

HOUSE No. 922

The Commonwealth of Massachusetts

PRESENTED BY:

Russell E. Holmes

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to the Massachusetts life and health insurance guaranty association law.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Russell E. Holmes</i>	<i>6th Suffolk</i>	<i>1/18/2013</i>

HOUSE No. 922

By Mr. Holmes of Boston, a petition (accompanied by bill, House, No. 922) of Russell E. Holmes relative to the Massachusetts life and health insurance guaranty association law. Financial Services.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act relative to the Massachusetts life and health insurance guaranty association law.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 146B of chapter 175 of the General Laws, as appearing in the 2010
2 Official Edition, is hereby amended by striking Subsection (2) and replacing it with the
3 following:- (2) As used in this section the following words shall, unless the context otherwise
4 requires, have the following meanings:—

5 “Account”, any of the three accounts created under subsection (6).

6 “Association”, the Massachusetts Life and Health Insurance Guaranty Association
7 created under subsection (6).

8 “Basic Hospital Expense Insurance”, coverage for services rendered while confined in a
9 hospital.

10 “Basic Medical-Surgical Expense Insurance”, coverage for in-hospital or surgical health
11 services rendered by a physician or other covered health care provider.

12 “Benefit plan”, a specific employee, union or association of natural persons benefit
13 plan. “Contractual obligation”, any obligation under a policy or contract or portion thereof for
14 which coverage is provided under subsection (4).

15 “Covered policy or contract”, any policy, contract or group certificate within the scope of
16 this section as provided in subsection (4).

17 “Disability Income Insurance”, coverage providing weekly or monthly benefits to replace
18 income that is lost due to disability arising from accident and/or sickness. It also includes

business expense insurance and business buy-out insurance policies that condition receipt of benefits upon the disability of the insured. “Impaired insurer”, a member insurer which, is not an insolvent insurer, and (a) is deemed by the commissioner to be potentially unable to meet its obligations, or (b) is placed under an order of rehabilitation or conservation by a court of competent jurisdiction.

“Insolvent insurer”, a member insurer which is placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency.

“Long term Care Insurance”, coverage as described in Section 1 of Ch. 176U.

“Major Medical Expense Insurance”, coverage for inpatient and outpatient health care services.

“Member insurer”, any insurer licensed or which holds a certificate of authority to transact in the commonwealth any kind of insurance for which coverage is provided under subsection (4) and any insurer whose license or certificate of authority to transact in the commonwealth such insurance may have been suspended, revoked, not renewed, or voluntarily withdrawn after the effective date of this section, other than a (a) fraternal benefit society, (b) mutual protective association, (c) mutual assessment company or other entity that operates on an assessment basis, (d) medical service corporation, (e) hospital service corporation, (f) health maintenance organization, (g) dental service corporation, (h) optometric service corporation, (i) mandatory state pooling plan, (j) insurance exchange, or (k) any other entity similar to any of the above.

“NAIC”, the National Association of Insurance Commissioners or its successor organization.

“Owner” of a policy or contract and “policy owner” and “contract owner”, the person who is identified as the legal owner under the terms of the policy or contract or who is otherwise vested with legal title to the policy or contract through a valid assignment completed in accordance with the terms of the policy or contract and properly recorded as the owner on the books of the insurer. The terms owner, contract owner and policy owner do not include persons with a mere beneficial interest in a policy or contract. “Person”, any individual, corporation, limited liability company, partnership, association governmental body or entity or voluntary organization.

“Premiums”, amounts received on covered policies or contracts, less premiums, considerations and deposits returned thereon, and less dividends and experience credits thereon. Premiums does not include any amount received for any policies or contracts or for the portions of any policies or contracts for which coverage is not provided under subsection (4) (B), except that assessable premiums shall not be reduced on account of subsection (4) (B) (2) (d) relating to

interest limitations and subsection (4) (B) (3) relating to limitations with respect to one individual and one contract owner. Premiums shall not include:

With respect to multiple non-group policies of life insurance owned by one owner, whether the policy owner is an individual, firm, corporation or other person, and whether the persons insured are officers, managers, employees or other persons, premiums in excess of \$5,000,000 with respect to these policies or contracts, regardless of the number of policies or contracts held by the owner.

“Principal Place of Business” of a plan sponsor or a person other than a natural person is the single state in which the natural persons who establish policy for the direction, control and coordination of the operations of the entity as a whole primarily exercise that function, determined by the association in its reasonable judgment by considering the following factors:

(a) The state in which the primary executive and administrative headquarters of the entity is located;

(b) The state in which the principal office of the chief executive officer of the entity is located;

(c) The state in which the board of directors (or similar governing person or persons) of the entity conducts the majority of its meetings;

(d) The state in which the executive or management committee of the board of directors (or similar governing person or persons) of the entity conducts the majority of its meetings;

(e) The state from which management of the overall operations of the entity is directed; and

(f) In the case of a benefit plan sponsored by affiliated companies comprising a consolidated corporation, the state in which the holding company or controlling affiliate has its principal place of business as determined using the above factors.

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

In the case of a benefit plan established or maintained by two (2) or more employers or jointly by one or more employers and one or more employee organizations, the principal place of business of a plan sponsor of such a benefit plan shall be deemed to be the principal place of business of the association, committee, joint board of trustees or other similar group of representatives of the parties who establish or maintain the benefit plan that, in lieu of a specific or clear designation of a principal place of business, shall be deemed to be the principal place of

business of the employer or employer organization that has the largest investment in the benefit plan in question.

“Receivership court”, means the court in the insolvent or impaired insurer’s state having jurisdiction over the conservation, rehabilitation or liquidation of the insurer.

“Published monthly average”, the monthly average of the composite yield on seasoned corporate bonds as:-(a) published by Moody’s Investors Service, Inc., or any successor thereto, or (b) established by regulation promulgated by the commissioner setting forth a substantially similar average in the event that such monthly average is no longer so published.

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

“Structured settlement annuity”, means an annuity purchased in order to fund periodic payments for a plaintiff or other claimant in payment for or with respect to personal injury suffered by the plaintiff or other claimant.

“Supplemental contract”, any agreement entered into for the distribution of policy or contract

SECTION 2. Subsection (2) of Section 146B of chapter 175 of the General Laws, as appearing in the 2010 Official Edition, is hereby further amended by inserting after the word “corporation”, in line 33, the following:- , limited liability company, government body or entity

SECTION 3. Subsection (2) of Section 146B of chapter 175 of the General Laws, as appearing in the 2010 Official Edition, is hereby further amended by striking out, in lines 39 through 41, the words “paragraph (B) of subsection (4), except for subclause (d) of clause (2) of said paragraph (B) and clause (3) of paragraph (B)” and inserting in place thereof the following:- subsection (4)(B), except that assessable premiums shall not be reduced on account of subsection (4)(B)(2)(d) relating to interest limitations and subsection (4)(B)(3) relating to limitations with respect to one individual and one contract owner. Premiums shall not include, with respect to multiple non-group policies of life insurance owned by one owner, whether the policy owner is an individual, firm, corporation or other person, and whether the persons insured are officers, managers, employees or other persons, premiums in excess of \$5,000,000 with respect to these policies or contracts, regardless of the number of policies or contracts held by the owner.

SECTION 4. Subsection 2 of Section 146B of chapter 175 of the General Laws, as appearing in the 2010 Official Edition, is hereby further amended by inserting after the word “business.” in line 52 the following:- Citizens of the United States that are either (a) residents of foreign countries, or (b) residents of United States possessions, territories or protectorates that do not have an association similar to the Association created by this section, shall be deemed residents of the state of domicile of the insurer that issued the policies or contracts.

SECTION 5. Subsection 4(A) of Section 146B of chapter 175 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking out, in lines 70 through 77, the words “To persons who are owners of such policies or contracts, or are insureds or annuitants under such policies or contracts, and who (a) are residents, or (b) are not residents, but only under all of the following conditions: (i) the insurer which issued such policies or contracts is domiciled in the commonwealth, (ii) such insurers never held a license or certificate of authority in the states in which such persons reside, (iii) such states have a life and health insurance guaranty association, and (iv) such persons are not eligible for coverage by such guaranty association” and inserting in place thereof the following:- To persons who are owners of or certificate holders under such policies or contracts (other than structured settlement annuities), and in each case who (a) are residents, or (b) are not residents, but only under all of the following conditions: (i) the insurers which issued such policies or contracts are domiciled in the commonwealth, (ii) the states in which the persons reside have a life and health insurance guaranty association, and (iii) such persons are not eligible for coverage by such guaranty association due to the fact that the insurer was not licensed in the state at the time specified in the state’s guaranty association law

SECTION 6. Subsection (4)(A) of Section 146B of chapter 175 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by inserting, after the words “guaranty association law,” in line 77 the following paragraphs:- (3) For structured settlement annuities, subsection (4)(A)(1) and subsection (4)(A)(2) shall not apply, and this section shall (except as provided in subsection (4)(A)(4) and subsection (4)(A)(5)) provide coverage to a person who is a payee under a structured settlement annuity or beneficiary of a payee if the payee is deceased), if the payee:

(a) is a resident regardless of where the contract owner resides, or

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

(i)(I) the contract owner of the structured settlement is a resident; or

(II) the contract owner of the structured settlement is not a resident; but

(A) the insurer that issued the structured settlement annuity is domiciled in the commonwealth; and

(B) the states in which the persons reside have a life and health insurance guaranty association; and

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

(4) This section shall not provide coverage to a person who is a payee (or beneficiary) of a contract owner resident of this commonwealth, if the payee (or beneficiary) is afforded any coverage by the association of another state.

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

SECTION 7. Subsection 4(B) of Section 146B of chapter 175 of the General Laws, as appearing in the 2010 Official Edition, is hereby further amended by inserting after the word “based” in line 94 the following:- or the interest rate, crediting rate or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value

SECTION 8. Subsection 4(B) of Section 146B of chapter 175 of the General Laws, as appearing in the 2010 Official Edition, is hereby further amended by inserting after the words “the commonwealth.”, in line 120, the following:- (h) any policy or contract and any portion of a policy or contract to the extent that the assessments required by subsection (9) with respect to the policy or contract are pre-empted by federal or state law;

(i) any obligation that does not arise under the express written terms of the policy or contract issued to the contract owner or policy owner, including without limitation:

(i) claims based on marketing materials;

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

(iii) misrepresentation of or regarding policy benefits;

(iv) extra-contractual claims, such as claims relating to bad faith in the payment of claims, punitive or exemplary damages or attorneys fees and costs; or

(v) a claim for penalties or consequential or incidental damages.

(j) Any portion of a policy or contract to the extent it provides for interest or other changes in value to be determined by the use of an index or other external reference stated in the policy or contract but which have not been credited to the policy or contract, or as to which the policy or contract owner's rights are subject to forfeiture, as of the date the member insurer becomes an impaired or insolvent insurer under this section, whichever is earlier. If a policy's or contract's interest or changes in value are credited less frequently than annually, then for the purposes of determining the values that have been credited and are not subject to forfeiture under this subsection (4)(B)(2)(j), the interest or change in value determined by using the procedures defined in the policy or contract will be credited as if the contractual date of crediting interest or changing values was the date of impairment or insolvency, whichever is earlier, and will not be subject to forfeiture.

(k) a policy or contract providing any hospital, medical, prescription drug or other health care benefits pursuant to Part C or Part D of Subchapter XVIII, Chapter 7 of Title 42 of the United States Code (commonly known as Medicare Part C&D) or any regulation issued pursuant thereto.

SECTION 9. Subsection 4(B) of Section 146B of chapter 175 of the General Laws, as appearing in the 2010 Official Edition, is hereby further amended by inserting after the word "life" in line 125 the following:- regardless of the number of policies or contracts

SECTION 10. Subsection 4(B) of Section 146B of chapter 175 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking out, in lines 128 through 135, the words "(ii) one hundred thousand dollars in health insurance benefits, including any net cash surrender and net cash withdrawal values; (iii) one hundred thousand dollars in the present value of annuity benefits, including net cash surrender and net cash withdrawal values; but in no event shall the association's liability exceed three hundred thousand dollars in the aggregate for all life insurance, health insurance and annuity benefits, including net cash surrender and net cash withdrawal values" and inserting in place thereof the following:-

(ii) In health insurance benefits:

(I) \$100,000 for coverages not defined as disability income insurance or basic hospital expense insurance, basic medical – surgical insurance, major medical expense insurance or long term care insurance, including any cash surrender and net cash withdrawal values.

(II) \$300,000 for disability income insurance, and \$300,000 for long term care insurance.

(III) \$500,000 for basic hospital expense insurance, basic medical - surgical expense insurance or major medical expense insurance.

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

SECTION 11. Subsection(4)(B) of Section 146B of chapter 175 of the General Laws, as appearing in the 2010 Official Edition, is hereby further amended by inserting after sub-clause (b) the following sub-clauses:- (c) with respect to each payee of a structured settlement annuity (or beneficiary or beneficiaries of the payee if deceased), \$250,000 in present value of annuity benefits in the aggregate, including net cash surrender and net cash withdrawal values;

(d) However, in no event shall the association be obligated to cover more than (i) an aggregate of \$300,000 in benefits with respect to any one life under subclauses (b) and (c) except with respect to benefits for basic hospital expense insurance, basic medical-surgical insurance or major medical expense insurance under subclause (b)(ii)(III), in which case the aggregate liability of the association shall not exceed \$500,000 with respect to any one individual, or (ii) with respect to one owner of multiple non-group policies of life insurance, whether the policy owner is an individual, firm, corporation or other person, and whether the persons insured are officers, managers, employees or other persons, more than \$5,000,000 in benefits, regardless of the number of policies and contracts held by the owner.

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

SECTION 12. Subsection (4) of Section 146B of chapter 175 of the General Laws is hereby further amended by inserting after paragraph (C) the following paragraph:-

(D) In performing its obligations to provide coverage under subsection (8), the association shall not be required to guarantee, assume, reinsure, or perform, or cause to be guaranteed, assumed, or reinsured, or performed , the contractual obligations of the impaired or insolvent insurer under a covered policy or contract that do not materially affect the economic values or economic benefits of the covered policy or contract.

SECTION 13. Subsection (5) of Section 146B of chapter 175 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking out subsection (5) and inserting in place thereof the following subsection:- (5) This section shall be construed to effect the purpose under subsection (3).

SECTION 14. Section 146B of chapter 175 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking out subsection 8(A) and inserting in place thereof the following subsection:- (8)(A) If a member is an impaired insurer, the association may, in its discretion, and subject to any conditions imposed by the association that do not impair the contractual obligations of the impaired insurer and that are approved by the commissioner,

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

(2) Provide such monies, pledges, loans, guarantees or other means as are proper to effectuate subsection (8)(A)(1) and assure payment of the contractual obligations of the impaired insurer pending action under subsection (8)(A)(1).

SECTION 15. Section 146B of chapter 175 of the General Laws is hereby amended by striking out subsection 8(B).

SECTION 16. Section 146B of chapter 175 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking out, in line 226, “(C)” and inserting in place thereof the following:- (B)

SECTION 17. Section 146B of chapter 175 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking out, in line 236, “(D)” and inserting in place thereof the following:- (C)

SECTION 18. Section 146B of chapter 175 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking out, in lines 237 through 239, the words “(D)(1) When proceeding under subclause (b) of clause (1) of paragraph (B) or clause (2) of paragraph (C), the association shall, with respect to only life and health insurance policies”, and inserting in place thereof the following:- (C)(1) When proceeding under subsection (8)(A) or subsection (8)(B) clause (2), the association shall, with respect to life and health insurance policies and annuities:

SECTION 19. Said subsection (8) of Section 146B of chapter 175 of the General Laws, as appearing in the 2010 Official Edition, is hereby further amended by striking out, in lines 258 through 271, “(ii) make diligent efforts to provide all known insureds, or owners, if other than the insureds, and group policyholders with respect to group policies, thirty days notice of the termination of the benefits provided; and (iii) with respect to individual policies, make available to each known insured, or owner if other than the insured, and with respect to an individual formerly insured under a group policy who is not eligible for replacement group coverage, make available substitute coverage on an individual basis in accordance with the provisions of clause (2) of paragraph (D), if such insured or owner had a right under law or under the terminated policy to convert coverage to individual coverage or to continue an individual policy in force until a specified age or for a specified time, during which the insurer had no right unilaterally to make changes in any provision of the policy or had a right only to make changes in premium by class” and inserting in place thereof the following:-

(ii) make diligent efforts to provide all known insureds, annuitants, or owners, if other than the insureds or annuitants, and group policyholders with respect to group policies, thirty days notice of the termination of the benefits provided; and (iii) with respect to individual

policies, make available to each known insured, annuitant or owner if other than the insured or annuitant, and with respect to an individual formerly insured under a group policy who is not eligible for replacement group coverage, make available substitute coverage on an individual basis in accordance with the provisions of clause (2) of paragraph (C), if such insured or owner had a right under law or under the terminated policy to convert coverage to individual coverage or to continue an individual policy in force until a specified age or for a specified time, during which the insurer had no right unilaterally to make changes in any provision of the policy or had a right only to make changes in premium by class.

SECTION 20. Section 146B of chapter 175 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking out, in line 272, "(D)" and inserting in place thereof the following:- (C)

SECTION 21. Section 146B of chapter 175 of the General Laws, as appearing in the 2010 Official Edition, is hereby further amended by inserting after the word "association.", in lines 303 through 304, the following:- (6) When proceeding under subsection (8)(C)(2) with respect to a policy or contract carrying minimum guaranteed interest rates, the association shall assure the payment or crediting of a rate of interest consistent with subsection (4)(B)(2)(d).

SECTION 22. Section 146B of chapter 175 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking out, in line 305, "(E)" and inserting in place thereof the following:- (D)

SECTION 23. Section 146B of chapter 175 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking out, in line 312, "(F)" and inserting in place thereof the following:- (E)

SECTION 24. Section 146B of chapter 175 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking out, in line 316 through 317, the words "(G) In carrying out its duties under paragraphs (B) and (C) of this subsection" and inserting in place thereof the following:- (F) In carrying out its duties under paragraph (B) of this subsection

SECTION 25. Section 146B of chapter 175 of the General Laws, as appearing in the 2010 Official Edition, is hereby further amended by inserting after the word "value.", in line 329, the following:- In addition, in the event of a temporary moratorium charge imposed by the receivership court on payment of cash values or policy loans, or any other right to withdraw funds held in conjunction with policies or contracts, out of assets of the impaired or insolvent insurer, the association may defer the payment of such values, policy loans or other rights by the association for a period of the moratorium or moratorium charge imposed by the receivership court, except for claims covered by the association to be paid in accordance with a hardship procedure established by the liquidator or rehabilitator and approved by the receivership court.

SECTION 26. Section 146B of chapter 175 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking out, in line 330 through 331, the words “(H) If the association fails to act within a reasonable period of time as provided in paragraphs (B), (C), and (D)” and inserting in place thereof the following:- (G) If the association fails to act within a reasonable period of time as provided in paragraphs (B) and (C)

SECTION 27. Section 146B of chapter 175 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking out, in line 334, “(I)” and inserting in place thereof the following:- (H)

SECTION 28. Section 146B of chapter 175 of the General Laws is hereby amended by striking out subsection 8(J), as appearing in the 2010 Official Edition, and inserting in place thereof the following subsection:-

(8)(I). The association, shall have standing to appear or intervene before any court or agency in the commonwealth with jurisdiction over an impaired or insolvent insurer concerning which the association is or may become obligated under this section or with jurisdiction over any person or property against whom the association may have rights through subrogation or otherwise. Such standing shall extend to all matters germane to the powers and duties of the association, including, but not limited to, proposals for reinsuring, modifying or guaranteeing the covered policies or contracts of the impaired or insolvent insurer and the determination of the covered policies or contracts and contractual obligations. The association shall also have the right to appear or intervene before a court or agency in any other state with jurisdiction over an impaired or insolvent insurer for which the association is or may become obligated or with jurisdiction over any person or property against whom the association may have rights through subrogation of the insurer’s policyholders.

SECTION 29. Section 146B of chapter 175 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking out, in line 352, “(K)” and inserting in place thereof the following:- (J)

SECTION 30. Section 146B of chapter 175 of the General Laws, as appearing in the 2010 Official Edition, is hereby further amended by inserting after the word “contracts.”, in lines 371 through 372, the following:- (4) If the preceding provisions of this paragraph are invalid or ineffective with respect to any person or claim for any reason, the amount payable by the Association with respect to the related coverage obligations shall be reduced by the amount realized by any other person with respect to the person or claim that is attributable to the policies (or portion thereof) covered by the Association.

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

SECTION 31. Section 146B of chapter 175 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking out, in lines 373 through 376, the words “(L) The association may: (i) enter into such contracts as are necessary or proper to carry out the provisions and purposes of this section; (ii) sue or be sued, including taking any legal actions necessary or proper for recovery of any unpaid assessments under subsection (9)”, and inserting in place thereof the following:- (K) In addition to the rights and powers elsewhere in this section, the association may: (i) enter into such contracts as are necessary or proper to carry out the provisions and purposes of this section; (ii) sue or be sued, including taking any legal actions necessary or proper for recovery of any unpaid assessments under subsection (9) and to settle claims or potential claims against it

SECTION 32. Subsection (8) of Section 146B of chapter 175 of the General Laws, as appearing in the 2010 Official Edition, is hereby further amended by inserting the following paragraphs:- (L) (1) (a) At any time within one hundred eighty (180) days of the date of the order of liquidation, the association may elect to succeed to the rights and obligations of the ceding member insurer that relate to policies or annuities covered, in whole or in part, by the association, in each case under one or more reinsurance contracts entered into by the insolvent insurer and its reinsurers and selected by the association. Any such assumption shall be effective as of the date of the order of liquidation. The election shall be effected by the association or the National Organization of Life and Health Insurance Guaranty Associations (NOLHGA) on its behalf sending written notice, return receipt requested, to the affected reinsurers.

(b) To facilitate the earliest practicable decision about whether to assume any of the contracts of reinsurance, and in order to protect the financial position of the estate, the receiver and each reinsurer of the ceding member insurer shall upon request make available to the association or NOLHGA on its behalf as soon as possible after commencement of formal delinquency proceedings (i) copies of in-force contracts of reinsurance and all related files and records relevant to the determination of whether such contracts should be assumed, and (ii) notices of any defaults under the reinsurance contracts or any known event or condition which with the passage of time could become a default under the reinsurance contracts.

(c) The following (i) through (iv) shall apply to reinsurance contracts so assumed by the association:

(i) The association shall be responsible for all unpaid premiums due under the reinsurance contracts for periods both before and after the date of the order of liquidation and shall be responsible for the performance of all other obligations to be performed after the date of the order of liquidation, in each case which relate to policies or annuities covered, in whole or in part, by the association. The association may charge policies or annuities covered in part by the association, through reasonable allocation methods, the cost for reinsurance in excess of the obligations of the association and shall provide notice and an accounting of these charges to the liquidator;

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

(A) The amount received by the association; and

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

(iii) Within thirty (30) days following the associations election, (the “election date”), the association and each reinsurer under contracts assumed by the association shall calculate the net balance due to or from the association under each reinsurance contract as of the election date with respect to policies or annuities covered, in whole or in part, by the association, which calculation shall give full credit to all items paid by either the insurer or its receiver or the reinsurer prior to the election date. The reinsurer shall pay the receiver any amounts due for losses or events prior to the date of the order of liquidation, subject to any set-off for premiums unpaid for periods prior to the date, and the association or reinsurer shall pay any remaining balance due the other, in each case within five (5) days of the completion of the aforementioned calculation. Any dispute over the amounts due to either the association or the reinsurer shall be resolved by arbitration pursuant to the terms of the affected reinsurance contracts or, if the contract contains no arbitration clause, as otherwise provided by law. If the receiver has received any amounts due the association pursuant to subclause(c)(ii), the receiver shall remit the same to the association as promptly as practicable.

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

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

(a) (i) Neither the association nor the reinsurer shall have any rights or obligations under reinsurance contracts that the association has the right to assume under subsection (8)(L)(1), whether for periods prior to or after the date of the order of liquidation; and

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

(b) Provided that once the association has elected to assume a reinsurance contract, the parties' rights and obligations shall be governed by subsection (8)(L)(1).

(3) If the association does not elect to assume a reinsurance contract by the election date pursuant to subsection (8)(L)(1), the association shall have no rights or obligations, in each case for periods both before and after the date of the order of liquidation, with respect to the reinsurance contract.

(4) When policies or annuities, or covered obligations with respect thereto, are transferred to an assuming insurer, reinsurance on the policies or annuities may also be transferred by the association, in the case of contracts assumed under subsection (8)(L)(1), subject to the following;

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

(b) the obligations described in subsection (8)(L)(1) shall no longer apply with respect to matters arising after the effective date of the transfer; and

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

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

(6) Except as otherwise provided in this paragraph, nothing in this paragraph shall alter or modify the terms and conditions of any reinsurance contract. Nothing in this paragraph shall abrogate or limit any rights of any reinsurer to claim that it is entitled to rescind a reinsurance contract. Nothing in this paragraph shall give a policyholder or beneficiary an independent cause of action against a reinsurer that is not otherwise set forth in the reinsurance contract. Nothing in this paragraph shall limit or affect the association's rights as a creditor of the estate against the

assets of the estate. Nothing in this paragraph shall apply to reinsurance agreements covering property or casualty risks.

(M) In carrying out its duties in connection with guaranteeing, assuming or reinsuring policies or contracts under paragraphs (8)(A) or (8)(B) the association may, subject to approval of the receivership court, issue substitute coverage for a policy or contract that provides an interest rate, crediting rate or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value by issuing an alternative policy or contract in accordance with the following provisions;

(a) In lieu of the index or other external reference provided for in the original policy or contract the alternative policy or contract provides for (i) a fixed interest rate or (ii) payment of dividends with minimum guarantees or (iii) a different method for calculating interest or changes in value;

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

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

(N) The Board of Directors of the Association shall have discretion and may exercise reasonable business judgment to determine the means by which the Association is to provide the benefits of this section in an economical and efficient manner.

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

SECTION 33. Subsection 9(B) of Section 146B of chapter 175 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking out, in lines 402 through 403, the words " and examinations conducted under the authority of paragraph (E) of subsection (12)".

SECTION 34. Subsection 9(B) of Section 146B of chapter 175 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking out, in lines 407 through 408, "(A), (B) or (C)" and inserting in place thereof the following:- (A) or (B)

SECTION 35. Subsection 9(C) of Section 146B of chapter 175 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking out, in lines 409 through 414, the words "The amount of any Class A assessment shall be determined by the board of directors and may be made on a pro rata or non-pro rata basis. If made on a pro rata basis, the board of directors may provide that it be credited against future Class B assessments. If it is

made on a non-pro rata basis, such assessment shall not exceed one hundred and fifty dollars per member insurer in any one calendar year.” and inserting in place thereof the following:- The amount of any Class A assessment shall be determined by the board of directors and may be made on a pro rata or non-pro rata basis or any combination thereof. If made on a pro rata basis, the board of directors may provide that it be credited against future Class B assessments.

SECTION 36. Subsection 9(E) of Section 146B of chapter 175 of the General Laws, as appearing in the 2010 Official Edition, is hereby further amended by inserting after “E”, in line 442, the following:- (1)(a)

SECTION 37. Subsection 9(E) of Section 146B of chapter 175 of the General Laws, as appearing in the 2010 Official Edition, is hereby further amended by inserting after the word “section.”, in line 451, the following:- (b) The board of directors may provide a method of allocating funds among claims, whether relating to one or more impaired or insolvent insurers, when the maximum assessment will be insufficient to cover anticipated claims.

(2) If the maximum assessment for the life or annuity account in any one year does not provide an amount sufficient to carry out the responsibilities of the association, then pursuant to subsection (9)(C)(2), the board of directors shall assess the other account for the necessary additional amount, subject to the maximum stated in subsection (9)(E)(1) above.

SECTION 38. Section 146B of chapter 175 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking out, in line 504, “(K)” and inserting in place thereof the following:- (J)

SECTION 39. Subsection (12) of Section 146B of chapter 175 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking out paragraphs (E), (F) and (G) and inserting in place thereof the following:- (E) The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer insolvencies.

SECTION 40. Subsection (14) of section 146B of chapter 175 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking out paragraph (B) and inserting in place thereof the following:- (B) Records shall be kept of all meetings of the board of directors to discuss the activities of the association in carrying out its powers and duties under subsection (8). The records of the association with respect to an impaired or insolvent insurer shall not be disclosed prior to the termination of a liquidation, rehabilitation, or conservation proceeding involving the impaired or insolvent insurer, except (i) upon the termination of the impairment of insolvency of the insurer, or (ii) upon the order of a court of competent jurisdiction. Nothing in this subsection shall limit the duty of the association to render a report of its activities under subsection (15)

SECTION 41. Subsection 14(C) of Section 146B of chapter 175 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking out, in line 667, “(K)” and inserting in place thereof the following:- (J)

SECTION 42. Subsection 14(E) of Section 146B of chapter 175 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking out, in line 711, “paragraph (3)” and inserting in place thereof the following:- clause (3)

SECTION 43. Subsection (14) of section 146B of chapter 175 of the General Laws, as appearing in the 2010 Official Edition, is hereby further amended by inserting the following paragraph:- (F) As a creditor of the impaired or insolvent insurer as established in paragraph (C) of this subsection and consistent with chapter 175, section 180C, the Association and other similar associations shall be entitled to receive a disbursement of assets out of the marshaled assets, from time to time as the assets become available to reimburse it, as a credit against contractual obligations under this section. If the liquidator has not, within 120 days of a final determination of insolvency of an insurer by the receivership court, made an application to the court for the approval of a proposal to disburse assets out of marshaled assets to guaranty associations having obligations because of the insolvency, then the Association shall be entitled to make application to the receivership court for approval of its own proposal to disburse assets.

SECTION 44. Subsection 17 of Section 146B of chapter 175 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking out, in line 732, “(L)” and inserting in place thereof the following:- (K)

SECTION 45. Subsection 18 of Section 146B of chapter 175 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking out, in lines 734 through 737, the words “All proceedings in which the insolvent insurer is a party in any court in the commonwealth shall be stayed sixty days from the date an order of rehabilitation or liquidation is final to permit proper legal action by the association on any matters germane to its powers or duties” and inserting in place thereof the following:- All proceedings in which the insolvent insurer is a party in any court in the commonwealth shall be stayed one hundred eighty (180) days from the date an order of rehabilitation, conservation or liquidation is final to permit proper legal action by the association on any matters germane to its powers or duties

SECTION 46. Section 146B of chapter 175 of the General Laws, as appearing in the 2010 Official Edition, is hereby further amended by inserting after the word “eighty-six.”, in line 757, the following:- Amendments to this section shall not apply to any insurer which was placed under an order of liquidation with a finding of insolvency prior to the effective date of these amendments.