

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

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

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

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

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

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33 withdrawn after the effective date of this section, other than a (a) fraternal benefit society, (b)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

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

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

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

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

56 With respect to multiple non-group policies of life insurance owned by one owner,
57 whether the policy owner is an individual, firm, corporation or other person, and whether the
58 persons insured are officers, managers, employees or other persons, premiums in excess of
59 \$5,000,000 with respect to these policies or contracts, regardless of the number of policies or
60 contracts held by the owner.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

184 (i) claims based on marketing materials;

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

187 (iii) misrepresentation of or regarding policy benefits;

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

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

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

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

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

209 SECTION 10. Subsection 4(B) of Section 146B of chapter 175 of the General Laws, as
210 appearing in the 2010 Official Edition, is hereby amended by striking out, in lines 128 through
211 135, the words “(ii) one hundred thousand dollars in health insurance benefits, including any net
212 cash surrender and net cash withdrawal values; (iii) one hundred thousand dollars in the present
213 value of annuity benefits, including net cash surrender and net cash withdrawal values; but in no
214 event shall the association’s liability exceed three hundred thousand dollars in the aggregate for
215 all life insurance, health insurance and annuity benefits, including net cash surrender and net
216 cash withdrawal values” and inserting in place thereof the following:-

217 (ii) In health insurance benefits:

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

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

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

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

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

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

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

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

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

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

257 SECTION 14. Section 146B of chapter 175 of the General Laws, as appearing in the
258 2010 Official Edition, is hereby amended by striking out subsection 8(A) and inserting in place
259 thereof the following subsection:- (8)(A) If a member is an impaired insurer, the association
260 may, in its discretion, and subject to any conditions imposed by the association that do not impair
261 the contractual obligations of the impaired insurer and that are approved by the commissioner,

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

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

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

269 SECTION 16. Section 146B of chapter 175 of the General Laws, as appearing in the
270 2010 Official Edition, is hereby amended by striking out, in line 226, "(C)" and inserting in place
271 thereof the following:- (B)

272 SECTION 17. Section 146B of chapter 175 of the General Laws, as appearing in the
273 2010 Official Edition, is hereby amended by striking out, in line 236, "(D)" and inserting in place
274 thereof the following:- (C)

275 SECTION 18. Section 146B of chapter 175 of the General Laws, as appearing in the
276 2010 Official Edition, is hereby amended by striking out, in lines 237 through 239, the words
277 "(D)(1) When proceeding under subclause (b) of clause (1) of paragraph (B) or clause (2) of
278 paragraph (C), the association shall, with respect to only life and health insurance policies", and
279 inserting in place thereof the following:- (C)(1) When proceeding under subsection (8)(A) or
280 subsection (8)(B) clause (2), the association shall, with respect to life and health insurance
281 policies and annuities:

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

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

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

306 SECTION 20. Section 146B of chapter 175 of the General Laws, as appearing in the
307 2010 Official Edition, is hereby amended by striking out, in line 272, "(D)" and inserting in place
308 thereof the following:- (C)

309 SECTION 21. Section 146B of chapter 175 of the General Laws, as appearing in the
310 2010 Official Edition, is hereby further amended by inserting after the word "association.", in
311 lines 303 through 304, the following:- (6) When proceeding under subsection (8)(C)(2) with
312 respect to a policy or contract carrying minimum guaranteed interest rates, the association shall
313 assure the payment or crediting of a rate of interest consistent with subsection (4)(B)(2)(d).

314 SECTION 22. Section 146B of chapter 175 of the General Laws, as appearing in the
315 2010 Official Edition, is hereby amended by striking out, in line 305, "(E)" and inserting in place
316 thereof the following:- (D)

317 SECTION 23. Section 146B of chapter 175 of the General Laws, as appearing in the
318 2010 Official Edition, is hereby amended by striking out, in line 312, "(F)" and inserting in place
319 thereof the following:- (E)

320 SECTION 24. Section 146B of chapter 175 of the General Laws, as appearing in the
321 2010 Official Edition, is hereby amended by striking out, in line 316 through 317, the words
322 "(G) In carrying out its duties under paragraphs (B) and (C) of this subsection" and inserting in
323 place thereof the following:- (F) In carrying out its duties under paragraph (B) of this subsection

324 SECTION 25. Section 146B of chapter 175 of the General Laws, as appearing in the
325 2010 Official Edition, is hereby further amended by inserting after the word "value.", in line 329,
326 the following:- In addition, in the event of a temporary moratorium charge imposed by the
327 receivership court on payment of cash values or policy loans, or any other right to withdraw
328 funds held in conjunction with policies or contracts, out of assets of the impaired or insolvent
329 insurer, the association may defer the payment of such values, policy loans or other rights by the
330 association for a period of the moratorium or moratorium charge imposed by the receivership
331 court, except for claims covered by the association to be paid in accordance with a hardship
332 procedure established by the liquidator or rehabilitator and approved by the receivership court.

333 SECTION 26. Section 146B of chapter 175 of the General Laws, as appearing in the
334 2010 Official Edition, is hereby amended by striking out, in line 330 through 331, the words
335 “(H) If the association fails to act within a reasonable period of time as provided in paragraphs
336 (B), (C), and (D)” and inserting in place thereof the following:- (G) If the association fails to act
337 within a reasonable period of time as provided in paragraphs (B) and (C)

338 SECTION 27. Section 146B of chapter 175 of the General Laws, as appearing in the
339 2010 Official Edition, is hereby amended by striking out, in line 334, “(I)” and inserting in place
340 thereof the following:- (H)

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

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

356 SECTION 29. Section 146B of chapter 175 of the General Laws, as appearing in the
357 2010 Official Edition, is hereby amended by striking out, in line 352, “(K)” and inserting in place
358 thereof the following:- (J)

359 SECTION 30. Section 146B of chapter 175 of the General Laws, as appearing in the
360 2010 Official Edition, is hereby further amended by inserting after the word “contracts.”, in lines
361 371 through 372, the following:- (4) If the preceding provisions of this paragraph are invalid or
362 ineffective with respect to any person or claim for any reason, the amount payable by the
363 Association with respect to the related coverage obligations shall be reduced by the amount
364 realized by any other person with respect to the person or claim that is attributable to the policies
365 (or portion thereof) covered by the Association.

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

370 SECTION 31. Section 146B of chapter 175 of the General Laws, as appearing in the
371 2010 Official Edition, is hereby amended by striking out, in lines 373 through 376, the words
372 “(L) The association may: (i) enter into such contracts as are necessary or proper to carry out the
373 provisions and purposes of this section; (ii) sue or be sued, including taking any legal actions
374 necessary or proper for recovery of any unpaid assessments under subsection (9)”, and inserting
375 in place thereof the following:- (K) In addition to the rights and powers elsewhere in this section,
376 the association may: (i) enter into such contracts as are necessary or proper to carry out the
377 provisions and purposes of this section; (ii) sue or be sued, including taking any legal actions
378 necessary or proper for recovery of any unpaid assessments under subsection (9) and to settle
379 claims or potential claims against it

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

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

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

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

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

414 (A) The amount received by the association; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

500 SECTION 33. Subsection 9(B) of Section 146B of chapter 175 of the General Laws, as
501 appearing in the 2010 Official Edition, is hereby amended by striking out, in lines 402 through
502 403, the words " and examinations conducted under the authority of paragraph (E) of subsection
503 (12)".

504 SECTION 34. Subsection 9(B) of Section 146B of chapter 175 of the General Laws, as
505 appearing in the 2010 Official Edition, is hereby amended by striking out, in lines 407 through
506 408, "(A), (B) or (C)" and inserting in place thereof the following:- (A) or (B)

507 SECTION 35. Subsection 9(C) of Section 146B of chapter 175 of the General Laws, as
508 appearing in the 2010 Official Edition, is hereby amended by striking out, in lines 409 through
509 414, the words "The amount of any Class A assessment shall be determined by the board of
510 directors and may be made on a pro rata or non-pro rata basis. If made on a pro rata basis, the
511 board of directors may provide that it be credited against future Class B assessments. If it is

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

517 SECTION 36. Subsection 9(E) of Section 146B of chapter 175 of the General Laws, as
518 appearing in the 2010 Official Edition, is hereby further amended by inserting after “E”, in line
519 442, the following:- (1)(a)

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

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

529 SECTION 38. Section 146B of chapter 175 of the General Laws, as appearing in the
530 2010 Official Edition, is hereby amended by striking out, in line 504, “(K)” and inserting in
531 place thereof the following:- (J)

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

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

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

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

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

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

567 SECTION 45. Subsection 18 of Section 146B of chapter 175 of the General Laws, as
568 appearing in the 2010 Official Edition, is hereby amended by striking out, in lines 734 through
569 737, the words “All proceedings in which the insolvent insurer is a party in any court in the
570 commonwealth shall be stayed sixty days from the date an order of rehabilitation or liquidation is
571 final to permit proper legal action by the association on any matters germane to its powers or
572 duties” and inserting in place thereof the following:- All proceedings in which the insolvent
573 insurer is a party in any court in the commonwealth shall be stayed one hundred eighty (180)
574 days from the date an order of rehabilitation, conservation or liquidation is final to permit proper
575 legal action by the association on any matters germane to its powers or duties

576 SECTION 46. Section 146B of chapter 175 of the General Laws, as appearing in the
577 2010 Official Edition, is hereby further amended by inserting after the word “eighty-six.”, in line
578 757, the following:- Amendments to this section shall not apply to any insurer which was placed
579 under an order of liquidation with a finding of insolvency prior to the effective date of these
580 amendments.