plan of operation
414 established and approved under section 38a-867 and shall exercise its
415 powers through a board of directors established under section 38a-864.
416 For purposes of administration and assessment, the association shall
417 maintain two accounts: (1) The life insurance and annuity account
418 which includes the following subaccounts: (A) Life insurance account;
419 (B) annuity account which shall include, but is not limited to, annuity
420 contracts owned by a governmental retirement plan, or its trustee,
421 established under Section 401, 403(b) or 457 of the Internal Revenue
422 Code of 1986, or any subsequent corresponding internal revenue code
423 of the United States, as from time to time amended, but shall otherwise
424 exclude unallocated annuities; and (C) unallocated annuity account
425 which shall [include contracts qualified under Section 403(b) of the
426 United States Internal Revenue Code] exclude contracts owned by a
427 governmental retirement benefit plan, or its trustee, established under
428 Section 401, 403(b) or 457 of the Internal Revenue Code of 1986, or any
429 subsequent corresponding internal revenue code of the United States,
430 as from time to time amended; and (2) the health insurance account.

431 (b) The association shall come under the immediate supervision of
432 the commissioner and shall be subject to the applicable provisions of
433 the insurance laws of this state.

434 Sec. 4. Section 38a-865 of the general statutes is repealed and the
435 following is substituted in lieu thereof:

436 [In addition to the powers and duties enumerated in sections 38a-

437 858 to 38a-875, inclusive:

438 (a) If a domestic insurer is an impaired insurer, the association may,
439 prior to an order of liquidation or rehabilitation, and subject to any
440 conditions imposed by the association other than those which impair
441 the contractual obligations of the impaired insurer, and approved by
442 the impaired insurer and the commissioner: (1) Guarantee or reinsure,
443 or cause to be guaranteed, assumed or reinsured, all the covered
444 policies of the impaired insurer; (2) provide such moneys, pledges,
445 notes, guarantees or other means as are proper to effectuate
446 subdivision (1) of this subsection and assure payment of the
447 contractual obligations of the impaired insurer pending action under
448 subdivision (1) of this subsection; (3) loan money to the impaired
449 insurer.

450 (b) If a foreign or alien insurer is an impaired insurer, the
451 association may, prior to an order of liquidation, rehabilitation, or
452 conservation, with respect to the covered policies of residents and
453 subject to any conditions imposed by the association other than those
454 which impair the contractual obligations of the impaired insurer, and
455 approved by the impaired insurer and the commissioner: (1)
456 Guarantee or reinsure, or cause to be guaranteed, assumed or
457 reinsured, the impaired insurer's covered policies of residents; (2)
458 provide such moneys, pledges, notes, guarantees or other means as are
459 proper to effectuate subdivision (1) of this subsection, and assure
460 payment of the impaired insurer's contractual obligations to residents
461 pending action under subdivision (1) of this subsection; (3) loan money
462 to the impaired insurer.

463 (c) If a domestic insurer is an impaired insurer under an order of
464 liquidation or rehabilitation, the association shall, subject to the
465 approval of the commissioner: (1) Guarantee, assume or reinsure, or
466 cause to be guaranteed, assumed or reinsured the covered policies of
467 the impaired insurer; (2) assure payment of the contractual obligations
468 of the impaired insurer; and (3) provide such moneys, pledges, notes,

469 guarantees or other means as are reasonably necessary to discharge
470 such duties. If the association fails to act within a reasonable period of
471 time, the commissioner shall have the powers and duties of the
472 association under sections 38a-858 to 38a-875, inclusive, with respect to
473 such domestic impaired insurer.

474 (d) If a foreign or alien insurer is an impaired insurer under an
475 order of liquidation, rehabilitation or conservation, the association
476 shall, subject to the approval of the commissioner, (1) guarantee,
477 assume or reinsure or cause to be guaranteed, assumed or reinsured
478 the covered policies of residents; (2) assure payment of the contractual
479 obligations of the impaired insurer to residents; and (3) provide such
480 moneys, pledges, notes, guarantees or other means as are reasonably
481 necessary to discharge such duties. If the association fails to act within
482 a reasonable period of time, the commissioner shall have the powers
483 and duties of the association under sections 38a-858 to 38a-875,
484 inclusive, with respect to such foreign or alien impaired insurer.

485 (e) (1) In carrying out its duties under subsections (c) and (d), the
486 association may request that there be imposed policy liens, contract
487 liens, moratoriums on payments or other similar means and such liens,
488 moratoriums or similar means may be imposed if the commissioner
489 finds that the amounts which can be assessed under sections 38a-858 to
490 38a-875, inclusive, are less than the amounts needed to assure full and
491 prompt performance of the impaired insurer's contractual obligations,
492 or that the economic or financial conditions as they affect member
493 insurers are sufficiently adverse to render the imposition of policy or
494 contract liens, moratoriums, or similar means to be in the public
495 interest, and approves the specific policy liens, contract liens,
496 moratoriums or similar means to be used. (2) Before being obligated
497 under subsections (c) and (d) the association may request that there be
498 imposed temporary moratoriums or liens on projects of cash values
499 and policy loans and such temporary moratoriums and liens may be
500 imposed if they are approved by the commissioner.]

501 (a) If a member insurer is an impaired insurer, the association may,
502 in its discretion, and subject to any conditions imposed by the
503 association that do not impair the contractual obligations of the
504 impaired insurer and that are approved by the commissioner, (1)
505 guarantee, assume or reinsure, or cause to be guaranteed, assumed or
506 reinsured, any or all of the policies or contracts of the impaired insurer;
507 or (2) provide such moneys, pledges, loans, notes, guarantees or other
508 means as are proper to effectuate subdivision (1) of this subsection and
509 assure payment of the contractual obligations of the impaired insurer
510 pending action under subdivision (1) of this subsection.

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

513 (1) (A) (i) Guarantee, assume or reinsure, or cause to be guaranteed,
514 assumed or reinsured, the policies or contracts of the insolvent insurer,
515 or (ii) assure payment of the contractual obligations of the insolvent
516 insurer, and (B) provide moneys, pledges, loans, notes, guarantees or
517 other means reasonably necessary to discharge the association's duties;
518 or

519 (2) Provide benefits and coverages in accordance with the following
520 provisions:

521 (A) With respect to life and health insurance policies and annuities,
522 assure payment of benefits for premiums identical to the premiums
523 and benefits, except for terms of conversion and renewability that
524 would have been payable under the policies or contracts of the
525 insolvent insurer, for claims incurred: (i) With respect to group policies
526 and contracts, not later than the earlier of the next renewal date under
527 those policies or contracts or forty-five days, but in no event less than
528 thirty days after the date on which the association becomes obligated
529 with respect to the policies and contracts; (ii) with respect to nongroup
530 policies, contracts and annuities, not later than the earlier of the next
531 renewal date, if any, under the policies or contracts or one year, but in
532 no event less than thirty days from the date on which the association

533 becomes obligated with respect to the policies or contracts;

534 (B) Make diligent efforts to provide all known insureds or
535 annuitants, for nongroup policies and contracts, or group policy
536 owners with respect to group policies and contracts, thirty days notice
537 of the termination of benefits pursuant to subparagraph (A) of this
538 subdivision;

539 (C) With respect to nongroup life and health insurance policies and
540 annuities covered by the association, make available to each known
541 insured or annuitant, or owner if other than the insured or annuitant,
542 and with respect to an individual formerly insured or formerly an
543 annuitant under a group policy who is not eligible for replacement
544 group coverage, make available substitute coverage on an individual
545 basis in accordance with the provisions of subparagraph (D) of this
546 subdivision, if the insureds or annuitants had a right under law or the
547 terminated policy or annuity to convert coverage to individual
548 coverage or to continue an individual policy or annuity in force until a
549 specified age or for a specified time during which the insurer had no
550 right to make unilateral changes in any provision of the policy or
551 annuity or had a right only to make changes in premium by class;

552 (D) In providing the substitute coverage required under
553 subparagraph (C) of this subdivision, the association may offer either
554 to reissue the terminated coverage or to issue an alternative policy.
555 Alternative or reissued policies shall be offered without requiring
556 evidence of insurability, and shall not provide for any waiting period
557 or exclusion that would not have applied under the terminated policy.
558 The association may reinsure any alternative or reissued policy;

559 (E) Alternative policies adopted by the association shall be subject to
560 the approval of the domiciliary insurance commissioner and the
561 receivership court. The association may adopt alternative policies of
562 various types for future issuance without regard to any particular
563 impairment or insolvency;

564 (F) Alternative policies adopted by the association shall contain at
565 least the minimum statutory provisions required in this state and
566 provide benefits that shall not be unreasonable in relation to the
567 premium charged. The association shall set the premium in accordance
568 with a table of rates that it shall adopt. The premium shall reflect the
569 amount of insurance to be provided and the age and class of risk of
570 each insured, but shall not reflect any changes in the health of the
571 insured after the original policy was last underwritten;

572 (G) Any alternative policy issued by the association shall provide
573 coverage of a type similar to that of the policy issued by the impaired
574 or insolvent insurer as determined by the association;

575 (H) If the association elects to reissue terminated coverage at a
576 premium rate different from that charged under the terminated policy,
577 the premium shall be set by the association in accordance with the
578 amount of insurance provided and the age and class of risk, subject to
579 approval of the domiciliary insurance commissioner and the
580 receivership court;

581 (I) The association's obligations with respect to coverage under any
582 policy of the impaired or insolvent insurer or under any reissued or
583 alternative policy shall cease on the date the coverage or policy is
584 replaced by another similar policy by the owner, the insured or the
585 association;

586 (J) When proceeding under this subdivision with respect to a policy
587 or contract carrying guaranteed minimum interest rates, the
588 association shall assure the payment or crediting of a rate of interest
589 consistent with subparagraph (C) of subdivision (2) of subsection (f) of
590 section 38a-860, as amended by this act.

591 (c) Nonpayment of premiums by the thirty-first day after the date
592 required under the terms of any guaranteed, assumed, alternative or
593 reissued policy or contract or substitute coverage shall terminate the
594 association's obligations under the policy or coverage under sections

595 38a-858 to 38a-875, inclusive, as amended by this act, with respect to
596 the policy or coverage, except with respect to any claims incurred or
597 any net surrender value that may be due in accordance with the
598 provisions of sections 38a-858 to 38a-875, inclusive, as amended by this
599 act.

600 (d) Premiums due for coverage after entry of an order of liquidation
601 of an insolvent insurer shall belong to and be payable at the direction
602 of the association, and the association shall be liable for unearned
603 premiums due to policy or contract owners arising after the entry of
604 the order.

605 (e) The protection provided by sections 38a-858 to 38a-875,
606 inclusive, as amended by this act, shall not apply where any guaranty
607 protection is provided to residents of this state by the laws of the
608 domiciliary state or jurisdiction of the impaired or insolvent insurer
609 other than this state.

610 (f) Repealed by P.A. 87-290, S. 7, 8.

611 [(g) The association may render assistance and advice to the
612 commissioner, upon his request, concerning rehabilitation, payment of
613 claims, continuations of coverage or the performance of other
614 contractual obligations of any impaired insurer.

615 (h) The association shall have standing to appear before any court in
616 this state with jurisdiction over an impaired insurer concerning which
617 the association is or may become obligated under sections 38a-858 to
618 38a-875, inclusive. Such standing shall extend to all matters germane to
619 the powers and duties of the association, including, but not limited to,
620 proposals for reinsuring or guaranteeing the covered policies of the
621 impaired insurer and the determination of the covered policies and
622 contractual obligations.

623 (i) (1) Any person receiving benefits under sections 38a-858 to 38a-
624 875, inclusive, shall be deemed to have assigned his rights under the

625 covered policy to the association to the extent of the benefits received
626 because of said sections, whether the benefits are payments of
627 contractual obligations or continuation of coverage. The association
628 may require an assignment to it of such rights by any payee, policy or
629 contract owner, beneficiary, insured or annuitant as a condition
630 precedent to the receipt of any rights or benefits conferred by said
631 sections upon such person. The association shall be subrogated to these
632 rights against the assets of any impaired insurer. (2) The subrogation
633 rights of the association under this subsection shall have the same
634 priority against the assets of the impaired insurer as that possessed by
635 the person entitled to receive benefits under said sections.

636 (j) The association may (1) enter into such contracts as are necessary
637 or proper to carry out the provisions and purposes of sections 38a-858
638 to 38a-875, inclusive; (2) sue or be sued, including taking any legal
639 actions necessary or proper for recovery of any unpaid assessments
640 under section 38a-866; (3) borrow money to effect the purposes of
641 sections 38a-858 to 38a-875, inclusive. Any notes or other evidence of
642 indebtedness of the association not in default shall be legal
643 investments for domestic insurers and may be carried as admitted
644 assets; (4) employ or retain such persons as are necessary to handle the
645 financial transactions of the association, and to perform such other
646 functions as become necessary or proper under said sections; (5)
647 negotiate and contract with any liquidator, rehabilitator, conservator
648 or ancillary receiver to carry out the powers and duties of the
649 association; (6) take such legal action as may be necessary to avoid
650 payment of improper claims; (7) exercise, for the purposes of said
651 sections and to the extent approved by the commissioner, the powers
652 of a domestic life or health insurer, but in no case may the association
653 issue insurance policies or annuity contracts other than those issued to
654 perform the contractual obligations of the impaired insurer.

655 (k) When proceeding under subsection (c) or (d) of this section with
656 respect to any policy or contract carrying guaranteed minimum
657 interest rates, the association shall assure the payment or crediting rate

658 of interest consistent with subparagraph (C) of subdivision (2) of
659 subsection (b) of section 38a-860.

660 (l) The protection provided by sections 38a-858 to 38a-875, inclusive,
661 shall not apply where any guaranty protection is provided to residents
662 of this state by the laws of the domiciliary state or jurisdiction of the
663 impaired insurer other than this state.]

664 (g) In carrying out its duties under subsection (b) of this section, the
665 association may:

666 (1) Subject to approval by a court in this state, impose permanent
667 policy or contract liens in connection with a guarantee, assumption or
668 reinsurance agreement, if the association finds that the amounts which
669 can be assessed under sections 38a-858 to 38a-875, inclusive, as
670 amended by this act, are less than the amounts needed to assure full
671 and prompt performance of the association's duties under sections
672 38a-858 to 38a-875, inclusive, as amended by this act, or that the
673 economic or financial conditions as they affect member insurers are
674 sufficiently adverse to render the imposition of such permanent policy
675 or contract liens to be in the public interest;

676 (2) Subject to approval by a court in this state, impose temporary
677 moratoriums or liens on payments of cash values and policy loans, or
678 any other right to withdraw funds held in conjunction with policies or
679 contracts, in addition to any contractual provisions for deferral of cash
680 or policy loan value. In addition, in the event of a temporary
681 moratorium or moratorium charge imposed by the receivership court
682 on payment of cash values or policy loans, or on any other right to
683 withdraw funds held in conjunction with policies or contracts, out of
684 the assets of the impaired or insolvent insurer, the association may
685 defer the payment of cash values, policy loans or other rights by the
686 association for the period of the moratorium or moratorium charge
687 imposed by the receivership court, except for claims covered by the
688 association to be paid in accordance with a hardship procedure
689 established by the liquidator or rehabilitator and approved by the

690 receivership court.

691 (h) If the association fails to act within a reasonable period of time
692 with respect to any insolvent insurer, as provided in subsection (b) of
693 this section, the commissioner shall have the powers and duties of the
694 association under sections 38a-858 to 38a-875, inclusive, as amended by
695 this act, with respect to the insolvent insurer.

696 (i) The association may render assistance and advice to the
697 commissioner, upon the commissioner's request, concerning
698 rehabilitation, payment of claims, continuation of coverage, or the
699 performance of other contractual obligations of an impaired or
700 insolvent insurer.

701 (j) The association shall have standing to appear or intervene before
702 a court or agency in this state with jurisdiction over an impaired or
703 insolvent insurer concerning which the association is or may become
704 obligated under sections 38a-858 to 38a-875, inclusive, as amended by
705 this act, or with jurisdiction over any person or property against which
706 the association may have rights through subrogation or otherwise.
707 Such standing shall extend to all matters germane to the powers and
708 duties of the association, including, but not limited to, proposals for
709 reinsuring, modifying or guaranteeing the policies or contracts and
710 contractual obligations. The association shall also have the right to
711 appear or intervene before a court or agency in another state with
712 jurisdiction over an impaired or insolvent insurer for which the
713 association is or may become obligated or with jurisdiction over any
714 person or property against whom the association may have rights
715 through subrogation or otherwise.

716 (k) (1) A person receiving benefits under sections 38a-858 to 38a-875,
717 inclusive, as amended by this act, whether the benefits are payments of
718 or on account of contractual obligations, continuation of coverage or
719 provision of substitute or alternative coverages, shall be deemed to
720 have assigned (A) the rights under the covered policy or contract to the
721 association to the extent of the benefits received under sections 38a-858

722 to 38a-875, inclusive, as amended by this act, and (B) any causes of
723 action against any person for losses arising under, resulting from or
724 otherwise relating to, the covered policy or contract to the association
725 to the extent of the benefits received because of sections 38a-858 to 38a-
726 875, inclusive, as amended by this act. The association may require an
727 assignment to it of such rights or cause of action by any payee, policy
728 or contract owner, beneficiary, insured or annuitant as a condition
729 precedent to the receipt of any right or benefits under sections 38a-858
730 to 38a-875, inclusive, as amended by this act, upon the person.

731 (2) The subrogation rights of the association under this subsection
732 shall have the same priority against the assets of the impaired or
733 insolvent insurer as that possessed by the person entitled to receive
734 benefits under sections 38a-858 to 38a-875, inclusive, as amended by
735 this act.

736 (3) In addition to subdivisions (1) and (2) of this subsection, the
737 association shall have, originally or by succession, all common law
738 rights of subrogation and any other equitable or legal remedy that
739 would have been available to the impaired or insolvent insurer or
740 owner, beneficiary or payee of a policy or contract with respect to the
741 policy or contracts, against a person responsible for the losses arising
742 from the personal injury relating to the annuity or payment thereof,
743 except any such person responsible solely by reason of serving as an
744 assignee with respect to a qualified assignment under Section 130 of
745 the Internal Revenue Code of 1986, or any subsequent corresponding
746 internal revenue code of the United States, as from time to time
747 amended. Such rights of the association shall include, but are not
748 limited to, in the case of a structured settlement annuity, any rights of
749 the owner, beneficiary or payee of the annuity, to the extent of benefits
750 received pursuant to sections 38a-858 to 38a-875, inclusive, as amended
751 by this act.

752 (4) If the provisions of subdivisions (1) to (3), inclusive, of this
753 subsection are invalid or ineffective with respect to any person or

754 claim for any reason, the amount payable by the association with
755 respect to the related covered obligations shall be reduced by the
756 amount realized by any other person with respect to the person or
757 claim that is attributable to the policies, or portion thereof, covered by
758 the association.

759 (5) If the association has provided benefits with respect to a covered
760 obligation and a person recovers amounts as to which the association
761 has rights as described in subdivisions (1) to (4), inclusive, of this
762 subsection, the person shall pay to the association the portion of the
763 recovery attributable to the policies, or portion thereof, covered by the
764 association.

765 (1) In addition to the rights and powers elsewhere in sections 38a-
766 858 to 38a-875, inclusive, as amended by this act, the association may:

767 (1) Enter into such contracts as are necessary or proper to carry out
768 the provisions and purposes of sections 38a-858 to 38a-875, inclusive,
769 as amended by this act;

770 (2) Sue or be sued, including, but not limited to, taking any legal
771 actions necessary or proper to recover any unpaid assessments under
772 section 38a-866, as amended by this act, and to settle claims or
773 potential claims against it;

774 (3) Borrow money to effect the purposes of sections 38a-858 to 38a-
775 875, inclusive, as amended by this act, and any notes or other evidence
776 of indebtedness of the association not in default shall be legal
777 investments for domestic insurers and may be carried as admitted
778 assets;

779 (4) Employ or retain such persons as are necessary or proper to
780 handle the financial transactions of the association, and to perform
781 such other functions as become necessary or proper under sections
782 38a-858 to 38a-875, inclusive, as amended by this act;

783 (5) Take such legal action as may be necessary or proper to avoid or

784 recover payment of improper claims;

785 (6) Exercise, for the purposes of sections 38a-858 to 38a-875,
786 inclusive, as amended by this act, and to the extent approved by the
787 commissioner, the powers of a domestic life or health insurer, but in no
788 case may the association issue insurance policies or annuity contracts
789 other than those issued to perform its obligations under sections 38a-
790 858 to 38a-875, inclusive, as amended by this act;

791 (7) Request information from a person seeking coverage from the
792 association in order to aid the association in determining its
793 obligations under sections 38a-858 to 38a-875, inclusive, as amended
794 by this act, with respect to the person, and the person shall promptly
795 comply with the request; and

796 (8) Take other necessary or proper action to discharge its duties and
797 obligations under sections 38a-858 to 38a-875, inclusive, as amended
798 by this act, or to exercise its powers under sections 38a-858 to 38a-875,
799 inclusive, as amended by this act.

800 (m) The association may join an organization of one or more other
801 state associations of similar purposes to further the purposes and
802 administer the powers and duties of the association.

803 (n) (1) At any time within one year after the date on which the
804 association becomes responsible for the obligations of a member
805 insurer, which date shall be deemed the coverage date, the association
806 may elect to succeed to the rights and obligations of the member
807 insurer that accrue on or after the coverage date and that relate to
808 contracts covered, in whole or in part, by the association, under any
809 one or more indemnity reinsurance agreements entered into by the
810 member insurer as a ceding insurer and selected by the association,
811 except that the association may not exercise an election with respect to
812 a reinsurance agreement if the receiver, rehabilitator or liquidator of a
813 member insurer has previously and expressly disaffirmed the
814 reinsurance agreement. The election shall be effected by a notice to the

815 receiver, rehabilitator or liquidator and to the affected reinsurers. If the
816 association makes an election, then subparagraphs (A) to (D),
817 inclusive, of this subdivision shall apply with respect to the
818 agreements selected by the association: (A) The association shall be
819 responsible for all unpaid premiums due under the agreements for
820 periods both before and after the coverage date, and shall be
821 responsible for the performance of all other obligations to be
822 performed after the coverage date, in each case which relate to
823 contracts covered in whole or in part by the association. The
824 association may charge contracts covered in part by the association,
825 through reasonable allocation methods, the costs for reinsurance in
826 excess of the obligations of the association. (B) The association shall be
827 entitled to any amounts payable by the reinsurer under the agreements
828 with respect to losses or events that occur in periods after the coverage
829 date and that relate to contracts covered by the association in whole or
830 in part, provided that, upon receipt of any such amounts, the
831 association shall be obliged to pay to the beneficiary under the policy
832 or contract on account of which the amounts were paid of the amount
833 equal to the excess of: (i) The amount received by the association, over
834 (ii) the benefits paid by the association on account of the policy or
835 contract less the retention of the impaired or insolvent member insurer
836 applicable to the loss or event. (C) Not later than thirty days after the
837 association's election, the association and each indemnity reinsurer
838 shall calculate the net balance due to or from the association under
839 each reinsurance agreement as of the date of the association's election,
840 giving full credit to all items paid by either the member insurer or its
841 receiver, rehabilitator or liquidator or the indemnity reinsurer during
842 the period between the coverage date and the date of the association's
843 election. Either the association or indemnity reinsurer shall pay the net
844 balance due the other not later than five days after the completion of
845 the calculation. If the receiver, rehabilitator or liquidator has received
846 any amounts due the association pursuant to subparagraph (B) of this
847 subdivision, the receiver, rehabilitator or liquidator shall remit the
848 same to the association as promptly as practicable. (D) If the

849 association, not later than sixty days after the election, pays the
850 premiums due for periods both before and after the coverage date that
851 relate to contracts covered by the association in whole or in part, the
852 reinsurer shall not be entitled to terminate the reinsurance agreements
853 insofar as the agreements relate to contracts covered by the association
854 in whole or in part and shall not be entitled to set off any unpaid
855 premium due for periods prior to the coverage date against amounts
856 due the association.

857 (2) If the association transfers its obligations to another insurer, and
858 if the association and the other insurer agree, the other insurer shall
859 succeed to the rights and obligations of the association under
860 subdivision (1) of this subsection, provided: (A) The indemnity
861 reinsurance agreements shall automatically terminate for new
862 reinsurance unless the indemnity reinsurer and the other insurer agree
863 to the contrary; and (B) the association's obligation to pay the
864 beneficiary pursuant to subparagraph (B) of subdivision (1) of this
865 subsection shall no longer apply on or after the date the indemnity
866 reinsurance agreement is transferred to the third party insurer. This
867 subdivision shall not apply if the association has previously expressly
868 determined in writing that it will not exercise the election referred to in
869 subdivision (1) of this subsection.

870 (3) The provisions of this subsection shall supercede the provisions
871 of any law of this state or of any affected reinsurance agreement that
872 provides for or requires any payment of reinsurance proceeds on
873 account of losses or events that occur in periods after the coverage date
874 to the receiver, liquidator or rehabilitator of the insolvent member
875 insurer. The receiver, rehabilitator or liquidator shall remain entitled to
876 any amount payable by the reinsurer under the reinsurance agreement
877 with respect to losses or events that occur in periods prior to the
878 coverage date subject to applicable setoff provisions.

879 (4) Except as otherwise expressly provided in this subsection,
880 nothing in this section shall alter or modify the terms and conditions of

881 the indemnity reinsurance agreements of the insolvent member
882 insurer. Nothing in this section shall abrogate or limit any rights of any
883 reinsurer to claim that it is entitled to rescind a reinsurance agreement.
884 Nothing in this section shall give a policy owner or beneficiary an
885 independent cause of action against an indemnity reinsurer that is not
886 otherwise set forth in the indemnity reinsurance agreement.

887 (o) The board of directors of the association shall have discretion
888 and may exercise reasonable business judgment to determine the
889 means by which the association is to provide the benefits of sections
890 38a-858 to 38a-875, inclusive, as amended by this act, in an economical
891 and efficient manner.

892 (p) Where the association has arranged or offered to provide the
893 benefits of sections 38a-858 to 38a-875, inclusive, as amended by this
894 act, to a covered person under a plan or arrangement that fulfills the
895 association's obligations under sections 38a-858 to 38a-875, inclusive,
896 as amended by this act, the person shall not be entitled to benefits from
897 the association in addition to or other than those provided under the
898 plan or arrangement.

899 (q) Venue in a suit against the association arising under sections
900 38a-858 to 38a-875, inclusive, as amended by this act, shall be in the
901 superior court for the judicial district of Hartford. The association shall
902 not be required to give an appeal bond in an appeal that relates to a
903 cause of action arising under sections 38a-858 to 38a-875, inclusive, as
904 amended by this act.

905 (r) In carrying out its duties in connection with guaranteeing,
906 assuming or reinsuring policies or contracts under subsections (a) or
907 (b) of this section, the association may, subject to approval of the
908 receivership court, issue substitute coverage for a policy or contract
909 that provides an interest rate, crediting rate or similar factor
910 determined by use of an index or other external reference stated in the
911 policy or contract employed in calculating returns or changes in value
912 by issuing an alternative policy or contract in accordance with

913 subdivisions (1) to (3), inclusive, of this subsection: (1) In lieu of the
914 index or other external reference provided for in the original policy or
915 contract, the alternative policy or contract provides for (A) a fixed
916 interest rate, (B) payment of dividends with minimum guarantees, or
917 (C) a different method for calculating interest or changes in value; (2)
918 there is no requirement for evidence of insurability, waiting period or
919 other exclusion that would not have applied under the replaced policy
920 or contract; and (3) the alternative policy or contract is substantially
921 similar to the replaced policy or contract in all other material terms.

922 Sec. 5. Section 38a-866 of the general statutes is repealed and the
923 following is substituted in lieu thereof:

924 (a) For the purpose of providing the funds necessary to carry out the
925 powers and duties of the association, the board of directors shall assess
926 the member insurers, separately for each account, at such times and for
927 such amounts as the board finds necessary. [The board shall collect the
928 assessments after thirty days' written notice to the member insurers
929 before payment is due.] The association shall establish a due date for
930 each assessment which shall be at least thirty days after the association
931 has provided the member notice of the assessment. Each member
932 insurer shall pay interest on any late payment at the rate of one per
933 cent per month, or any portion thereof, from the due date to the date of
934 payment.

935 (b) There shall be [three] two classes of assessments, as follows: (1)
936 Class A assessments shall be made for the purpose of meeting
937 administrative costs and other general expenses not related to a
938 particular impaired or insolvent insurer; (2) Class B assessments shall
939 be [made] authorized and called to the extent necessary to carry out
940 the powers and duties of the association under section 38a-865, as
941 amended by this act, with regard to an impaired [domestic] or
942 insolvent insurer. [; (3) Class C assessments shall be made to the extent
943 necessary to carry out the powers and duties of the association under
944 said section 38a-865, with regard to an impaired foreign or alien

945 insurer.]

946 (c) (1) The amount of any Class A assessment [for each account]
947 shall be determined by the board and may be [made] authorized and
948 called on a pro-rata or non-pro-rata basis. If an assessment is made on
949 a pro-rata basis, the board may provide that the assessment be credited
950 against future Class B assessments. The total of all non-pro-rata
951 assessments shall not exceed one hundred fifty dollars per member
952 insurer in any calendar year. The amount of any Class B [or C]
953 assessment shall be [divided among the accounts in the proportion
954 that the premiums received by the impaired insurer on the policies
955 covered by each account bears to the premiums received by such
956 insurer on all covered policies;] allocated for assessment purposes
957 among the accounts pursuant to an allocation formula which may be
958 based on the premiums or reserves of the impaired or insolvent insurer
959 or any other standard that the board, in its sole discretion, deems as
960 being fair and reasonable under the circumstances.

961 (2) Class [C] B assessments against member insurers for each
962 account and subaccount shall be in the proportion that the premiums
963 received on business in this state by each assessed member insurer on
964 policies or contracts covered by each account [bears] for the three most
965 recent calendar years for which information is available preceding the
966 year in which the insurer became insolvent or, in the case of an
967 assessment with respect to an impaired insurer, the three most recent
968 calendar years for which information is available preceding the year in
969 which the insurer became impaired bear to such premiums received on
970 business in this state for those calendar years by all assessed member
971 insurers. [; (3) Class B assessments for each account shall be made
972 separately for each state in which the impaired domestic insurer was
973 authorized to transact insurance at any time, in the proportion that the
974 premiums received on business in such state by the impaired insurer
975 on policies covered by such account bears to such premiums received
976 in all such states by the impaired insurer. The assessments against
977 member insurers shall be in the proportion that the premiums received

978 on business in each such state by each assessed member insurer on
979 policies covered by each account bears to such premiums received on
980 business in each state by all assessed member insurers; (4)
981 assessments]

982 (3) Assessments for funds to meet the requirements of the
983 association with respect to an impaired or insolvent insurer shall not
984 be [made] authorized or called until necessary to implement the
985 purposes of sections 38a-858 to 38a-875, inclusive, as amended by this
986 act. Classification of assessments under subsection (b) of this section
987 and computation of assessments under this subsection shall be made
988 with a reasonable degree of accuracy, recognizing that exact
989 determinations may not always be possible. The association shall
990 notify each member insurer of its anticipated pro-rata share of an
991 authorized assessment that is not yet called not later than one hundred
992 eighty days after the association authorizes the assessment.

993 (d) The association may abate or defer, in whole or in part, the
994 assessment of a member insurer if, in the opinion of the board,
995 payment of the assessment would endanger the ability of the member
996 insurer to fulfill its contractual obligations. In the event an assessment
997 against a member insurer is abated, or deferred in whole or in part, the
998 amount by which such assessment is abated or deferred may be
999 assessed against the other member insurers in a manner consistent
1000 with the basis for assessments set forth in this section. Once the
1001 conditions that caused a deferral have been removed or rectified, the
1002 member insurer shall pay all assessments that were deferred pursuant
1003 to a repayment plan approved by the association.

1004 (e) (1) (A) [The] Subject to the provisions of subparagraph (B) of this
1005 subdivision, the total of all assessments [upon] authorized by the
1006 association with respect to a member insurer for each subaccount of
1007 the life insurance and annuity account and for [each subaccount
1008 thereunder] the health account shall not in any one calendar year
1009 exceed two per cent [and for the health account shall not in any one

1010 calendar year exceed two per cent of] such insurer's average annual
1011 premiums received in this state on the policies and contracts covered
1012 by the subaccount or account during the three calendar years
1013 preceding the year in which the insurer became an impaired or
1014 insolvent insurer. (B) If two or more assessments are authorized in one
1015 calendar year with respect to insurers that become impaired or
1016 insolvent in different calendar years, the average annual premiums for
1017 purposes of the aggregate assessment percentage shall be equal and
1018 limited to the higher of the three-year average annual premium for the
1019 applicable subaccount or account as calculated pursuant to this section.
1020 (C) If the maximum assessment, together with the other assets of the
1021 association in any account, does not provide in any one year in either
1022 account an amount sufficient to carry out the responsibilities of the
1023 association, the necessary additional funds shall be assessed as soon
1024 thereafter as permitted by sections 38a-858 to 38a-875, inclusive, as
1025 amended by this act.

1026 (2) The board may provide in the plan of operation a method of
1027 allocating funds among claims, whether relating to one or more
1028 impaired insurers, when the maximum assessment will be insufficient
1029 to cover anticipated claims.

1030 (3) If [a one per cent] the maximum assessment for any subaccount
1031 of the life and annuity account in any one year does not provide an
1032 amount sufficient to carry out the responsibilities of the association,
1033 then pursuant to subdivision (2) of subsection (c) of this section, the
1034 board shall access [all] the other subaccounts of the life and annuity
1035 account for the necessary additional amount, subject to the maximum
1036 stated in subdivision (1) of this subsection.

1037 (f) The board may, by an equitable method as established in the plan
1038 of operation, refund to member insurers, in proportion to the
1039 contribution of each insurer to that account, the amount by which the
1040 assets of the account exceed the amount the board finds is necessary to
1041 carry out during the coming year the obligations of the association

1042 with regard to that [amount] account, including assets accruing from
1043 assignment, subrogation, net realized gains and income from
1044 investments. A reasonable amount may be retained in any account to
1045 provide funds for the continuing expenses of the association and for
1046 future losses if refunds are impractical.

1047 (g) It shall be proper for any member insurer, in determining its
1048 premium rates and policy owner dividends as to any kind of insurance
1049 within the scope of sections 38a-858 to 38a-875, inclusive, as amended
1050 by this act, to consider the amount reasonably necessary to meet its
1051 assessment obligations under said sections.

1052 (h) [(1)] Each insurer paying an assessment under sections 38a-858
1053 to 38a-875, inclusive, as amended by this act, may offset one hundred
1054 per cent of the amount of such assessment against its premium tax
1055 liability to this state under chapter 207. Such offset shall be taken over
1056 a period of the five successive tax years following the year of payment
1057 of the assessment, at the rate of twenty per cent per year of the
1058 assessment paid to the association. Each insurer [which] that has offset
1059 assessments paid to the association against its premium tax liability to
1060 the state shall pay to the Department of Revenue Services one hundred
1061 per cent of any sums [which] that are acquired by refund from the
1062 association pursuant to subsection (f) of this section. The association
1063 shall promptly notify the commissioner of the name and address of the
1064 insurers to which such refunds have been made, the amount of such
1065 refunds, and the date on which such refunds were mailed to such
1066 insurer. If the amount that an insurer is required to pay to the
1067 Department of Revenue Services has not been so paid on or before the
1068 thirtieth day after the date of mailing of such refunds, the insurer shall
1069 be liable for interest on such amount at the rate of one per cent per
1070 month, or [fraction] portion thereof, from such thirtieth day to the date
1071 of payment.

1072 [(2) An insurer may transfer any offset provided under this
1073 subsection to an affiliate, as defined in section 38a-1, of that insurer.]

1074 (i) (1) A member insurer that wishes to protest all or part of an
1075 assessment shall pay when due the full amount of the assessment as
1076 set forth in the notice provided by the association. The payment shall
1077 be available to meet association obligations during the pendency of the
1078 protest or any subsequent appeal. Payment shall be accompanied by a
1079 written statement that (A) the payment is made under protest, and (B)
1080 includes a brief statement of the grounds for the protest. (2) Not later
1081 than sixty days following the payment of an assessment under protest
1082 by a member insurer, the association shall notify the member insurer
1083 in writing of its determination with respect to the protest unless the
1084 association notifies the member insurer that additional time is required
1085 to resolve the issues raised by the protest. (3) Not later than thirty days
1086 after a final decision has been made, the association shall notify the
1087 protesting member insurer in writing of the final decision. (4) Not later
1088 than sixty days after receipt of notice of the final decision, the
1089 protesting member insurer may appeal the final action to the
1090 commissioner. (5) In the alternative to rendering a final decision with
1091 respect to a protest based on a question regarding the assessment base,
1092 the association may refer protests to the commissioner for a final
1093 decision, with a recommendation from the association. (6) If the protest
1094 or appeal on the assessment is upheld, the amount paid in error or
1095 excess shall be returned to the member company. Interest on a refund
1096 due a protesting member shall be paid at the rate actually earned by
1097 the association.

1098 (j) The association may request information from member insurers
1099 in order to aid in the exercise of its power under this section and
1100 member insurers shall promptly comply with such request.

Statement of Purpose:

To update the Connecticut Life and Health Insurance Guaranty Association Act to reflect changes recommended by the National Association of Insurance Commissioners.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]