



General Assembly

**Substitute Bill No. 1247**

January Session, 2001

**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 Section 38a-860 of the general statutes is repealed and the  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) A claim based on marketing materials; (ii) a claim  
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) a misrepresentation of or regarding policy benefits;  
151 (iv) an extra-contractual claim; 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 shall 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 shall 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 (l) 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 before, on and after the coverage date, and shall be responsible  
821 for the performance of all other obligations to be performed after the  
822 coverage date, in each case which relate to contracts covered in whole  
823 or in part by the association. The association may charge contracts  
824 covered in part by the association, through reasonable allocation  
825 methods, the costs for reinsurance in excess of the obligations of the  
826 association. (B) The association shall be entitled to any amounts  
827 payable by the reinsurer under the agreements with respect to losses  
828 or events that occur in periods after the coverage date and that relate  
829 to contracts covered by the association in whole or in part, and upon  
830 the association's receipt of any such amount, the association shall pay  
831 any beneficiary of a policy or contract under which the association  
832 paid only a portion of the policy or contract amount: (i) The amount

833 received by the association that exceeds the benefits paid the  
834 beneficiary under the policy, less (ii) the benefits paid by the  
835 association on account of the policy or contract less the retention of the  
836 impaired or insolvent member insurer applicable to the loss or event.  
837 (C) Not later than thirty days after the association's election, the  
838 association and each indemnity reinsurer shall calculate the net  
839 balance due to or from the association under each reinsurance  
840 agreement as of the date of the association's election, giving full credit  
841 to all items paid by either the member insurer or its receiver,  
842 rehabilitator or liquidator or the indemnity reinsurer during the period  
843 between the coverage date and the date of the association's election.  
844 Either the association or indemnity reinsurer shall pay the net balance  
845 due the other not later than five days after the completion of the  
846 calculation. If the receiver, rehabilitator or liquidator has received any  
847 amounts due the association pursuant to subparagraph (B) of this  
848 subdivision, the receiver, rehabilitator or liquidator shall remit the  
849 same to the association as promptly as practicable. (D) If the  
850 association, not later than sixty days after the election, pays the  
851 premiums due for periods before, on and after the coverage date that  
852 relate to contracts covered by the association in whole or in part, the  
853 reinsurer shall not be entitled to terminate the reinsurance agreements  
854 insofar as the agreements relate to contracts covered by the association  
855 in whole or in part and shall not be entitled to set off any unpaid  
856 premium due for periods prior to the coverage date against amounts  
857 due the association.

858 (2) If the association transfers its obligations to another insurer, and  
859 if the association and the other insurer agree, the other insurer shall  
860 succeed to the rights and obligations of the association under  
861 subdivision (1) of this subsection, provided: (A) The indemnity  
862 reinsurance agreements shall automatically terminate for new  
863 reinsurance unless the indemnity reinsurer and the other insurer agree  
864 to the contrary; and (B) the association's obligation to pay the  
865 beneficiary pursuant to subparagraph (B) of subdivision (1) of this  
866 subsection shall no longer apply on or after the date the indemnity

867 reinsurance agreement is transferred to the third party insurer. This  
868 subdivision shall not apply if the association has previously expressly  
869 determined in writing that it will not exercise the election referred to in  
870 subdivision (1) of this subsection.

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

880 (4) Except as otherwise expressly provided in this subsection,  
881 nothing in this section shall alter or modify the terms and conditions of  
882 the indemnity reinsurance agreements of the insolvent member  
883 insurer. Nothing in this section shall abrogate or limit any rights of any  
884 reinsurer to claim that it is entitled to rescind a reinsurance agreement.  
885 Nothing in this section shall give a policy owner or beneficiary an  
886 independent cause of action against an indemnity reinsurer that is not  
887 otherwise set forth in the indemnity reinsurance agreement.

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

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

899 plan or arrangement.

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

906 (r) In carrying out its duties in connection with guaranteeing,  
907 assuming or reinsuring policies or contracts under subsections (a) or  
908 (b) of this section, the association may, subject to approval of the  
909 receivership court, issue substitute coverage for a policy or contract  
910 that provides an interest rate, crediting rate or similar factor  
911 determined by use of an index or other external reference stated in the  
912 policy or contract employed in calculating returns or changes in value  
913 by issuing an alternative policy or contract in accordance with  
914 subdivisions (1) to (3), inclusive, of this subsection: (1) In lieu of the  
915 index or other external reference provided for in the original policy or  
916 contract, the alternative policy or contract provides for (A) a fixed  
917 interest rate, (B) payment of dividends with minimum guarantees, or  
918 (C) a different method for calculating interest or changes in value; (2)  
919 there is no requirement for evidence of insurability, waiting period or  
920 other exclusion that would not have applied under the replaced policy  
921 or contract; and (3) the alternative policy or contract is substantially  
922 similar to the replaced policy or contract in all other material terms.

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

925 (a) For the purpose of providing the funds necessary to carry out the  
926 powers and duties of the association, the board of directors shall assess  
927 the member insurers, separately for each account, at such times and for  
928 such amounts as the board finds necessary. [The board shall collect the  
929 assessments after thirty days' written notice to the member insurers  
930 before payment is due.] The association shall establish a due date for

931 each assessment which shall be at least thirty days after the association  
932 has provided the member notice of the assessment. Each member  
933 insurer shall pay interest on any late payment at the rate of one per  
934 cent per month, or any portion thereof, from the due date to the date of  
935 payment.

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

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

962 (2) Class [~~C~~] B assessments against member insurers for each

963 account and subaccount shall be in the proportion that the premiums  
964 received on business in this state by each assessed member insurer on  
965 policies or contracts covered by each account [bears] for the three most  
966 recent calendar years for which information is available preceding the  
967 year in which the insurer became insolvent or, in the case of an  
968 assessment with respect to an impaired insurer, the three most recent  
969 calendar years for which information is available preceding the year in  
970 which the insurer became impaired bear to such premiums received on  
971 business in this state for those calendar years by all assessed member  
972 insurers. [; (3) Class B assessments for each account shall be made  
973 separately for each state in which the impaired domestic insurer was  
974 authorized to transact insurance at any time, in the proportion that the  
975 premiums received on business in such state by the impaired insurer  
976 on policies covered by such account bears to such premiums received  
977 in all such states by the impaired insurer. The assessments against  
978 member insurers shall be in the proportion that the premiums received  
979 on business in each such state by each assessed member insurer on  
980 policies covered by each account bears to such premiums received on  
981 business in each state by all assessed member insurers; (4)  
982 assessments]

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

994 (d) The association may abate or defer, in whole or in part, the  
995 assessment of a member insurer if, in the opinion of the board,

996 payment of the assessment would endanger the ability of the member  
997 insurer to fulfill its contractual obligations. In the event an assessment  
998 against a member insurer is abated, or deferred in whole or in part, the  
999 amount by which such assessment is abated or deferred may be  
1000 assessed against the other member insurers in a manner consistent  
1001 with the basis for assessments set forth in this section. Once the  
1002 conditions that caused a deferral have been removed or rectified, the  
1003 member insurer shall pay all assessments that were deferred pursuant  
1004 to a repayment plan approved by the association.

1005 (e) (1) (A) [The] Subject to the provisions of subparagraph (B) of this  
1006 subdivision, the total of all assessments [upon] authorized by the  
1007 association with respect to a member insurer for each subaccount of  
1008 the life insurance and annuity account and for [each subaccount  
1009 thereunder] the health account shall not in any one calendar year  
1010 exceed two per cent [and for the health account shall not in any one  
1011 calendar year exceed two per cent of] such insurer's average annual  
1012 premiums received in this state on the policies and contracts covered  
1013 by the subaccount or account during the three calendar years  
1014 preceding the year in which the insurer became an impaired or  
1015 insolvent insurer. (B) If two or more assessments are authorized in one  
1016 calendar year with respect to insurers that become impaired or  
1017 insolvent in different calendar years, the average annual premiums for  
1018 purposes of the aggregate assessment percentage shall be equal and  
1019 limited to the higher of the three-year average annual premium for the  
1020 applicable subaccount or account as calculated pursuant to this section.  
1021 (C) If the maximum assessment, together with the other assets of the  
1022 association in any account, does not provide in any one year in either  
1023 account an amount sufficient to carry out the responsibilities of the  
1024 association, the necessary additional funds shall be assessed as soon  
1025 thereafter as permitted by sections 38a-858 to 38a-875, inclusive, as  
1026 amended by this act.

1027 (2) The board may provide in the plan of operation a method of  
1028 allocating funds among claims, whether relating to one or more

1029 impaired insurers, when the maximum assessment will be insufficient  
1030 to cover anticipated claims.

1031 (3) If [a one per cent] the maximum assessment for any subaccount  
1032 of the life and annuity account in any one year does not provide an  
1033 amount sufficient to carry out the responsibilities of the association,  
1034 then pursuant to subdivision (2) of subsection (c) of this section, the  
1035 board shall access [all] the other subaccounts of the life and annuity  
1036 account for the necessary additional amount, subject to the maximum  
1037 stated in subdivision (1) of this subsection.

1038 (f) The board may, by an equitable method as established in the plan  
1039 of operation, refund to member insurers, in proportion to the  
1040 contribution of each insurer to that account, the amount by which the  
1041 assets of the account exceed the amount the board finds is necessary to  
1042 carry out during the coming year the obligations of the association  
1043 with regard to that [amount] account, including assets accruing from  
1044 assignment, subrogation, net realized gains and income from  
1045 investments. A reasonable amount may be retained in any account to  
1046 provide funds for the continuing expenses of the association and for  
1047 future losses if refunds are impractical.

1048 (g) It shall be proper for any member insurer, in determining its  
1049 premium rates and policy owner dividends as to any kind of insurance  
1050 within the scope of sections 38a-858 to 38a-875, inclusive, as amended  
1051 by this act, to consider the amount reasonably necessary to meet its  
1052 assessment obligations under said sections.

1053 (h) [(1)] Each insurer paying an assessment under sections 38a-858  
1054 to 38a-875, inclusive, as amended by this act, may offset one hundred  
1055 per cent of the amount of such assessment against its premium tax  
1056 liability to this state under chapter 207. Such offset shall be taken over  
1057 a period of the five successive tax years following the year of payment  
1058 of the assessment, at the rate of twenty per cent per year of the  
1059 assessment paid to the association. Each insurer [which] that has offset  
1060 assessments paid to the association against its premium tax liability to

1061 the state shall pay to the Department of Revenue Services one hundred  
1062 per cent of any sums [which] that are acquired by refund from the  
1063 association pursuant to subsection (f) of this section. The association  
1064 shall promptly notify the commissioner of the name and address of the  
1065 insurers to which such refunds have been made, the amount of such  
1066 refunds, and the date on which such refunds were mailed to such  
1067 insurer. If the amount that an insurer is required to pay to the  
1068 Department of Revenue Services has not been so paid on or before the  
1069 thirtieth day after the date of mailing of such refunds, the insurer shall  
1070 be liable for interest on such amount at the rate of one per cent per  
1071 month, or [fraction] portion thereof, from such thirtieth day to the date  
1072 of payment.

1073 [(2) An insurer may transfer any offset provided under this  
1074 subsection to an affiliate, as defined in section 38a-1, of that insurer.]

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

1094 decision, with a recommendation from the association. (6) If the protest  
1095 or appeal on the assessment is upheld, the amount paid in error or  
1096 excess shall be returned to the member company. Interest on a refund  
1097 due a protesting member shall be paid at the rate actually earned by  
1098 the association.

1099 (j) The association may request information from member insurers  
1100 in order to aid in the exercise of its power under this section and  
1101 member insurers shall promptly comply with such request.

**INS**      **JOINT FAVORABLE SUBST.**