



General Assembly

January Session, 2011

**Raised Bill No. 6509**

LCO No. 4112

\*04112\_\_\_\_\_INS\*

Referred to Committee on Insurance and Real Estate

Introduced by:  
(INS)

**AN ACT CONCERNING THE CONNECTICUT INSURANCE GUARANTY ASSOCIATION ACT AND 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 Section 38a-838 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2011*):

3 The following terms as used in sections 38a-836 to 38a-853,  
4 inclusive, as amended by this act, unless the context otherwise requires  
5 or a different meaning is specifically prescribed, shall have the  
6 following meanings:

7 (1) "Account" means any one of the three accounts created by  
8 section 38a-839, as amended by this act;

9 (2) "Affiliate" means [any affiliate, as defined in section 38a-1, of] a  
10 person who, directly or indirectly, through one or more intermediaries,  
11 controls, is controlled by or under common control with, another  
12 person on December thirty-first of the year immediately preceding the  
13 date the insurer becomes an insolvent insurer;

14 (3) "Association" means the Connecticut Insurance Guaranty  
15 Association created under section 38a-839, as amended by this act;

16 (4) "Association similar to the association" means any guaranty  
17 association, security fund or other insolvency mechanism that affords  
18 protection similar to that of the association. "Association similar to the  
19 association" includes any property and casualty insolvency mechanism  
20 that obtains assessments or other contributions from insurers on a  
21 preinsolvency basis;

22 (5) "Assumed claims transaction" means: (A) A transaction in which  
23 claim and insurance policy obligations are assumed by an insolvent  
24 insurer prior to the date of the entry of a final order of liquidation, by  
25 means of a merger between such insolvent insurer and another entity  
26 obligated under the policy; or (B) an assumption reinsurance  
27 transaction in which all of the following have occurred: (i) Prior to the  
28 date of the entry of a final order of liquidation, the insolvent insurer  
29 assumed the claim or insurance policy obligations of another insurer or  
30 entity; (ii) such assumption of obligations was approved by an  
31 insurance regulator having jurisdiction over such assumption; and (iii)  
32 as a result of such assumption, the claim or policy obligations became  
33 the direct obligations of the insolvent insurer through novation;

34 (6) "Claimant" means any person instituting a covered claim, except  
35 that no affiliate shall be a claimant;

36 ~~[(4)]~~ (7) "Commissioner" means the Insurance Commissioner;

37 (8) "Control" means the direct or indirect possession of the power to  
38 direct or cause the direction of the management and policies of a  
39 person, whether through the ownership of voting securities, by  
40 contract other than a contract for goods or nonmanagement services,  
41 or otherwise, unless such power is the result of an official position or  
42 corporate office held by the person. Control shall be presumed to exist  
43 if a person directly or indirectly owns, controls, holds with the power  
44 to vote or holds proxies representing, ten per cent or more of any

45 voting securities of another person. Such presumption may be rebutted  
46 by a showing that control does not exist in fact;

47 [(5)] (9) (A) "Covered claim" means an unpaid claim, including [, but  
48 not limited to,] one submitted by a claimant for unearned premiums,  
49 [which] that arises out of and is within the coverage and subject to the  
50 applicable limits of an insurance policy to which sections 38a-836 to  
51 38a-853, inclusive, as amended by this act, apply [issued by an insurer,  
52 if such] if the insurer becomes an insolvent insurer [after October 1,  
53 1971,] and the policy was issued by the insurer or assumed by the  
54 insurer in an assumed claims transaction, and [(A)] (i) the claimant or  
55 insured is a resident of this state at the time of the insured event, [;] or  
56 [(B)] (ii) the claim is a first party claim for damage to property with a  
57 permanent location in this state, [, provided the term "covered claim"  
58 shall] For purposes of this subparagraph, the residence of a claimant or  
59 insured that is not an individual shall be the state in which such  
60 claimant's or insured's principal place of business is located at the time  
61 of the insured event.

62 (B) "Covered claim" does not include: [(i) any claim by or for the  
63 benefit of any reinsurer, insurer, insurance pool, or underwriting  
64 association, as subrogation recoveries or otherwise; provided that a  
65 claim for any such amount, asserted against a person insured under a  
66 policy issued by an insurer which has become an insolvent insurer,  
67 which, if it were not a claim by or for the benefit of a reinsurer, insurer,  
68 insurance pool or underwriting association, would be a "covered  
69 claim" may be filed directly with the receiver of the insolvent insurer  
70 but in no event shall any such claim be asserted against the insured of  
71 such insolvent insurer, (ii) any claim by or on behalf of an individual  
72 who is neither a citizen of the United States nor an alien legally  
73 resident in the United States at the time of the insured event, or an  
74 entity other than an individual whose principal place of business is not  
75 in the United States at the time of the insured event, and it arises out of  
76 an accident, occurrence, offense, act, error or omission that takes place  
77 outside of the United States, or a loss to property normally located

78 outside of the United States or, if a workers' compensation claim, it  
79 arises out of employment outside of the United States, (iii) any claim  
80 by or on behalf of a person who is not a resident of this state, other  
81 than a claim for compensation or any other benefit which arises out of  
82 and is within the coverage of a workers' compensation policy, against  
83 an insured whose net worth at the time the policy was issued or at any  
84 time thereafter exceeded twenty-five million dollars, provided that an  
85 insured's net worth for purposes of this section and section 38a-844  
86 shall be deemed to include the aggregate net worth of the insured and  
87 all of its subsidiaries as calculated on a consolidated basis, (iv) any  
88 claim by or on behalf of an affiliate of the insolvent insurer at the time  
89 the policy was issued or at the time of the insured event, or (v) any  
90 claim arising out of a policy issued by an insurer which was not  
91 licensed to transact insurance in this state either at the time the policy  
92 was issued or when the insured event occurred] (i) Any amount  
93 awarded as punitive or exemplary damages; (ii) any amount sought as  
94 a return of premium under any retrospective rating plan; (iii) any  
95 amount due as subrogation recoveries, reinsurance recoveries,  
96 contribution or indemnification to any insurer, reinsurer, insurance  
97 pool, underwriting association, health care center, hospital service  
98 corporation, medical service corporation or self-insurer; (iv) any first  
99 party claims by an insured that is an affiliate of the insolvent insurer;  
100 (v) any fee or other expense relating to goods or services sought by or  
101 on behalf of any attorney or other provider of goods or services  
102 retained by the insolvent insurer or an insured prior to the date such  
103 insurer was determined to be insolvent by a court of competent  
104 jurisdiction; (vi) any fee or other expense relating to goods or services  
105 sought by or on behalf of any attorney or other provider of goods or  
106 services retained by an insured or claimant in connection with the  
107 assertion or prosecution of a claim, covered or otherwise, against the  
108 association; (vii) any claims for interest; or (viii) any claim filed with  
109 the association or a liquidator for protection afforded under the  
110 insured's policy for losses incurred but not reported;

111 [(6)] (10) (A) "Insolvent insurer" means an insurer;

112 [(A) (i) licensed] (i) (I) Licensed to transact insurance in this state  
113 [either] at the time the policy was issued, when the obligation with  
114 respect to the covered claim was assumed under an assumed claims  
115 transaction or when the insured event occurred, and [(ii)] (II)  
116 determined to be insolvent by a court of competent jurisdiction;

117 [(B) which] (ii) That is [(i)] (I) the legal successor of an insurer that  
118 was licensed to transact insurance in this state either at the time the  
119 policy was issued or when the insured event occurred, by reason of a  
120 merger, provided such merger [is] was approved by an insurance  
121 regulator having jurisdiction over such merger, and [(ii)] (II)  
122 determined to be insolvent by a court of competent jurisdiction; or

123 [(C) which (i)] (iii) That (I) succeeds to the policy obligations of an  
124 insurer that was licensed to transact insurance in this state either at the  
125 time the policy was issued or when the insured event occurred, by  
126 reason of a division whereby policies issued by such licensed insurer  
127 are transferred to an insurer, and [(ii)] (II) is determined to be insolvent  
128 by a court of competent jurisdiction, provided such division is  
129 approved [(I)] in a jurisdiction that allows such division [,] and [(II)] by  
130 an insurance regulator having jurisdiction over such division.

131 (B) "Insolvent insurer" [shall] does not [be construed to] mean any  
132 insurer with respect to which an order, decree, judgment or finding of  
133 insolvency, whether permanent or temporary in nature, or order of  
134 rehabilitation or conservation [has been] was issued by a court of  
135 competent jurisdiction prior to October 1, 1971;

136 (11) "Insured" means any named insured, additional insured,  
137 vendor, lessor or other party identified as an insured under the policy;

138 [(7)] (12) "Member insurer" means any person who (A) writes any  
139 kind of insurance to which sections 38a-836 to 38a-853, inclusive, as  
140 amended by this act, apply under section 38a-837, including, but not  
141 limited to, the exchange of reciprocal or interinsurance contracts, and  
142 (B) is licensed to transact insurance in this state. An insurer shall cease

143 to be a member insurer effective on the day following the termination  
144 or expiration of its license to transact the kinds of insurance to which  
145 [said] sections 38a-836 to 38a-853, inclusive, as amended by this act,  
146 apply, [however] except that such insurer shall remain liable as a  
147 member insurer for (i) any obligations, including obligations for  
148 assessments levied prior to the termination or expiration of the  
149 insurer's license, and [for] (ii) assessments levied after the termination  
150 or expiration [which] that relate to any insurer [which] that became an  
151 insolvent insurer prior to the termination or expiration of such  
152 insurer's license. In the case of such insurer, the average of its net  
153 direct written premium for the five calendar years prior to expiration  
154 or termination of its license, whether or not the insurer has net direct  
155 written premium in the year preceding such expiration or termination,  
156 shall be used as its assessment base for any year following such  
157 expiration or termination in which the insurer has no direct written  
158 premium;

159 [(8)] (13) "Net direct written premiums" means direct gross  
160 premiums written in this state on insurance policies to which sections  
161 38a-836 to 38a-853, inclusive, as amended by this act, apply, including  
162 policy and membership fees, less return premiums, [thereon]  
163 premiums on policies not taken and dividends paid or credited to  
164 policyholders on such direct business. [, provided the term "net] "Net  
165 direct written premiums" [shall] does not include premiums on any  
166 contract between insurers or reinsurers;

167 (14) "Novation" means the assumption of claim or insurance policy  
168 obligations by an insolvent insurer as direct obligations through  
169 consent of the policyholder, whether express or implied based upon  
170 the circumstances, the notice provided and the conduct of the parties,  
171 whereby the ceding insurer or entity initially obligated under the claim  
172 or policy is released by the policyholder from fulfilling the claim or  
173 policy obligation;

174 [(9)] (15) "Person" means an individual, aggregation of individuals,

175 corporation, partnership, association, joint stock company, business  
176 trust, limited liability company, unincorporated organization,  
177 voluntary organization, governmental entity or other legal entity;

178 [(10) "Residence" means, when used in reference to a corporation, its  
179 principal place of business;

180 (11) "United States" has the meaning assigned to it by section 38a-1.]

181 (16) "Self-insurer" means a person that covers its liability through a  
182 qualified individual or group self-insurance program or any other  
183 formal program created for the specific purpose of covering liabilities  
184 typically covered by insurance.

185 Sec. 2. Section 38a-839 of the general statutes is repealed and the  
186 following is substituted in lieu thereof (*Effective October 1, 2011*):

187 There is created a nonprofit unincorporated legal entity to be known  
188 as the Connecticut Insurance Guaranty Association. All insurers  
189 defined as member insurers in [subdivision (8) of] section 38a-838, as  
190 amended by this act, shall be members of said association as a  
191 condition of their authority to transact insurance in this state. Said  
192 association shall perform its functions under a plan of operation  
193 established and approved under section 38a-842, as amended by this  
194 act, and shall exercise its powers through a board of directors  
195 established under section 38a-840, as amended by this act. For the  
196 purposes of administration and assessment, said association shall be  
197 divided into three separate accounts: (1) The workers' compensation  
198 insurance account; (2) the automobile insurance account; and (3) an  
199 account for all other insurance to which sections 38a-836 to 38a-853,  
200 inclusive, as amended by this act, apply.

201 Sec. 3. Section 38a-840 of the general statutes is repealed and the  
202 following is substituted in lieu thereof (*Effective October 1, 2011*):

203 (a) The board of directors of said association shall consist of not less  
204 than five [nor] or more than nine persons, two of which shall be

205 persons representing the public and the remainder which shall be  
206 persons representing insurers, serving terms as established in the plan  
207 of operation under section 38a-842, as amended by this act.

208 (1) (A) The [members of the board of] directors of said board who  
209 represent insurers shall be selected by member insurers and subject to  
210 the approval of the commissioner. Vacancies on the board for such  
211 directors shall be filled for the remaining period of the term by a  
212 majority vote of the remaining [members] directors, subject to the  
213 approval of the commissioner. [If no members are selected within sixty  
214 days after October 1, 1971, the commissioner may appoint the initial  
215 members of the board of directors.]

216 [(b)] In approving selections to said board, the commissioner shall  
217 consider, among other things, whether all member insurers are fairly  
218 represented.

219 (B) Any director of said board who represents an insurer shall be  
220 terminated as a director if such insurer enters receivership. Such  
221 termination shall be effective as of the date of the entry of the order of  
222 receivership.

223 (2) The directors of said board who represent the public shall be  
224 appointed by the commissioner. Vacancies on the board for such  
225 directors shall be filled for the remaining period of the term by the  
226 commissioner. No officer, director or employee of an insurer or any  
227 person engaged in the business of insurance shall be eligible to serve as  
228 a director of said board who represents the public.

229 [(c) Members] (b) The directors of said board shall receive no  
230 compensation as such but shall be reimbursed from the assets of said  
231 association for actual and necessary expenses incurred by them in  
232 carrying out their official duties as members of the board of directors.

233 (c) If a director fails to attend three consecutive board meetings, the  
234 board of directors may declare a vacancy, which shall be filled in

235 accordance with subsection (a) of this section.

236 (d) The commissioner may suspend a director from said board,  
237 pending the outcome of an investigation or hearing by the  
238 commissioner or the conclusion of a criminal proceeding, if the  
239 commissioner has reasonable cause to believe such director failed to  
240 disclose a known conflict of interest with respect to such director's  
241 duties on said board, failed to take appropriate action based on a  
242 known conflict of interest with respect to such director's duties on said  
243 board, or has been indicted or charged with a felony. The insurer that  
244 such director represents may replace such director prior to the  
245 conclusion of such investigation, hearing or criminal proceeding. The  
246 commissioner shall declare a vacancy if the investigation, hearing or  
247 criminal proceeding substantiates the allegations or charges. Such  
248 vacancy shall be filled in accordance with subsection (a) of this section.

249 Sec. 4. Section 38a-841 of the general statutes is repealed and the  
250 following is substituted in lieu thereof (*Effective October 1, 2011*):

251 (a) Said association shall:

252 (1) Be obligated to the extent of the covered claims existing prior to  
253 the determination of insolvency and arising within thirty days after the  
254 determination of insolvency, or before the policy expiration date if less  
255 than thirty days after the determination, or before the insured replaces  
256 the policy or causes its cancellation, if [he] the insured does so within  
257 thirty days of such determination, provided such obligation shall be  
258 limited as follows: (A) With respect to covered claims for unearned  
259 premiums, [to one-half of the unearned premium on any policy,  
260 subject to] a maximum of [two] ten thousand dollars per policy; (B)  
261 with respect to covered claims other than for unearned premiums,  
262 such obligation shall include only that amount of each such claim  
263 [which] that is in excess of one hundred dollars and is less than (i)  
264 three hundred thousand dollars for claims arising under policies of  
265 insurers determined to be insolvent prior to October 1, 2007, [and] (ii)  
266 four hundred thousand dollars for claims arising under policies of

267 insurers determined to be insolvent on or after October 1, 2007, but  
268 prior to October 1, 2011, and (iii) five hundred thousand dollars for  
269 claims arising under policies of insurers determined to be insolvent on  
270 or after October 1, 2011, except that said association shall pay the full  
271 amount of any such claim arising out of a workers' compensation  
272 policy, provided in no event shall said association be obligated [(i)] (I)  
273 to any claimant in an amount in excess of the obligation of the  
274 insolvent insurer under the policy form or coverage from which the  
275 claim arises, [or (ii)] (II) for any claim filed with the association after  
276 the expiration of two years from the date of the declaration of  
277 insolvency unless such claim arose out of a workers' compensation  
278 policy and was timely filed in accordance with section 31-294c, or (III)  
279 to defend an insured subsequent to the association's payment or tender  
280 of the association's covered claim obligation limit or the applicable  
281 insurance policy limit, whichever is less;

282 (2) [be] Be deemed the insurer to the extent of its obligations, subject  
283 to the limitations under sections 38a-836 to 38a-853, inclusive, as  
284 amended by this act, on the covered claims and to such extent shall  
285 have all rights, duties, and obligations of the insolvent insurer as if the  
286 insurer had not become insolvent, including, but not limited to, the  
287 right to pursue and retain salvage and subrogation recoverable on  
288 covered claim obligations to the extent paid by the association. The  
289 association shall not be deemed the insolvent insurer for purposes of  
290 conferring jurisdiction;

291 (3) [allocate] Allocate claims paid and expenses incurred among the  
292 three accounts, created by section 38a-839, as amended by this act,  
293 separately, and assess member insurers separately (A) [in] with respect  
294 [of] to each such account for such amounts as shall be necessary to pay  
295 the obligations of said association under subdivision (1) of this  
296 subsection [(a) of this section] subsequent to an insolvency; (B) the  
297 expenses of handling covered claims subsequent to an insolvency; (C)  
298 the cost of examinations under section 38a-846; and (D) such other  
299 expenses as are authorized by sections 38a-836 to 38a-853, inclusive, as

300 amended by this act. The assessments of each member insurer shall be  
301 in the proportion that the net direct written premiums of such member  
302 insurer for the calendar year preceding the assessment on the kinds of  
303 insurance in such account bears to the net direct written premiums of  
304 all member insurers for the calendar year preceding the assessment on  
305 the kinds of insurance in such account. Each member insurer shall be  
306 notified of its assessment not later than thirty days before it is due. No  
307 member insurer may be assessed in any year on any account an  
308 amount greater than two per cent of that member insurer's net direct  
309 written premiums for the calendar year preceding the assessment on  
310 the kinds of insurance in said account. [, provided if, at the time an  
311 assessment is levied on the "all other insurance" account, as defined in  
312 subdivision (3) of section 38a-839, the board of directors finds that at  
313 least fifty per cent of the total net direct written premiums of a member  
314 insurer and all its affiliates, for the year on which such assessment is  
315 based, were from policies issued or delivered in Connecticut, on risks  
316 located in this state, such member insurer shall be assessed only on  
317 such member insurer's net direct written premium that is attributable  
318 to the kind of insurance that gives rise to each covered claim.] If the  
319 maximum assessment, together with the other assets of said  
320 association in any account, does not provide in any one year in any  
321 account an amount sufficient to make all necessary payments from that  
322 account, the funds available may be prorated and the unpaid portion  
323 shall be paid as soon thereafter as funds become available. Said  
324 association may defer, in whole or in part, the assessment of any  
325 member insurer, if the assessment would cause the member insurer's  
326 financial statement to reflect amounts of capital or surplus less than the  
327 minimum amounts required for a certificate of authority by any  
328 jurisdiction in which the member insurer is authorized to transact  
329 insurance provided that during the period of deferment, no dividends  
330 shall be paid to shareholders or policyholders. Deferred assessments  
331 shall be paid when such payment will not reduce capital or surplus  
332 below the minimum amounts required for a certificate of authority.  
333 Such payments shall be refunded to those insurers receiving greater

334 assessments because of such deferment or, at the election of the  
335 insurer, be credited against future assessments. Each member insurer  
336 serving as a servicing facility may set off against any assessment,  
337 authorized payments made on covered claims and expenses incurred  
338 in the payment of such claims by such member insurer if they are  
339 chargeable to the account in respect of which the assessment is made;

340 (4) [investigate] Investigate claims brought against said association,  
341 appoint and direct legal counsel retained under liability insurance  
342 policies for the defense of covered claims, [and] adjust, compromise,  
343 settle [,] and pay covered claims to the extent of said association's  
344 obligations, and deny all other claims. The association shall pay claims  
345 in any order it deems reasonable [,] including, but not limited to,  
346 payment in the order of receipt or by classification; [. It may review  
347 settlements, releases and judgments to which the insolvent insurer or  
348 its insureds were parties to determine the extent to which such  
349 settlements, releases and judgments may be properly contested;]

350 (5) [notify] Notify such persons as the commissioner may direct  
351 under subdivision (1) of subsection (b) of section 38a-843;

352 (6) [handle] Handle claims through its employees or through one or  
353 more insurers or other persons designated by said association as  
354 servicing facilities, provided such designation of a servicing facility  
355 shall be subject to the approval of the commissioner, and may be  
356 declined by a member insurer;

357 (7) [reimburse] Reimburse each such servicing facility for  
358 obligations of said association paid by such facility and for expenses  
359 incurred by such facility while handling claims on behalf of said  
360 association and shall pay such other expenses of said association as are  
361 authorized by sections 38a-836 to 38a-853, inclusive, as amended by  
362 this act;

363 (8) Have the right to review and contest, as set forth in subsection  
364 (d) of this section, settlements, releases, compromises, waivers and

365 judgments to which the insolvent insurer or its insureds were parties  
366 prior to the date of the entry of the order of liquidation; and

367 (9) Make all reasonable efforts, in cooperation with other obligated  
368 or potentially obligated associations similar to the association or their  
369 authorized representatives, to coordinate and cooperate with receivers  
370 or authorized representatives of insolvent insurers in a uniform  
371 manner, including, but not limited to, through the use of Uniform Data  
372 Standards promulgated or approved by the National Association of  
373 Insurance Commissioners.

374 (b) Said association may: (1) Employ or retain such persons as are  
375 necessary to handle claims and perform other duties of said  
376 association; (2) borrow such funds as may be necessary from time to  
377 time to effect the purposes of sections 38a-836 to 38a-853, inclusive, as  
378 amended by this act, in accord with the plan of operation under  
379 section 38a-842, as amended by this act; (3) sue or be sued; (4)  
380 intervene as a matter of right as a party in any proceeding before any  
381 court in this state that has jurisdiction over an insolvent insurer, as  
382 defined in section 38a-838, as amended by this act; (5) negotiate and  
383 become a party to such contracts as are necessary to carry out the  
384 purpose of [said] sections 38a-836 to 38a-853, inclusive, as amended by  
385 this act; (6) perform such other acts as are necessary or proper to  
386 effectuate the purpose of said sections; (7) refund to the member  
387 insurers in proportion to the contribution of each such member insurer  
388 to that account, that amount by which the assets of the account exceed  
389 the liabilities, if, at the end of any calendar year, the board of directors  
390 finds that the assets of said association in any account exceed the  
391 liabilities of that account as estimated by the board of directors for the  
392 coming year; and (8) join one or more organizations comprised of  
393 other states' associations similar to the association and designate such  
394 organization to act as a liaison for said association and, to the extent  
395 said association authorizes such organization, to bind said association  
396 to agreements or settlements with receivers or authorized  
397 representatives of insolvent insurers.

398 (c) (1) Each insurer paying an assessment under [sections 38a-836 to  
399 38a-853, inclusive,] this section may offset, for an assessment paid in  
400 the income year commencing prior to January 1, 2012, one hundred per  
401 cent and for an assessment paid in income years commencing on or  
402 after January 1, 2012, fifty per cent of the amount of such assessment  
403 against its premium tax liability to this state under chapter 207. Such  
404 offset shall be taken over a period of the five successive tax years  
405 following the year of payment of the assessment, at the rate of twenty  
406 per cent per year of [the assessment paid to the association] such offset.  
407 Each insurer to which has been refunded by the association, pursuant  
408 to subsection (b) of this section, all or a portion of an assessment  
409 previously paid to the association by the insurer shall be required to  
410 pay to the Department of Revenue Services an amount equal to the  
411 total amount that has been claimed as an offset against the premiums  
412 tax liability on the premiums tax return or returns, as the case may be,  
413 filed by such insurer and that is attributable to such refunded  
414 assessment, provided the amount required to be paid to said  
415 department shall not exceed the amount of the refunded assessment. If  
416 the amount of the refunded assessment exceeds the total amount that  
417 has been claimed as an offset against the premiums tax liability on the  
418 premiums tax return or returns filed by such insurer and that is  
419 attributable to such refunded assessment, such excess may not be  
420 claimed as an offset against the premiums tax liability on a premiums  
421 tax return or returns filed by such insurer or, if the offset has been  
422 transferred to another person pursuant to subdivision (2) of this  
423 subsection, by such other person. For purposes of this subparagraph, if  
424 the offset has been transferred to another person pursuant to  
425 subdivision (2) of this subsection, the total amount that has been  
426 claimed as an offset against the premiums tax liability on the  
427 premiums tax return or returns filed by such insurer includes the total  
428 amount that has been claimed as an offset against the premiums tax  
429 liability on the premiums tax return or returns filed by such other  
430 person. The association shall promptly notify the Commissioner of  
431 Revenue Services of the name and address of the insurers to which

432 such refunds have been made, the amount of such refunds and the  
433 date on which such refunds were mailed to such insurer. If the amount  
434 that an insurer is required to pay to the Department of Revenue  
435 Services has not been so paid on or before the forty-fifth day after the  
436 date of mailing of such refunds, the insurer shall be liable for interest  
437 on such amount at the rate of one per cent per month or fraction  
438 thereof from such forty-fifth day to the date of payment.

439 (2) An insurer, in this subparagraph called "the transferor", may  
440 transfer any offset provided under subdivision (1) of this subsection to  
441 an affiliate, as defined in section 38a-1, of the transferor. Any such  
442 transfer of the offset by the transferor and any subsequent transfer or  
443 transfers of the same offset shall not affect the obligation of the  
444 transferor to pay to the Department of Revenue Services any sums  
445 which are acquired by refund from the association pursuant to  
446 subsection (b) of this section and which are required to be paid to the  
447 Department of Revenue Services pursuant to subdivision (1) of this  
448 subsection. Such offset may be taken by any transferee only against the  
449 transferee's premium tax liability to this state under chapter 207. The  
450 Commissioner of Revenue Services shall not allow such offset to a  
451 transferee against its premium tax liability unless the transferor, the  
452 affiliate to which the offset was originally transferred, each subsequent  
453 transferor and each subsequent transferee have filed such information  
454 as may be required on forms provided by said commissioner with  
455 respect to any such transfer or transfers on or before the due date of  
456 the premium tax return on which such offset would have been taken  
457 by the transferor if no transfer had been made by the transferor.

458 (3) A member insurer shall include in rates and premiums charged  
459 for insurance policies to which sections 38a-836 to 38a-853, inclusive, as  
460 amended by this act, apply, an amount sufficient to recoup a sum  
461 equal to the assessment paid under this section by such insurer to said  
462 association, less any amount (A) returned to such insurer by said  
463 association, or (B) subject to an offset as set forth in subdivision (1) of  
464 this subsection. Such rates and premiums shall not be deemed

465 excessive solely because they contain an additional amount reasonably  
466 calculated to recoup all assessments paid by the member insurer to  
467 said association.

468 (d) (1) In an action to enforce a settlement, release, compromise,  
469 waiver or judgment to which the insolvent insurer or its insured was a  
470 party prior to the date of the entry of the order of liquidation, the  
471 association shall have the right to assert the following defenses in  
472 addition to any defenses available to the insurer:

473 (A) The association is not bound by a settlement, release,  
474 compromise or waiver executed by the insolvent insurer or its insured,  
475 or any judgment entered against the insurer or its insured by consent  
476 or through failure to exhaust all appeals, if the settlement, release,  
477 compromise, waiver or judgment was: (i) Executed or entered within  
478 one hundred twenty days prior to the date of the entry of the order of  
479 liquidation and the insurer or insured did not use reasonable care in  
480 executing or entering into the settlement, release, compromise or  
481 waiver or did not pursue all reasonable appeals of an adverse  
482 judgment; or (ii) executed by or entered against an insurer or its  
483 insured based on default, fraud, collusion or the insurer's failure to  
484 defend; and

485 (B) Any statutory defenses or rights of offset against any settlement,  
486 release, compromise, waiver or judgment executed by or entered  
487 against the insured or its insured.

488 (2) If a court of competent jurisdiction finds the association is not  
489 bound by a settlement, release, compromise, waiver or judgment for  
490 any of the reasons set forth in subparagraph (A) of subdivision (1) of  
491 this subsection, such settlement, release, compromise, waiver or  
492 judgment shall be set aside and the association shall be permitted to  
493 defend any covered claim on its merits. Such settlement, release,  
494 compromise, waiver or judgment shall not be considered as evidence  
495 of liability or damages in connection with any claim brought against  
496 the association or any other party under sections 38a-836 to 38a-853,

497 inclusive, as amended by this act;

498 (3) With respect to a judgment regarding any covered claim under  
499 any decision, order, verdict or finding based on the default of the  
500 insolvent insurer or its failure to defend, the association, on its own  
501 behalf or on behalf of an insured under an insurance policy issued by  
502 the insolvent insurer, may apply to set aside or make a motion to open  
503 such judgment, decision, order, verdict or finding with the same court  
504 or administrator that entered such judgment, decision, order, verdict  
505 or finding, and shall be permitted to defend the covered claim on its  
506 merits.

507 Sec. 5. Section 38a-842 of the general statutes is repealed and the  
508 following is substituted in lieu thereof (*Effective October 1, 2011*):

509 (a) (1) Said association shall submit to the commissioner a plan of  
510 operation and any amendments thereto necessary or suitable to assure  
511 the fair, reasonable, and equitable administration of said association.  
512 The plan of operation and any amendments thereto shall become  
513 effective upon approval in writing by the commissioner.

514 (2) If said association fails to submit a suitable plan of operation  
515 within ninety days following October 1, 1971, or if at any time  
516 thereafter said association fails to submit suitable amendments to the  
517 plan, the commissioner shall, after notice and hearing, adopt and  
518 promulgate such reasonable regulations as are necessary or advisable  
519 to effectuate the provisions of sections 38a-836 to 38a-853, inclusive, as  
520 amended by this act. Such regulations shall continue in force until  
521 modified by the commissioner or superseded by a plan submitted by  
522 said association and approved by the commissioner.

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

524 (c) The plan of operation shall: (1) Establish the procedures whereby  
525 all the powers and duties of said association under section 38a-841, as  
526 amended by this act, shall be performed; (2) establish procedures for

527 handling the assets of said association; (3) establish the number, the  
528 terms of office and the amount and method of reimbursing members  
529 of the board of directors under section 38a-840, as amended by this act;  
530 (4) establish procedures by which claims may be filed with said  
531 association and establish acceptable forms of proof of covered claims.  
532 Notice of claims to the receiver or liquidator of the insolvent insurer  
533 shall be deemed notice to said association or its agent and a list of such  
534 claims shall be periodically submitted to said association or similar  
535 organization having a like function to that of said association in  
536 another state by the receiver or liquidator; (5) establish regular places  
537 and times for meetings of the board of directors; (6) establish  
538 procedures for records to be kept of all financial transactions of said  
539 association, its agents, and the board of directors; (7) provide that any  
540 member insurer aggrieved by any final action or decision of said  
541 association may appeal to the commissioner within thirty days after  
542 such action or decision; (8) establish the procedures whereby selections  
543 for the board of directors shall be submitted to the commissioner; (9)  
544 contain such additional provisions as may be necessary or proper for  
545 the execution of the powers and duties of said association under  
546 sections 38a-836 to 38a-853, inclusive, as amended by this act.

547 (d) The plan of operation may delegate any or all powers and duties  
548 of said association, except those under subdivision (3) of subsection (a)  
549 of section 38a-841, as amended by this act, and subdivision (2) of  
550 subsection (b) of section 38a-841, as amended by this act, to a  
551 corporation, association similar to the association, or other  
552 organization [which] that performs or will perform functions similar to  
553 those of said association, or its equivalent having a like function to that  
554 of said association, in two or more states. Such a corporation,  
555 association similar to the association or organization shall be  
556 reimbursed by said association as a servicing facility would be  
557 reimbursed and shall be paid by said association for its performance of  
558 any other functions of said association. Any delegation under this  
559 subsection shall take effect only with the approval of both the board of  
560 directors and the commissioner, and may be made only to a

561 corporation, association, or organization [which] that extends  
562 protection not substantially less favorable and effective than that  
563 provided by sections 38a-836 to 38a-853, inclusive, as amended by this  
564 act.

565 Sec. 6. Section 38a-844 of the general statutes is repealed and the  
566 following is substituted in lieu thereof (*Effective October 1, 2011*):

567 (a) Any person recovering any moneys under sections 38a-836 to  
568 38a-853, inclusive, as amended by this act, shall be deemed to have  
569 assigned [his] such person's rights under the policy to said association  
570 to the extent of [his] such person's recovery from said association.  
571 Every insured or claimant seeking the protection of said sections shall  
572 cooperate with said association to the same extent as such person  
573 would have been required to cooperate with the insolvent insurer. Said  
574 association shall have no cause of action against any insured of the  
575 insolvent insurer for any sums it has paid out to such insured except  
576 such causes of action as the insolvent insurer would have had if such  
577 sums had been paid by the insolvent insurer. In the case of an  
578 insolvent insurer operating on a plan with assessment liability,  
579 payments of claims of said association shall not operate to reduce the  
580 liability of insureds to the receiver, liquidator [,] or statutory successor  
581 for unpaid assessments.

582 [(b) The receiver, liquidator, or statutory successor of an insolvent  
583 insurer shall be bound by determinations of covered claim eligibility  
584 under sections 38a-836 to 38a-853, inclusive, and by settlements of  
585 claims made by said association or any similar organization having a  
586 like function to that of said association in another state. The court  
587 having jurisdiction shall grant such claims priority equal to that to  
588 which the claimant would have been entitled in the absence of said  
589 sections 38a-836 to 38a-853, inclusive, against the assets of the  
590 insolvent insurer. The expenses of said association or any similar  
591 organization having a like function to that of said association in  
592 handling claims shall be accorded the same priority as the receiver's or

593 liquidator's expenses.]

594 (b) A reinsurer, insurer, insurance pool, underwriting association,  
595 health care center, hospital service corporation, medical service  
596 corporation or self-insurer shall have no cause of action against any  
597 insured of the insolvent insurer for any amount due such reinsurer,  
598 insurer, insurance pool, underwriting association, health care center,  
599 hospital service corporation, medical service corporation or self-  
600 insurer except to the extent such amount exceeds the association's  
601 obligation limits set forth in section 38a-841, as amended by this act.

602 (c) Said association shall periodically file with the receiver or  
603 liquidator of the insolvent insurer statements of the covered claims  
604 paid by said association, the expenses paid for the processing of  
605 covered claims paid or contested and estimates of anticipated claims  
606 on said association, and expenses of processing such claims which  
607 shall preserve the rights of said association against the assets of the  
608 insolvent insurer.

609 (d) [(1) Except as provided in subdivision (2) of this subsection, the]  
610 The association shall have the right to recover from the following  
611 persons the amount of any covered claim paid on behalf of such  
612 person pursuant to sections 38a-836 to 38a-853, inclusive, as amended  
613 by this act: [(A)] (1) Any person who is an affiliate of the insolvent  
614 insurer and whose liability obligations to other persons are satisfied in  
615 whole or in part by payments made under this chapter; and [(B)] (2)  
616 any insured whose net worth on December thirty-first of the year next  
617 preceding the date the insurer becomes an insolvent insurer exceeds  
618 fifty million dollars and whose liability obligations to other persons are  
619 satisfied in whole or in part by payments made under said sections.  
620 For purposes of this [subdivision] subsection, "insured" does not  
621 include a [municipality, as defined in section 7-148,] governmental  
622 entity or the Second Injury Fund, established in section 31-354.

623 [(2) The association shall have no right to recover pursuant to  
624 subdivision (1) of this subsection from any nonprofit corporation

625 organized to deliver health services and social services to meet the  
626 needs of the elderly, that is incorporated in this state and qualified as a  
627 Section 501(c)(3) organization under the Internal Revenue Code of  
628 1986, or any subsequent corresponding internal revenue code of the  
629 United States, as amended from time to time, for any amount of  
630 covered claims paid on behalf of such corporation on or after  
631 December 1, 2001, provided the insolvent insurer was declared  
632 insolvent prior to May 27, 2008. Any amounts recovered by the  
633 association prior to May 27, 2008, from any such nonprofit corporation  
634 or affiliate of such nonprofit corporation shall not be required to be  
635 reimbursed to such nonprofit corporation or affiliate of such nonprofit  
636 corporation.]

637 Sec. 7. Section 38a-845 of the general statutes is repealed and the  
638 following is substituted in lieu thereof (*Effective October 1, 2011*):

639 (a) (1) Any person having a claim against an insurer under any  
640 provision in an insurance policy [, other than a policy of an insolvent  
641 insurer, which is also a covered claim under sections 38a-836 to 38a-  
642 853, inclusive,] shall first exhaust [first his rights under such policy] all  
643 coverage, including the right to a defense, provided by any other  
644 insurance policy, regardless of whether such policy was issued by a  
645 member insurer, if the claim arises from the same facts, injury or loss  
646 that gave rise to a covered claim against the association. A claim  
647 arising from the same facts, injury or loss shall be considered to have  
648 occurred if a claim has arisen under a policy that provides liability  
649 coverage to a person who may be jointly and severally liable as a  
650 tortfeasor with a person insured under an insurance policy issued by  
651 the insolvent insurer. This subdivision shall not apply to any right an  
652 insured has under an insurance policy of an insolvent insurer or under  
653 a life insurance policy.

654 (2) (A) Any amount payable on a covered claim under [said]  
655 sections 38a-836 to 38a-853, inclusive, as amended by this act, shall be  
656 reduced by the [amount recoverable under the claimant's insurance

657 policy or chapter 568.] full applicable limits stated in the other  
658 insurance policy or by the amount of the recovery under the other  
659 insurance policy as provided herein:

660 (i) The association shall receive a full credit for the stated limits,  
661 unless the claimant demonstrates that the claimant used reasonable  
662 efforts to exhaust all coverage and limits applicable under the other  
663 insurance policy; or

664 (ii) The association shall receive a full credit for the amount of the  
665 recovery if the claimant demonstrates that the claimant used  
666 reasonable efforts to exhaust all coverage and limits applicable under  
667 the other insurance policy.

668 (B) Any such credit shall be deducted from the lesser of (i) the  
669 association's covered claim limit, (ii) the amount of the judgment or  
670 settlement of the claim, or (iii) the full applicable limit stated in the  
671 policy of the insolvent insurer. The association's obligation shall not  
672 exceed the covered claim limits set forth in section 38a-841, as  
673 amended by this act.

674 (C) No insured under an insurance policy issued by the insolvent  
675 insurer shall be liable for any amount of the reduction made by the  
676 association pursuant to this subdivision to any amount paid to a third-  
677 party claimant.

678 (3) Except to the extent the claimant has a contractual right to a  
679 defense under an insurance policy issued by another insurer and  
680 except as otherwise limited under the provisions of sections 38a-836 to  
681 38a-853, inclusive, as amended by this act, nothing in this section shall  
682 relieve the association of its duty to defend under the policy issued by  
683 the insolvent insurer.

684 (4) For purposes of this section, a claim under an insurance policy  
685 other than a life insurance policy shall include, but not be limited to,  
686 (A) a claim against a health care center, hospital service corporation,

687 medical service corporation or disability insurance company, and (B)  
688 any amount payable by or on behalf of a self-insurer.

689 (b) Any person having a claim [which] that may be recovered under  
690 more than one insurance guaranty association or [its equivalent having  
691 a like function to that of said] association similar to the association  
692 shall seek recovery first from the association operating in the area of  
693 the residence of the insured, except that (1) if it is a first party claim for  
694 damage to property with a permanent location, such person shall seek  
695 recovery first from the association operating in the location of the  
696 property, and (2) if it is a workers' compensation claim, such person  
697 shall seek recovery first from the association operating in the area of  
698 residence of the claimant. Any recovery under sections 38a-836 to 38a-  
699 853, inclusive, as amended by this act, shall be reduced by the amount  
700 recoverable from any other insurance guaranty association or [its  
701 equivalent having a like function to that of said] association similar to  
702 the association.

703 [(c) Any person having a claim under any governmental insurance  
704 or guaranty program which such claim is also a covered claim shall be  
705 required to first exhaust his rights under such program. Any amount  
706 payable on a covered claim under sections 38a-836 to 38a-853,  
707 inclusive, shall be reduced by any amount recoverable under such  
708 program.]

709 Sec. 8. Section 38a-851 of the general statutes is repealed and the  
710 following is substituted in lieu thereof (*Effective October 1, 2011*):

711 (a) All proceedings in which an insolvent insurer is a party or is  
712 obligated to defend an insured as a party in any court in this state shall  
713 be stayed for up to six months and for such additional time thereafter  
714 as may be determined by the court from the date of declaration of  
715 insolvency or from the time an ancillary proceeding is instituted in the  
716 state, whichever is later, to permit proper defense by said association  
717 of all pending causes of action in the case. [Whenever any covered  
718 claims arise from a judgment under any decision, verdict or finding

719 based on the default of an insolvent insurer or based on such insolvent  
720 insurer's failure to defend an insured, said association, either on its  
721 own behalf or on behalf of such insured, may apply to have such  
722 judgment, order, decision, verdict or finding set aside by the same  
723 court or administrator that made such judgment, order, decision,  
724 verdict or finding and said association may defend against any such  
725 claim on the merits of the case.]

726 (b) The receiver, liquidator [, receiver] or statutory successor of an  
727 insolvent insurer covered by sections 38a-836 to 38a-853, inclusive, as  
728 amended by this act, shall permit access by the board or its authorized  
729 representative to such of the insolvent insurer's records [which] that  
730 the board determines are necessary for the board to carry out its  
731 functions under said sections 38a-836 to 38a-853, inclusive, as amended  
732 by this act, with regard to covered claims. The receiver, liquidator [,  
733 receiver] or statutory successor shall provide the board or its  
734 representative with copies of such records upon the request and at the  
735 expense of the board.

736 Sec. 9. Section 38a-860 of the general statutes is repealed and the  
737 following is substituted in lieu thereof (*Effective October 1, 2011*):

738 (a) Sections 38a-858 to 38a-875, inclusive, as amended by this act,  
739 shall provide coverage for the policies and contracts specified in  
740 subsection [(f)] (d) of this section to:

741 (1) [To] For a policy or certificate other than an unallocated annuity  
742 contract or a structured settlement annuity, (A) any person, except for  
743 a nonresident certificate holder under a group policy or contract, who  
744 is the beneficiary, assignee or payee of the person covered under  
745 [subdivision (2)] subparagraph (B) of this [subsection] subdivision,  
746 regardless of where the person resides, and [(2)] (B) any person who is  
747 the owner of, or certificate holder under, such policy or contract and in  
748 each case who [(A)] (i) is a resident, or [(B)] (ii) is not a resident,  
749 provided [(i)] (I) the insurer that issued such policy or contract is  
750 domiciled in this state, [(ii)] (II) the state in which the person resides

751 has an association similar to the association created by this section and  
752 sections 38a-837, 38a-838, as amended by this act, 38a-845, as amended  
753 by this act, 38a-853, 38a-862, 38a-863, as amended by this act, 38a-865,  
754 as amended by this act, and 38a-866, as amended by this act, and [(iii)]  
755 (III) the person is not eligible for coverage by an association in any  
756 other state because the insurer was not licensed in the state at the time  
757 specified in the state's guaranty association law; [.]

758 [(b)] (2) For unallocated annuity contracts, [specified in subsection  
759 (f) of this section, subdivisions (1) and (2) of subsection (a) of this  
760 section shall not apply, and] except as provided in subsections [(d)] (b)  
761 and [(e)] (c) of this section, [sections 38a-858 to 38a-875, inclusive, shall  
762 apply to: (1) Any] (A) any person who is the owner of the unallocated  
763 annuity contract if the contract is issued to, or in connection with, a  
764 specific benefit plan whose plan sponsor has its principal place of  
765 business in this state, [;] and [(2)] (B) any person who is the owner of  
766 an unallocated annuity contract issued to, or in connection with,  
767 government lotteries if the owners are residents; [.]

768 [(c)] (3) For structured settlement annuities, [specified in subsection  
769 (f) of this section, subdivisions (1) and (2) of subsection (a) of this  
770 section shall not apply, and] except as provided in subsections [(d)] (b)  
771 and [(e)] (c) of this section, [sections 38a-858 to 38a-875, inclusive, shall  
772 apply to] a person who is a payee under a structured settlement  
773 annuity, or to a beneficiary of a payee if the payee is deceased, if the  
774 payee: [(1)] (A) Is a resident, regardless of where the contract owner  
775 resides, or [(2)] (B) is not a resident, provided [: (A) (i) The] (i) (I) the  
776 contract owner of the structured settlement annuity is a resident, or  
777 [(ii)] (II) the contract owner of the structured settlement annuity is not  
778 a resident, but the insurer that issued the structured settlement annuity  
779 is domiciled in this state, and the state in which the contract owner  
780 resides has an association similar to the association created by sections  
781 38a-858 to 38a-875, inclusive, as amended by this act, [;] and [(B)] (ii)  
782 neither the payee, beneficiary or contract owner is eligible for coverage  
783 by the association of the state in which the payee, beneficiary or

784 contract owner resides.

785 [(d)] (b) Sections 38a-858 to 38a-875, inclusive, as amended by this  
786 act, shall not provide coverage to: (1) A person who is a payee or  
787 beneficiary of a contract owner resident of this state, if the payee or  
788 beneficiary is afforded any coverage by the association of another state;  
789 or (2) a person covered under subdivision (2) of subsection [(b)] (a) of  
790 this section, if any coverage is provided by the association of another  
791 state to the person.

792 [(e)] (c) Sections 38a-858 to 38a-875, inclusive, as amended by this  
793 act, shall provide coverage to a person who is a resident and, in special  
794 circumstances, to a nonresident. In order to avoid duplicate coverage,  
795 if a person who would otherwise receive coverage under sections 38a-  
796 858 to 38a-875, inclusive, as amended by this act, is provided coverage  
797 under the laws of any other state, the person shall not be provided  
798 coverage under sections 38a-858 to 38a-875, inclusive, as amended by  
799 this act. In determining the application of the provisions of this  
800 subsection in situations where a person could be covered by the  
801 association of more than one state, whether as an owner, payee,  
802 beneficiary or assignee, sections 38a-858 to 38a-875, inclusive, as  
803 amended by this act, shall be construed in conjunction with the laws of  
804 other states to result in coverage by only one association.

805 [(f)] (d) (1) Sections 38a-858 to 38a-875, inclusive, as amended by this  
806 act, shall provide coverage to the persons specified in [subsections (a)  
807 to (d), inclusive,] subsections (a) and (b) of this section for direct,  
808 nongroup life, health or annuity policies or contracts and supplemental  
809 contracts to such policies or contracts, for certificates under direct  
810 group policies and contracts, and for unallocated annuity contracts  
811 issued by member insurers, except as limited by said sections. Annuity  
812 contracts and certificates under group annuity contracts include, but  
813 are not limited to, guaranteed investment contracts, deposit  
814 administration contracts, unallocated funding agreements, allocated  
815 funding agreements, structured settlement annuities, annuities issued

816 to or in connection with government lotteries and any immediate or  
817 deferred annuity contracts.

818 (2) [Said sections] Sections 38a-858 to 38a-875, inclusive, as amended  
819 by this act, shall not provide coverage for: (A) Any portion of a policy  
820 or contract not guaranteed by the insurer, or under which the risk is  
821 borne by the policy or contract holder; (B) any policy or contract of  
822 reinsurance, unless assumption certificates have been issued pursuant  
823 to the reinsurance policy or contract; (C) any portion of a policy or  
824 contract to the extent that the rate of interest on which it is based or the  
825 interest rate, crediting rate or similar factor determined by use of an  
826 index or other external reference stated in the policy or contract  
827 employed in calculating returns or changes in value (i) averaged over  
828 the period of four years prior to the date on which the member insurer  
829 becomes an impaired or insolvent insurer under sections 38a-858 to  
830 38a-875, inclusive, as amended by this act, exceeds the rate of interest  
831 determined by subtracting two percentage points from Moody's  
832 corporate bond yield average averaged for that same four-year period  
833 or for such lesser period if the policy or contract was issued less than  
834 four years before the member insurer becomes an impaired or  
835 insolvent insurer under sections 38a-858 to 38a-875, inclusive, as  
836 amended by this act, whichever is earlier; and (ii) on and after the date  
837 on which the member insurer becomes an impaired or insolvent  
838 insurer under sections 38a-858 to 38a-875, inclusive, as amended by  
839 this act, whichever is earlier, exceeds the rate of interest determined by  
840 subtracting three percentage points from Moody's corporate bond  
841 yield average as most recently available; (D) a portion of a policy or  
842 contract issued to any plan or program of an employer, association or  
843 similar entity to provide life, health or annuity benefits to its  
844 employees or members to the extent that such plan or program is self-  
845 funded or uninsured, including, but not limited to, benefits payable by  
846 an employer, association or similar entity under (i) a multiple  
847 employer welfare arrangement as defined in Section 514 of the federal  
848 Employee Retirement Income Security Act of 1974, as amended from  
849 time to time; (ii) a minimum premium group insurance plan; or (iii) an

850 administrative services only contract; (E) any stop-loss or excess loss  
851 insurance policy or contract providing for the indemnification of or  
852 payment to a policy owner, a contract owner, a plan or another person  
853 obligated to pay life, health or annuity benefits; (F) any portion of a  
854 policy or contract to the extent that it provides dividends, experience  
855 rating credits, voting rights or provides that any fees or allowances be  
856 paid to any person, including, but not limited to, the policy or contract  
857 holder, in connection with the service to or administration of such  
858 policy or contract; (G) any policy or contract issued in this state by a  
859 member insurer at a time when it was not licensed or did not have a  
860 certificate of authority to issue such policy or contract in this state; (H)  
861 any unallocated annuity contract issued to an employee benefit plan  
862 protected under the federal Pension Benefit Guaranty Corporation,  
863 regardless of whether the federal Pension Benefit Guaranty  
864 Corporation has yet become liable to make any payments with respect  
865 to the benefit plan; (I) any portion of an unallocated annuity contract  
866 that is not issued to, or in connection with a specific employee, union  
867 or association of natural persons benefit plan or a government lottery;  
868 (J) any subscriber contract issued by a health care center; (K) a  
869 contractual agreement that establishes the insurer's obligation by  
870 reference to a portfolio of assets that is not owned or possessed by the  
871 insurance company; (L) an obligation that does not arise under the  
872 express written terms of the policy or contract issued by the insurer to  
873 the contract owner or policy owner, including, but not limited to: (i) A  
874 claim based on marketing materials; (ii) a claim based on side letters,  
875 riders or other documents that were issued by the insurer without  
876 meeting applicable policy form filing or approval requirements; (iii) a  
877 misrepresentation of or regarding policy benefits; (iv) an extra-  
878 contractual claim; or (v) a claim for penalties or consequential or  
879 incidental damages; (M) a contractual agreement that establishes the  
880 member insurer's obligations to provide a book value accounting  
881 guaranty for defined contribution benefit plan participants by  
882 reference to a portfolio of assets that is owned by the benefit plan or its  
883 trustee, which in each case is not an affiliate of the member insurer;

884 [and] (N) a portion of a policy or contract to the extent it provides for  
885 interest or other changes in value to be determined by the use of an  
886 index or other external reference stated in the policy or contract, but  
887 which have not been credited to the policy or contract, or as to which  
888 the policy or contract owner's rights are subject to forfeiture, as of the  
889 date the member insurer becomes an impaired or insolvent insurer  
890 under sections 38a-858 to 38a-875, inclusive, as amended by this act,  
891 whichever is earlier. If a policy's or contract's interest or changes in  
892 value are credited less frequently than annually, then for purposes of  
893 determining the values that have been credited and are not subject to  
894 forfeiture under this subparagraph, the interest or change in value  
895 determined by using the procedures defined in the policy or contract  
896 shall be credited as if the contractual date of crediting interest or  
897 changing values was the date of impairment or insolvency, whichever  
898 is earlier, and shall not be subject to forfeiture; and (O) a policy or  
899 contract providing any hospital, medical, prescription drugs or other  
900 health care benefits pursuant to Part C or Part D of Subchapter XVIII of  
901 42 USC 7, as amended from time to time, commonly known as  
902 Medicare Part C and D, or any regulations issued thereunder.

903 [(g)] (e) The benefits for which the association may become liable  
904 shall in no event exceed the lesser of:

905 (1) The contractual obligations for which the insurer is liable or  
906 would have been liable if it were not an impaired or insolvent insurer,  
907 or

908 (2) (A) [with] With respect to any one life, regardless of the number  
909 of policies or contracts: (i) Five hundred thousand dollars in life  
910 insurance death benefits, but no more than five hundred thousand  
911 dollars in net cash surrender and net cash withdrawal values for life  
912 insurance; (ii) five hundred thousand dollars in health insurance  
913 benefits, including, but not limited to, any net cash surrender and net  
914 cash withdrawal values; (iii) five hundred thousand dollars in the  
915 present value of annuity benefits, including, but not limited to, net

916 cash surrender and net cash withdrawal values;

917 (B) [with] With respect to each individual participating in a  
918 governmental retirement plan established under Section 401, 403(b) or  
919 457 of the United States Internal Revenue Code of 1986, or any  
920 subsequent internal revenue code of the United States, as amended  
921 from time to time, covered by an unallocated annuity contract or the  
922 beneficiaries of each such individual if deceased, in the aggregate, five  
923 hundred thousand dollars in present value annuity benefits, including,  
924 but not limited to, net cash surrender and net cash withdrawal values;

925 (C) [with] With respect to each payee of a structured settlement  
926 annuity, or beneficiary or beneficiaries of the payee if deceased, five  
927 hundred thousand dollars in present value annuity benefits, in the  
928 aggregate, including, but not limited to, net cash surrender and net  
929 cash withdrawal values, if any, provided in no event shall the  
930 association be liable to expend (i) more than the five hundred  
931 thousand dollars in the aggregate with respect to any one individual  
932 under this subparagraph and subparagraphs (A) [,] and (B) [and (C)]  
933 of this subdivision, and (ii) with respect to one owner of multiple  
934 nongroup policies of life insurance, whether the policy owner is an  
935 individual, firm, corporation or other person, and whether the persons  
936 insured are officers, managers, employees or other persons, more than  
937 five million dollars in benefits, regardless of the number of policies and  
938 contracts held by the owner;

939 (D) [with] With respect to either (i) one contract owner provided  
940 coverage under subparagraph (B) of subdivision (2) of subsection [(b)]  
941 (a) of this section, or (ii) one plan sponsor whose plans own directly or  
942 in trust one or more unallocated annuity contracts not included in  
943 subparagraph (B) of this subdivision, [(2) of this subsection,] five  
944 million dollars in benefits regardless of the number of contracts with  
945 respect to the contract owner or plan sponsor, except that in the case  
946 where one or more unallocated annuity contracts are covered contracts  
947 under sections 38a-858 to 38a-875, inclusive, as amended by this act,

948 and are owned by a trust or other entity for the benefit of two or more  
949 plan sponsors, coverage shall be afforded by the association if the  
950 largest interest in the trust or entity owning the contract or contracts is  
951 held by a plan sponsor whose principal place of business is in this state  
952 and in no event shall the association be obligated to cover more than  
953 five million dollars in benefits with respect to all such unallocated  
954 contracts.

955 [(h)] (f) The limits set forth in subsection [(g)] (e) of this section are  
956 limits on the benefits for which the association is obligated before  
957 taking into account either the association's subrogation and  
958 assignment rights or the extent to which those benefits could be  
959 provided out of the assets of the impaired or insolvent insurer that are  
960 attributable to covered policies. The costs of the association's  
961 obligations under sections 38a-858 to 38a-875, inclusive, as amended  
962 by this act, may be met by the use of assets attributable to covered  
963 policies or reimbursed to the association pursuant to the association's  
964 subrogation and assignment rights.

965 [(i)] (g) In performing its obligation to provide coverage under  
966 section 38a-865, as amended by this act, the association shall not be  
967 required to guarantee, assume, reinsure or perform, or cause to be  
968 guaranteed, assumed, reinsured or performed, the contractual  
969 obligations of the insolvent or impaired insurer under a covered policy  
970 or contract that does not materially affect the economic value or  
971 economic benefit of the covered policy or contract.

972 Sec. 10. Section 38a-863 of the general statutes is repealed and the  
973 following is substituted in lieu thereof (*Effective October 1, 2011*):

974 (a) There is created a nonprofit legal entity to be known as the  
975 Connecticut Life and Health Insurance Guaranty Association. All  
976 member insurers shall be and remain members of the association as a  
977 condition of their authority to transact insurance in this state. The  
978 association shall perform its functions under the plan of operation  
979 established and approved under section 38a-867, as amended by this

980 act, and shall exercise its powers through a board of directors  
981 established under section 38a-864, as amended by this act. For  
982 purposes of administration and assessment, the association shall  
983 maintain two accounts: (1) The life insurance and annuity account  
984 which includes the following subaccounts: (A) Life insurance account;  
985 (B) annuity account which shall include, but is not limited to, annuity  
986 contracts owned by a governmental retirement plan, or its trustee,  
987 established under Section 401, 403(b) or 457 of the Internal Revenue  
988 Code of 1986, or any subsequent corresponding internal revenue code  
989 of the United States, as from time to time amended, but shall otherwise  
990 exclude unallocated annuities; and (C) unallocated annuity account  
991 which shall exclude contracts owned by a governmental retirement  
992 benefit plan, or its trustee, established under Section 401, 403(b) or 457  
993 of the Internal Revenue Code of 1986, or any subsequent  
994 corresponding internal revenue code of the United States, as from time  
995 to time amended; and (2) the health insurance account.

996 (b) The association shall come under the immediate supervision of  
997 the commissioner and shall be subject to the applicable provisions of  
998 the insurance laws of this state. Meetings or records of the association  
999 may be opened to the public upon a majority vote of the board of  
1000 directors of the association.

1001 Sec. 11. Section 38a-864 of the general statutes is repealed and the  
1002 following is substituted in lieu thereof (*Effective October 1, 2011*):

1003 (a) The board of directors of the association shall consist of not less  
1004 than five [nor] or more than nine members, two of which shall be  
1005 persons representing the public and the remainder which shall be  
1006 persons representing insurers, serving terms as established in the plan  
1007 of operation under section 38a-867, as amended by this act.

1008 (1) The [members of the board] directors of said board who  
1009 represent insurers shall be selected by member insurers and subject to  
1010 the approval of the commissioner. Vacancies on the board for such  
1011 directors shall be filled for the remaining period of the term [in the

1012 manner described in the plan of operation] by a majority vote of the  
1013 remaining directors, subject to the approval of the commissioner. [To  
1014 select the initial board of directors, and initially organize the  
1015 association, the commissioner shall give notice to all member insurers  
1016 of the time and place of the organizational meeting. In determining  
1017 voting rights at the organizational meeting each member insurer shall  
1018 be entitled to one vote in person or by proxy. If the board of directors  
1019 is not selected within sixty days after notice of the organizational  
1020 meeting, the commissioner may appoint the initial members.]

1021 [(b)] In approving selections [or in appointing members] to the  
1022 board, the commissioner shall consider, among other things, whether  
1023 all member insurers are fairly represented.

1024 (2) The directors of said board who represent the public shall be  
1025 appointed by the commissioner. Vacancies on the board for such  
1026 directors shall be filled for the remaining period of the term by the  
1027 commissioner. No officer, director or employee of an insurer or any  
1028 person engaged in the business of insurance shall be eligible to serve as  
1029 a director who represents the public.

1030 [(c) Members] (b) The directors of the board may be reimbursed  
1031 from the assets of the association for expenses incurred by them as  
1032 members of the board of directors but [members of the board] the  
1033 directors shall not otherwise be compensated by the association for  
1034 their services.

1035 Sec. 12. Subsection (d) of section 38a-865 of the general statutes is  
1036 repealed and the following is substituted in lieu thereof (*Effective*  
1037 *October 1, 2011*):

1038 (d) Premiums due for coverage after entry of an order of liquidation  
1039 of an insolvent insurer shall belong to and be payable at the direction  
1040 of the association, and the association shall be liable for unearned  
1041 premiums due to policy or contract owners arising after the date of the  
1042 entry of the order. Upon request by the liquidator of an insolvent

1043 insurer, the association shall provide to such liquidator a report  
1044 regarding such premiums that the association has collected.

1045 Sec. 13. Subsection (n) of section 38a-865 of the general statutes is  
1046 repealed and the following is substituted in lieu thereof (*Effective*  
1047 *October 1, 2011*):

1048 (n) (1) (A) At any time within [one year after the date on which the  
1049 association becomes responsible for the obligations of a member  
1050 insurer, which date shall be deemed the coverage date] one hundred  
1051 eighty days after the date of the entry of the order of liquidation, the  
1052 association may elect to [succeed to] assume the rights and obligations  
1053 of the [member] insolvent insurer [that accrue on or after the coverage  
1054 date and] that relate to [contracts] policies or annuities covered, in  
1055 whole or in part, by the association, in each case under any one or  
1056 more [indemnity] reinsurance [agreements] contracts entered into by  
1057 the [member] insolvent insurer [as a ceding insurer] and its reinsurers  
1058 and selected by the association. [, except that the association may not  
1059 exercise an election with respect to a reinsurance agreement if the  
1060 receiver, rehabilitator or liquidator of a member insurer has previously  
1061 and expressly disaffirmed the reinsurance agreement.] Any such  
1062 assumption shall be effective as of the date of the entry of the order of  
1063 liquidation. The election shall be effected by a notice to the receiver [,  
1064 rehabilitator or liquidator] and to the affected reinsurers.

1065 (B) To facilitate the earliest practicable decision by the association  
1066 whether to assume any reinsurance contracts entered into by the  
1067 insolvent insurer and to protect the financial position of the estate of  
1068 the insolvent insurer, upon request by the association, the receiver and  
1069 each reinsurer of the insolvent insurer shall make available as soon as  
1070 possible after the commencement of formal delinquency proceedings  
1071 (i) copies of reinsurance contracts in force and all related files and  
1072 records relevant to the determination of whether such contracts should  
1073 be assumed, and (ii) notices of any defaults under such reinsurance  
1074 contracts or any known event or condition that, with the passage of

1075 time, could become a default under such reinsurance contracts.

1076 [If the association makes an election, then subparagraphs (A) to (D),  
1077 inclusive, of this subdivision shall apply with respect to the  
1078 agreements selected] (C) For reinsurance contracts assumed by the  
1079 association pursuant to this subsection:

1080 [(A)] (i) The association shall be responsible for all unpaid  
1081 premiums due under the [agreements] reinsurance contracts for  
1082 periods before, on and after the [coverage] date of the entry of the  
1083 order of liquidation [,] and shall be responsible for the performance of  
1084 all other obligations to be performed after the [coverage] date [,] of the  
1085 entry of the order of liquidation, that relate in each case [which relate]  
1086 to [contracts] policies or annuities covered, in whole or in part, by the  
1087 association. The association may charge [contracts] policies or  
1088 annuities covered in part by the association, through reasonable  
1089 allocation methods, the costs for reinsurance in excess of the  
1090 obligations of the association, and shall provide notice and an  
1091 accounting of such charges to the receiver; [ (B)]

1092 (ii) The association shall be entitled to any amounts payable by the  
1093 reinsurer under the [agreements] reinsurance contracts with respect to  
1094 losses or events that occur in periods after the [coverage] date of the  
1095 entry of the order of liquidation and that relate to [contracts] policies  
1096 or annuities covered, [by the association] in whole or in part, [and] by  
1097 the association, provided upon the association's receipt of any such  
1098 [amount] amounts, the association shall pay any beneficiary of a policy  
1099 or [contract under] annuity on account of which [the association] an  
1100 amount was paid, [only] a portion of the [policy or contract] amount  
1101 equal to the lesser of: [(i)] (I) The amount received by the association;  
1102 [that exceeds the benefits paid the beneficiary under the policy, less  
1103 (ii)] or (II) the amount received by the association that exceeds the  
1104 benefits paid by the association on account of the policy or [contract]  
1105 annuity, less the retention of the [impaired or insolvent member]  
1106 insurer applicable to the loss or event; [.]

1107 [(C)] (iii) Not later than thirty days after the association's election,  
1108 the association and each [indemnity] reinsurer under contracts  
1109 assumed by the association shall calculate the net balance due to or  
1110 from the association under each reinsurance [agreement] contract as of  
1111 the date of the association's election [, giving] with respect to policies  
1112 or annuities covered, in whole or in part, by the association, which  
1113 calculation shall give full credit to all items paid by [either] the  
1114 [member] insurer or its receiver [, rehabilitator or liquidator or the  
1115 indemnity reinsurer during the period between the coverage date and]  
1116 or the reinsurer prior to the date of the association's election. [Either  
1117 the association or indemnity] The reinsurer shall pay the [net] receiver  
1118 any amounts due for losses or events that occurred in periods prior to  
1119 the date of the entry of the order of liquidation, subject to any set off  
1120 for premiums unpaid for periods prior to such date, and the  
1121 association or the reinsurer shall pay any remaining balance due the  
1122 other, in each case not later than five days after the completion of the  
1123 calculation. [If the receiver, rehabilitator or liquidator] Any dispute  
1124 over the amount due to either the association or the reinsurer shall be  
1125 resolved by arbitration pursuant to the terms of the affected  
1126 reinsurance contract, or if the contract contains no arbitration clause, as  
1127 otherwise provided by law. If the receiver has received any amounts  
1128 due the association pursuant to subparagraph [(B)] (C)(ii) of this  
1129 subdivision, the receiver [, rehabilitator or liquidator] shall remit the  
1130 same to the association as promptly as practicable; [.]

1131 [(D)] (iv) If the association or the receiver on the association's behalf  
1132 pays, not later than sixty days after the election, [pays] the premiums  
1133 due for periods before, on and after the [coverage] election date that  
1134 relate to [contracts] policies or annuities covered, [by the association]  
1135 in whole or in part, by the association, the reinsurer shall not [be  
1136 entitled to] terminate the reinsurance [agreements] contracts for  
1137 nonpayment of premium insofar as the [agreements] reinsurance  
1138 contracts relate to [contracts] policies or annuities covered, [by the  
1139 association] in whole or in part, by the association and shall not [be  
1140 entitled to] set off any unpaid [premium] amounts due [for periods

1141 prior to the coverage date] under other contracts or unpaid amounts  
1142 due from parties other than the association against amounts due the  
1143 association.

1144 (2) [If the association transfers its obligations to another insurer, and  
1145 if the association and the other insurer agree, the other insurer shall  
1146 succeed to the rights and obligations of the association under  
1147 subdivision (1) of this subsection, provided: (A) The indemnity  
1148 reinsurance agreements shall automatically terminate for new  
1149 reinsurance unless the indemnity reinsurer and the other insurer agree  
1150 to the contrary; and (B) the association's obligation to pay the  
1151 beneficiary pursuant to subparagraph (B) of subdivision (1) of this  
1152 subsection shall no longer apply on or after the date the indemnity  
1153 reinsurance agreement is transferred to the third party insurer. This  
1154 subdivision shall not apply if the association has previously expressly  
1155 determined in writing that it will not exercise the election referred to in  
1156 subdivision (1) of this subsection.] (A) During the period from the date  
1157 of the entry of the order of liquidation until the election date, or if there  
1158 is no election, until one hundred eighty days after the date of the entry  
1159 of the order of liquidation, (i) neither the association nor the reinsurer  
1160 shall have any rights or obligations under reinsurance contracts that  
1161 the association has the right to assume under subdivision (1) of this  
1162 subsection, and (ii) the association, the receiver and the reinsurer shall,  
1163 to the extent practicable, provide to each other data and records  
1164 reasonably requested by each. Upon the election by the association to  
1165 assume a reinsurance contract, the rights and obligations of the  
1166 association and the reinsurer shall be governed by subdivision (1) of  
1167 this subsection.

1168 (B) If the association does not elect to assume a reinsurance contract  
1169 by the election date set forth in subdivision (1) of this subsection, the  
1170 association shall have no rights or obligations with respect to such  
1171 contract.

1172 (C) When the receiver transfers policies or annuities or covered

1173 obligations thereto to an assuming insurer, the association may  
1174 transfer to such insurer any reinsurance contract it assumed on such  
1175 policies or annuities pursuant to subdivision (1) of this section, subject  
1176 to the following: (i) The reinsurance contract shall not cover any new  
1177 policies or annuities in addition to those transferred unless otherwise  
1178 agreed by the reinsurer and the assuming insurer; (ii) the association  
1179 shall not be obligated under subdivision (1) of this subsection with  
1180 respect to losses or events arising on or after the effective date of the  
1181 transfer of the reinsurance contract; and (iii) the association provides  
1182 written notice, return receipt requested, to the affected reinsurer not  
1183 less than thirty days prior to the effective date of the transfer of the  
1184 reinsurance contract.

1185 (3) The provisions of this subsection shall supersede the provisions  
1186 of any law of this state or of any affected reinsurance [agreement]  
1187 contract that provides for or requires any payment of reinsurance  
1188 proceeds on account of losses or events that occur in periods on and  
1189 after the [coverage] date of the entry of the order of liquidation to the  
1190 receiver [, liquidator or rehabilitator] of the insolvent [member] insurer  
1191 or to any other person. The receiver [, rehabilitator or liquidator] shall  
1192 remain entitled to any amount payable by the reinsurer under the  
1193 reinsurance [agreement] contract with respect to losses or events that  
1194 occur in periods prior to the [coverage] date of the entry of the order of  
1195 liquidation, subject to applicable [setoff] set off provisions.

1196 (4) Except as otherwise expressly provided in this [subsection]  
1197 section, nothing in this [section] subsection shall alter or modify the  
1198 terms and conditions of [the indemnity] any reinsurance [agreements  
1199 of the insolvent member insurer] contract. Nothing in this section shall  
1200 abrogate or limit any rights of any reinsurer to claim that it is entitled  
1201 to rescind a reinsurance [agreement] contract. Nothing in this section  
1202 shall (A) give a policy owner or beneficiary an independent cause of  
1203 action against [an indemnity] a reinsurer that is not otherwise set forth  
1204 in the [indemnity] reinsurance [agreement] contract, (B) limit or affect  
1205 the association's right as a creditor of the estate of the insolvent

1206 insurer, or (C) apply to reinsurance contracts covering property or  
1207 casualty risks.

1208 Sec. 14. Subsections (a) to (c), inclusive, of section 38a-866 of the  
1209 general statutes are repealed and the following is substituted in lieu  
1210 thereof (*Effective October 1, 2011*):

1211 (a) For the purpose of providing the funds necessary to carry out the  
1212 powers and duties of the association, the board of directors shall assess  
1213 the member insurers, separately for each account, at such times and for  
1214 such amounts as the board finds necessary. The association shall  
1215 establish a due date for each assessment which shall be at least thirty  
1216 days after the association has provided the member notice of the  
1217 assessment. Each member insurer shall pay interest on any late  
1218 payment at the rate of one per cent per month, or any portion thereof,  
1219 from the due date to the date of payment.

1220 (b) There shall be two classes of assessments, as follows: (1) Class A  
1221 assessments shall be [made] authorized and called for the purpose of  
1222 meeting administrative and legal costs and other general expenses not  
1223 related to a particular impaired or insolvent insurer; (2) Class B  
1224 assessments shall be authorized and called to the extent necessary to  
1225 carry out the powers and duties of the association under section 38a-  
1226 865 with regard to an impaired or insolvent insurer.

1227 (c) (1) The amount of any Class A assessment shall be determined  
1228 by the board and may be authorized and called on a pro-rata or non-  
1229 pro-rata basis. If an assessment is made on a pro-rata basis, the board  
1230 may provide that the assessment be credited against future Class B  
1231 assessments. On and after January 1, 2012, the total of all non-pro-rata  
1232 assessments shall not exceed three hundred dollars per member  
1233 insurer per calendar year. The amount of any Class B assessment shall  
1234 be allocated for assessment purposes among the accounts pursuant to  
1235 an allocation formula which may be based on the premiums or  
1236 reserves of the impaired or insolvent insurer or any other standard that  
1237 the board, in its sole discretion, deems as being fair and reasonable

1238 under the circumstances.

1239 (2) Class B assessments against member insurers for each account  
1240 and subaccount shall be in the proportion that the premiums received  
1241 on business in this state by each assessed member insurer on policies  
1242 or contracts covered by each account for the three most recent calendar  
1243 years for which information is available preceding the year in which  
1244 the insurer became insolvent or, in the case of an assessment with  
1245 respect to an impaired insurer, the three most recent calendar years for  
1246 which information is available preceding the year in which the insurer  
1247 became impaired bear to such premiums received on business in this  
1248 state for those calendar years by all assessed member insurers.

1249 (3) Assessments for funds to meet the requirements of the  
1250 association with respect to an impaired or insolvent insurer shall not  
1251 be authorized or called until necessary to implement the purposes of  
1252 sections 38a-858 to 38a-875, inclusive. Classification of assessments  
1253 under subsection (b) of this section and computation of assessments  
1254 under this subsection shall be made with a reasonable degree of  
1255 accuracy, recognizing that exact determinations may not always be  
1256 possible. The association shall notify each member insurer of its  
1257 anticipated pro-rata share of an authorized assessment that is not yet  
1258 called not later than one hundred eighty days after the association  
1259 authorizes the assessment.

1260 Sec. 15. Subsection (h) of section 38a-866 of the general statutes is  
1261 repealed and the following is substituted in lieu thereof (*Effective*  
1262 *October 1, 2011*):

1263 (h) (1) Each insurer paying an assessment under [sections 38a-858 to  
1264 38a-875, inclusive,] this section may offset, for an assessment paid in  
1265 the income year commencing prior to January 1, 2012, one hundred per  
1266 cent and for an assessment paid in income years commencing on or  
1267 after January 1, 2012, fifty per cent of the amount of such assessment  
1268 against its premium tax liability to this state under chapter 207. Such  
1269 offset shall be taken over a period of the five successive tax years

1270 following the year of payment of the assessment, at the rate of twenty  
1271 per cent per year of [the assessment paid to the association] such offset.  
1272 Each insurer to which has been refunded by the association, pursuant  
1273 to subsection (f) of this section, all or a portion of an assessment  
1274 previously paid to the association by the insurer shall be required to  
1275 pay to the Department of Revenue Services an amount equal to the  
1276 total amount that has been claimed as an offset against the premiums  
1277 tax liability on the premiums tax return or returns, as the case may be,  
1278 filed by such insurer and that is attributable to such refunded  
1279 assessment, provided the amount required to be paid to said  
1280 department shall not exceed the amount of the refunded assessment. If  
1281 the amount of the refunded assessment exceeds the total amount that  
1282 has been claimed as an offset against the premiums tax liability on the  
1283 premiums tax return or returns filed by such insurer and that is  
1284 attributable to such refunded assessment, such excess may not be  
1285 claimed as an offset against the premiums tax liability on a premiums  
1286 tax return or returns filed by such insurer or, if the offset has been  
1287 transferred to another person pursuant to subdivision (2) of this  
1288 subsection, by such other person. For purposes of this subdivision, if  
1289 the offset has been transferred to another person pursuant to  
1290 subdivision (2) of this subsection, the total amount that has been  
1291 claimed as an offset against the premiums tax liability on the  
1292 premiums tax return or returns filed by such insurer includes the total  
1293 amount that has been claimed as an offset against the premiums tax  
1294 liability on the premiums tax return or returns filed by such other  
1295 person. The association shall promptly notify the Commissioner of  
1296 Revenue Services of the name and address of the insurers to which  
1297 such refunds have been made, the amount of such refunds, and the  
1298 date on which such refunds were mailed to each such insurer. If the  
1299 amount that an insurer is required to pay to the Department of  
1300 Revenue Services has not been so paid on or before the forty-fifth day  
1301 after the date of mailing of such refunds, the insurer shall be liable for  
1302 interest on such amount at the rate of one per cent per month, or  
1303 fraction thereof, from such forty-fifth day to the date of payment.

1304 (2) An insurer, in this subdivision called "the transferor", may  
1305 transfer any offset provided under subdivision (1) of this subsection to  
1306 an affiliate, as defined in section 38a-1, of the transferor. Any such  
1307 transfer of the offset by the transferor, and any subsequent transfer or  
1308 transfers of the same offset, shall not affect the obligation of the  
1309 transferor to pay to the Department of Revenue Services any sums  
1310 which are acquired by refund from the association pursuant to  
1311 subsection (f) of this section and which are required to be paid to the  
1312 Department of Revenue Services pursuant to subdivision (1) of this  
1313 subsection. Such offset may be taken by any transferee only against the  
1314 transferee's premium tax liability to this state under chapter 207. The  
1315 Commissioner of Revenue Services shall not allow such offset to a  
1316 transferee against its premium tax liability unless the transferor, the  
1317 affiliate to which the offset was originally transferred, each subsequent  
1318 transferor and each subsequent transferee have filed such information  
1319 as may be required on forms provided by said commissioner with  
1320 respect to any such transfer or transfers on or before the due date of  
1321 the premium tax return on which such offset would have been taken  
1322 by the transferor, if no transfer had been made by the transferor.

1323 Sec. 16. Subsection (c) of section 38a-867 of the general statutes is  
1324 repealed and the following is substituted in lieu thereof (*Effective*  
1325 *October 1, 2011*):

1326 (c) The plan of operation shall, in addition to requirements  
1327 enumerated elsewhere in sections 38a-858 to 38a-875, inclusive, as  
1328 amended by this act: (1) Establish procedures for handling the assets of  
1329 the association; (2) establish the amount and method of reimbursing  
1330 members of the board of directors under section 38a-864, as amended  
1331 by this act; (3) establish regular places and times for meetings  
1332 including telephone conference calls of the board of directors; (4)  
1333 establish procedures for records to be kept of all financial transactions  
1334 of the association, its agents and the board of directors; (5) establish the  
1335 procedures whereby selections for the board of directors will be made  
1336 and submitted to the commissioner; (6) establish any additional

1337 procedures for assessments under section 38a-866, as amended by this  
1338 act; (7) contain additional provisions necessary or proper for the  
1339 execution of the powers and duties of the association.

1340 Sec. 17. Section 38a-868 of the general statutes is repealed and the  
1341 following is substituted in lieu thereof (*Effective October 1, 2011*):

1342 (a) In addition to the duties and powers enumerated elsewhere in  
1343 sections 38a-858 to 38a-875, inclusive, as amended by this act, [(a)  
1344 The] the commissioner shall: (1) Notify the board of directors of the  
1345 existence of an impaired insurer not later than three days after a  
1346 determination of impairment is made or he receives notice of  
1347 impairment; (2) upon request of the board of directors, provide the  
1348 association with a statement of the premiums in the appropriate states  
1349 for each member insurer; and (3) when an impairment is declared and  
1350 the amount of the impairment is determined, serve a demand upon the  
1351 impaired insurer to make good the impairment within a reasonable  
1352 time. Notice to the impaired insurer shall constitute notice to its  
1353 shareholders, if any. The failure of the insurer to promptly comply  
1354 with such demand shall not excuse the association from the  
1355 performance of its powers and duties under sections 38a-858 to 38a-  
1356 875, inclusive, as amended by this act. [(4) in any liquidation or  
1357 rehabilitation proceeding involving a domestic insurer, be appointed  
1358 as the liquidator or rehabilitator. If a foreign or alien member insurer is  
1359 subject to a liquidation proceeding in its domiciliary jurisdiction or  
1360 state of entry, the commissioner shall be appointed conservator.]

1361 (b) The commissioner may suspend or revoke, after notice and  
1362 hearing, the certificate of authority issued by this state to any member  
1363 insurer that fails to pay an assessment when due or fails to comply  
1364 with the plan of operation. As an alternative, the commissioner may  
1365 levy a forfeiture on any member insurer that fails to pay an assessment  
1366 when due. Such forfeiture shall not exceed five per cent of the unpaid  
1367 assessment per month, but no forfeiture shall be less than five hundred  
1368 dollars per month.

1369 (c) Any final action of the board of directors or the association may  
1370 be appealed to the commissioner by any member insurer if such  
1371 appeal is taken within thirty days of the final action being appealed.  
1372 Any final action or order of the commissioner shall be subject to  
1373 judicial review in the superior court for the judicial district of Hartford.

1374 (d) The liquidator, rehabilitator or conservator of any impaired or  
1375 insolvent insurer may notify all interested persons of the effect of  
1376 sections 38a-858 to 38a-875, inclusive, as amended by this act.

1377 Sec. 18. Section 38a-871 of the general statutes is repealed and the  
1378 following is substituted in lieu thereof (*Effective October 1, 2011*):

1379 (a) Nothing in sections 38a-858 to 38a-875, inclusive, as amended by  
1380 this act, shall be construed to reduce the liability for unpaid  
1381 assessments of the insureds of an impaired or insolvent insurer  
1382 operating under a plan with assessment liability.

1383 (b) Records shall be kept of all negotiations and meetings in which  
1384 the association or its representatives are involved to discuss the  
1385 activities of the association in carrying out its powers and duties under  
1386 section 38a-865, as amended by this act. Records of such negotiations  
1387 or meetings shall be made public only upon the termination of a  
1388 liquidation, rehabilitation, or conservation proceeding involving the  
1389 impaired or insolvent insurer, upon the termination of the impairment  
1390 or insolvency of the insurer, or upon the order of a court of competent  
1391 jurisdiction. Nothing in this subsection shall limit the duty of the  
1392 association to render a report of its activities under section 38a-872.

1393 (c) For the purpose of carrying out its obligations under sections  
1394 38a-858 to 38a-875, inclusive, as amended by this act, the association  
1395 shall be deemed to be a creditor of the impaired or insolvent insurer to  
1396 the extent of assets attributable to covered policies reduced by any  
1397 amounts to which the association is entitled as subrogee pursuant to  
1398 subdivision [(i)] (k) of section 38a-865. All assets of the impaired or  
1399 insolvent insurer attributable to covered policies shall be used to

1400 continue all covered policies and pay all contractual obligations of the  
1401 impaired or insolvent insurer as required by sections 38a-858 to 38a-  
1402 875, inclusive, as amended by this act. Assets attributable to covered  
1403 policies, as used in this subsection, is that proportion of the assets  
1404 which the reserves that should have been established for such policies  
1405 bear to the reserve that should have been established for all policies of  
1406 insurance written by the impaired or insolvent insurer.

1407 (d) As a creditor of the impaired or insolvent insurer pursuant to  
1408 subsection (c) of this section, the association shall be entitled to receive  
1409 from time to time a disbursement of assets, as such assets become  
1410 available, from the marshaled assets of the impaired or insolvent  
1411 insurer, as credits against the contractual obligations of the association  
1412 under sections 38a-858 to 38a-875, inclusive, as amended by this act. If  
1413 the liquidator has not made an application to the receivership court,  
1414 within one hundred twenty days after a final determination of  
1415 insolvency of a member insurer, for the approval of a proposal to  
1416 disburse assets to the association, the association may make an  
1417 application to such court for the approval of its own proposal to  
1418 disburse such assets.

1419 [(d)] (e) (1) Prior to the termination of any liquidation, rehabilitation  
1420 or conservation proceeding, the court may take into consideration the  
1421 contributions of the respective parties, including the association, the  
1422 shareholders and [policyowners] policy owners of the impaired or  
1423 insolvent insurer, and any other party with a bona fide interest, in  
1424 making an equitable distribution of the ownership rights of such  
1425 impaired or insolvent insurer. In such a determination, consideration  
1426 shall be given to the welfare of the [policyholders] policy owners of the  
1427 continuing or successor insurer. (2) No distribution to stockholders, if  
1428 any, of an impaired or insolvent insurer shall be made until and unless  
1429 the total amount of [assessments levied by] valid claims of the  
1430 association for funds expended by the association to carry out its  
1431 duties under section 38a-865, as amended by this act, with respect to  
1432 such insurer, plus interest at a rate to be determined by the liquidator,

1433 has been fully recovered by the [commission] association.

1434 [(e) It shall be a prohibited unfair trade practice and a violation of  
1435 section 38a-815 for any person to make use in any manner of the  
1436 protection afforded by sections 38a-858 to 38a-875, inclusive, in the  
1437 solicitation, negotiation, procurement or effectuation of insurance  
1438 provided, this subsection shall not apply to the distribution of any  
1439 publication approved by the commissioner and describing the general  
1440 purposes and current limitations of sections 38a-858 to 38a-874,  
1441 inclusive. Violations of this section shall be subject to the provisions of  
1442 section 38a-817.]

1443 (f) (1) [If an order for liquidation or rehabilitation of an insurer  
1444 domiciled in this state has been entered, the receiver appointed under  
1445 such order shall have a right to recover on behalf of the insurer, from  
1446 any affiliate that controlled it, the amount of distributions, other than  
1447 stock dividends paid by the insurer on its capital stock, made at any  
1448 time during the five years preceding the petition for liquidation or  
1449 rehabilitation subject to the limitations of subdivisions (2) to (4),  
1450 inclusive. (2) No such dividend shall be recoverable if the insurer  
1451 shows that when paid the distribution was lawful and reasonable, and  
1452 that the insurer did not know and could not reasonably have known  
1453 that the distribution might adversely affect the ability of the insurer to  
1454 fulfill its contractual obligations. (3) Any person who was an affiliate  
1455 that controlled the insurer at the time the distributions were paid shall  
1456 be liable up to the amount of distributions he received. Any person  
1457 who was an affiliate that controlled the insurer at the time the  
1458 distributions were declared shall be liable up to the amount of  
1459 distributions he would have received if they had been paid  
1460 immediately. If two persons are liable with respect to the same  
1461 distributions, they shall be jointly and severally liable. (4) The  
1462 maximum amount recoverable under this subsection shall be the  
1463 amount needed in excess of all other available assets of the impaired  
1464 insurer to pay the contractual obligations of the impaired insurer. (5) If  
1465 any person liable under subdivision (3) of this subsection is insolvent,

1466 all its affiliates that controlled it at the time the dividend was paid shall  
1467 be jointly and severally liable for any resulting deficiency in the  
1468 amount recovered from the insolvent affiliate.] No person, including  
1469 an insurer, agent or affiliate of an insurer, shall make, publish,  
1470 disseminate or place before the public, or cause directly or indirectly to  
1471 be made, published, disseminated or placed before the public, in any  
1472 form, manner or method any written or oral advertisement,  
1473 announcement or statement that uses the existence of the association to  
1474 sell, solicit or induce the purchase of any insurance covered by the  
1475 association pursuant to sections 38a-858 to 38a-875, inclusive, as  
1476 amended by this act.

1477 (2) (A) Not later than April 1, 2012, the association shall prepare and  
1478 submit to the commissioner for the commissioner's approval a  
1479 summary document that complies with subdivision (3) of this  
1480 subsection and describes the general purposes of and restrictions  
1481 imposed by sections 38a-858 to 38a-875, inclusive, as amended by this  
1482 act. Upon the commissioner's approval of such document, the  
1483 association shall notify its member insurers of the availability of such  
1484 document and the requirements set forth in subparagraph (B) of this  
1485 subdivision. The association shall revise such document as necessary  
1486 to maintain accuracy.

1487 (B) Beginning sixty days after the date the commissioner approves  
1488 the summary document, no member insurer shall deliver a policy or  
1489 contract unless such document accompanies such policy or contract at  
1490 the time of delivery to the policy or contract owner. Such document  
1491 shall also be available upon request by a policy or contract owner.  
1492 Such document shall not be a guarantee that the policy, contract or  
1493 policy or contract owner is covered in the event of the impairment of  
1494 insolvency of a member insurer. The failure of an insurer to provide  
1495 such document shall not afford any rights to a policy or contract owner  
1496 greater than those specified in sections 38a-858 to 38a-875, inclusive, as  
1497 amended by this act.

1498       (3) The summary document set forth in subdivision (2) of this  
1499 subsection shall contain a clear and conspicuous disclaimer on its face.  
1500 The commissioner shall establish the form and content of such  
1501 disclaimer, which shall include: (A) The name and address of the  
1502 association and the Insurance Department; (B) a prominent warning  
1503 that the association may not cover the policy or contract and if the  
1504 association does cover the policy or contract, such coverage will be  
1505 subject to substantial limitations and exclusions and conditioned on  
1506 the policy or contract owner's continued residence in this state; (C) a  
1507 statement of the types of coverage for which the association provides  
1508 coverage; (D) a statement that the insurer and its agents are prohibited  
1509 by law from using the existence of the association to sell, solicit or  
1510 induce the purchase of any insurance; (E) a statement that the policy or  
1511 contract owners should not rely on coverage under the association  
1512 when selecting an insurer; (F) an explanation of the rights available to  
1513 the policy or contract owner and the procedures for filing a complaint  
1514 alleging a violation of any provision of sections 38a-858 to 38a-875,  
1515 inclusive, as amended by this act; and (G) any other information as  
1516 directed by the commissioner, including, but not limited to, sources for  
1517 information about the financial condition of insurers, provided such  
1518 information is not proprietary and is subject to disclosure pursuant to  
1519 section 1-210.

1520       (4) A member insurer shall retain evidence of compliance, as  
1521 established by the commissioner, with subdivision (2) of this  
1522 subsection for as long as the policy or contract for which the summary  
1523 document was delivered remains in effect.

1524       Sec. 19. Subparagraph (J) of subdivision (2) of section 38a-865 of the  
1525 general statutes is repealed and the following is substituted in lieu  
1526 thereof (*Effective October 1, 2011*):

1527       (J) When proceeding under this subdivision with respect to a policy  
1528 or contract carrying guaranteed minimum interest rates, the  
1529 association shall assure the payment or crediting of a rate of interest

1530 consistent with subparagraph (C) of subdivision (2) of subsection [(f)]  
1531 (d) of section 38a-860, as amended by this act.

1532 Sec. 20. Subdivision (16) of section 38a-862 of the general statutes is  
1533 repealed and the following is substituted in lieu thereof (*Effective*  
1534 *October 1, 2011*):

1535 (16) "Premiums" means amounts or considerations, by whatever  
1536 name called, received on covered policies or contracts less premiums,  
1537 considerations and deposits returned thereon, and less dividends and  
1538 experience credits thereon. "Premiums" does not include (A) any  
1539 amounts or considerations received for any policies or contracts or for  
1540 the portions of any policies or contracts for which coverage is not  
1541 provided under subsection [(f)] (d) of section 38a-860, as amended by  
1542 this act, except that assessable premium shall not be reduced on  
1543 account of subparagraph (C) of subdivision (2) of subsection [(f)] (d) of  
1544 section 38a-860, as amended by this act, relating to interest limitations,  
1545 and subdivision (2) of subsection [(g)] (e) of section 38a-860, as  
1546 amended by this act, relating to limitations with respect to any one  
1547 individual, any one participant and any one contract owner; provided  
1548 that "premiums" shall not include any premiums in excess of five  
1549 million dollars on any unallocated annuity contract not issued under a  
1550 governmental retirement benefit plan established under Section 401,  
1551 403(b) or 457 of the Internal Revenue Code of 1986, or any subsequent  
1552 corresponding internal revenue code of the United States, as from time  
1553 to time amended, or (B) with respect to multiple nongroup policies of  
1554 life insurance owned by one owner, whether the policy owner is an  
1555 individual, firm, corporation or other person, and whether the persons  
1556 insured are officers, managers, employees or other persons, premiums  
1557 in excess of five million dollars with respect to such policies or  
1558 contracts, regardless of the number of policies or contracts held by the  
1559 owner;

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>October 1, 2011</i>	38a-838
Sec. 2	<i>October 1, 2011</i>	38a-839
Sec. 3	<i>October 1, 2011</i>	38a-840
Sec. 4	<i>October 1, 2011</i>	38a-841
Sec. 5	<i>October 1, 2011</i>	38a-842
Sec. 6	<i>October 1, 2011</i>	38a-844
Sec. 7	<i>October 1, 2011</i>	38a-845
Sec. 8	<i>October 1, 2011</i>	38a-851
Sec. 9	<i>October 1, 2011</i>	38a-860
Sec. 10	<i>October 1, 2011</i>	38a-863
Sec. 11	<i>October 1, 2011</i>	38a-864
Sec. 12	<i>October 1, 2011</i>	38a-865(d)
Sec. 13	<i>October 1, 2011</i>	38a-865(n)
Sec. 14	<i>October 1, 2011</i>	38a-866(a) to (c)
Sec. 15	<i>October 1, 2011</i>	38a-866(h)
Sec. 16	<i>October 1, 2011</i>	38a-867(c)
Sec. 17	<i>October 1, 2011</i>	38a-868
Sec. 18	<i>October 1, 2011</i>	38a-871
Sec. 19	<i>October 1, 2011</i>	38a-865(2)(J)
Sec. 20	<i>October 1, 2011</i>	38a-862(16)

**Statement of Purpose:**

To update provisions of the Connecticut Insurance Guaranty Association Act and the Connecticut Life and Health Insurance Guaranty Association Act to reflect updates to the National Association of Insurance Commissioners' guaranty association model acts.

*[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.]*