

AMENDED IN ASSEMBLY JUNE 1, 2010

SENATE BILL

No. 1408

**Introduced by Committee on Banking, Finance and Insurance
(Senators Calderon (Chair), Cogdill, Correa, Cox, Florez, Kehoe,
Liu, Lowenthal, Padilla, Price, and Runner)**

February 19, 2010

An act to amend ~~Section 1067.01~~ *Sections 1025.5, 1067.02, 1067.03, 1067.04, 1067.05, 1067.055, 1067.07, 1067.08, 1067.09, 1067.10, 1067.11, 1067.12, 1067.13, 1067.16, and 1067.17* of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 1408, as amended, Committee on Banking, Finance and Insurance. Insurance: California Life and Health Insurance Guarantee Association Act.

Existing law requires the formation of the California Life and Health Insurance Guarantee Association to provide coverage for persons for direct, nongroup life, health, annuity, and supplemental policies or contracts of insurance, except as specified, in case of failure in the performance of contractual obligations under policies and contracts because of the impairment or insolvency of the member insurer that issued the policies or contracts.

~~This bill would make clarifying and conforming changes in provisions declaring the purpose of this law.~~

This bill would revise and recast provisions of the act, including, but not limited to, the powers and duties of the association, coverage eligibility, the conditions and procedures for payment of a claim, association reporting requirements, and other related changes. The bill would also make various technical and conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1025.5 of the Insurance Code is amended
2 to read:

3 1025.5. Notwithstanding the provisions of Sections 1021 to
4 1025, inclusive, the commissioner may, in lieu of requiring
5 claimants to file separate claims:

6 (a) File a claim himself or herself on behalf of all claimants for
7 return premiums.

8 (b) Permit any assignee of the right of the insured to a return
9 premium by virtue of a valid assignment, as security or otherwise,
10 made prior to an order under Section 1011 or a seizure under
11 Section 1013, whichever is earlier in time in the particular case,
12 to file one claim as assignee on behalf of all insureds having
13 assigned rights to the assignee, which shall set forth such
14 information as may be required under Section 1023.

15 (c) Permit the California Insurance Guarantee Association under
16 subdivision (b) of Section 1063.4, or the California Life and Health
17 Insurance Guarantee Association under paragraph (1) of
18 subdivision ~~(m)~~ (k) of Section 1067.07 to file one claim, for its
19 association, combining all assigned claims and setting forth the
20 information that the commissioner may require under Section
21 1023.

22 SEC. 2. Section 1067.02 of the Insurance Code is amended to
23 read:

24 1067.02. (a) This article shall provide coverage for the policies
25 and contracts specified in subdivision (b) to all of the following:

26 (1) To persons who, regardless of where they reside (except for
27 nonresident certificate holders under group policies or contracts),
28 are the beneficiaries, assignees, or payees of the persons covered
29 under paragraph (2).

30 ~~(2) To persons who are owners of or certificate holders under
31 those policies or contracts, and who either:~~

32 ~~(A) Are residents of this state.~~

33 ~~(B) Are not residents, but only under all of the following
34 conditions:~~

1 ~~(i) The insurers that issued the policies or contracts are domiciled~~
2 ~~in this state.~~

3 ~~(ii) The insurers never held a license or certificate of authority~~
4 ~~in the states in which the persons reside.~~

5 ~~(iii) The states in which the persons reside have associations~~
6 ~~similar to the association created by this article.~~

7 ~~(iv) The persons are not eligible for coverage by those~~
8 ~~associations.~~

9 ~~(b) (1) This article shall provide coverage to the persons~~
10 ~~specified in subdivision (a) for direct, nongroup life, health,~~
11 ~~annuity, and supplemental policies or contracts and for certificates~~
12 ~~under direct group life, health, annuity, and supplemental policies~~
13 ~~and contracts, except as limited by this article. Annuity contracts~~
14 ~~and certificates under group annuity contracts include, but are not~~
15 ~~limited to, structured settlement agreements, allocated annuity~~
16 ~~contracts, and any immediate or deferred annuity contracts, and~~
17 ~~unallocated annuity contracts except those expressly excluded~~
18 ~~pursuant to subparagraph (D) of paragraph (2) of this subdivision.~~

19 *(2) To persons who are owners of or certificate holders under*
20 *the policies or contracts, other than structured settlement annuities,*
21 *and in each case who either:*

22 *(A) Are residents of this state.*

23 *(B) Are not residents, but only under all of the following*
24 *conditions:*

25 *(i) The insurer that issued the policies or contracts is domiciled*
26 *in this state.*

27 *(ii) The states in which the persons reside have associations*
28 *similar to the association created by this article.*

29 *(iii) The persons are not eligible for coverage by an association*
30 *in any other state due to the fact that the insurer was not licensed*
31 *in the state at the time specified in the state's guaranty association*
32 *law.*

33 *(3) For structured settlement annuities specified in subdivision*
34 *(b), paragraphs (1) and (2) of this subdivision shall not apply, and*
35 *this article shall, except as provided in paragraphs (4) and (5) of*
36 *this subdivision, provide coverage to a person who is a payee*
37 *under a structured settlement annuity, or beneficiary of a payee*
38 *if the payee is deceased, if the payee is either:*

39 *(A) A resident of this state, regardless of where the contract*
40 *owner resides.*

1 (B) Not a resident, but only if both of the following conditions
2 are satisfied:

3 (i) The contract owner of the structured settlement annuity is a
4 resident, or the contract owner of the structured settlement annuity
5 is not a resident, but the insurer that issued the structured
6 settlement annuity is domiciled in this state, and the state in which
7 the contract owner resides has an association similar to the
8 association created by this article.

9 (ii) Neither the payee, or beneficiary, nor the contract owner
10 is eligible for coverage by the association of the state in which the
11 payee or contract owner resides.

12 (4) This article shall not provide coverage to a person who is
13 a payee, or beneficiary, of a contract owner resident of this state,
14 if the payee, or beneficiary, is afforded coverage by the association
15 of another state.

16 (5) This article is intended to provide coverage to a person who
17 is a resident of this state and, in special circumstances, to a
18 nonresident. In order to avoid duplicate coverage, if a person who
19 would otherwise receive coverage under this article is provided
20 coverage under the laws of any other state, the person shall not
21 be provided coverage under this article. In determining the
22 application of the provisions of this paragraph in situations where
23 a person could be covered by the association of more than one
24 state, whether as an owner, payee, beneficiary, or assignee, this
25 article shall be construed in conjunction with other state laws to
26 result in coverage by only one association.

27 (b) (1) This article shall provide coverage to the persons
28 specified in subdivision (a) for direct, nongroup life, health, or
29 annuity policies or contracts, and supplemental contracts to any
30 of these, and for certificates under direct group policies and
31 contracts, except as limited by this article. Annuity contracts and
32 certificates under group annuity contracts include allocated
33 funding agreements, structured settlement annuities, and any
34 immediate or deferred annuity contracts. The health policies and
35 contracts covered under this article include, but are not limited
36 to, basic hospital, medical, and surgical insurance, major medical
37 insurance, disability income insurance, disability insurance,
38 including insurance appertaining to injury, disablement, or death
39 resulting to the insured from accidents, and appertaining to
40 disablements resulting to the insured from sickness, and long-term

1 *care insurance, including any net cash surrender and net cash*
2 *withdrawal values.*

3 (2) This article shall not provide coverage for any of the
4 following:

5 (A) Any portion of a policy or contract not guaranteed by the
6 insurer, or under which the risk is borne by the ~~policyholder~~ *policy*
7 ~~owner or contractholder~~ *contract owner*.

8 (B) Any policy or contract of reinsurance, unless assumption
9 certificates have been issued *pursuant to the reinsurance policy*
10 *or contract*.

11 (C) ~~Any portion of a policy or contract to the extent that the~~
12 ~~rate of interest on which it is based exceeds either or both of the~~
13 ~~following:~~

14 (i) ~~The extent to which the rate of interest, averaged over the~~
15 ~~period of four years prior to the date on which the association~~
16 ~~becomes obligated with respect to the policy or contract, exceeds~~
17 ~~a rate of interest determined by subtracting six percentage points~~
18 ~~from Moody's Corporate Bond Yield Average averaged for that~~
19 ~~same four-year period or for such lesser period if the policy or~~
20 ~~contract was issued less than four years before the association~~
21 ~~became obligated, not to go below a minimum of 0 percent.~~

22 (ii) ~~The extent to which the rate of interest, on and after the date~~
23 ~~on which the association becomes obligated with respect to the~~
24 ~~policy or contract, exceeds the rate of interest determined by~~
25 ~~subtracting six percentage points from Moody's Corporate Bond~~
26 ~~Yield Average as most recently available, not to go below a~~
27 ~~minimum of 3 percent.~~

28 (D) ~~Guaranteed investment contracts, guaranteed interest~~
29 ~~contracts, funding agreements, deposit administration contracts,~~
30 ~~and all other unallocated annuity contracts; provided however,~~
31 ~~coverage may be provided for unallocated annuity contracts sold~~
32 ~~(i) by an insurer as to which an order of liquidation, which~~
33 ~~contained a finding of insolvency and which later became final,~~
34 ~~was entered by a court of competent jurisdiction in the state of its~~
35 ~~domicile, after December 20, 1991, but prior to December 20,~~
36 ~~1992, and sold to an employer or a trustee or other plan fiduciary~~
37 ~~in connection with a plan or program of an employer prior to~~
38 ~~December 20, 1992, for purposes of providing the employees of~~
39 ~~the employer with deferred compensation or pension benefits and~~
40 ~~(f) the individual employees have an option to participate or not~~

1 ~~participate, in whole or in part, in the contract, and (H) the~~
2 ~~individual employee contributes from his or her wages some~~
3 ~~portion of the funds paid into the plan or program, or (ii) sold by~~
4 ~~a mutual insurer as to which an order of liquidation that contained~~
5 ~~a finding of insolvency and that later became final was entered by~~
6 ~~a court of competent jurisdiction in the state of its domicile after~~
7 ~~December 1, 1991, but prior to December 31, 1991, and sold to~~
8 ~~an employer qualifying as an Internal Revenue Code Section~~
9 ~~501(c)(3) employer or to a trustee or other plan fiduciary in~~
10 ~~connection with a plan or program of such an employer for~~
11 ~~purposes of providing the employees of the employer with deferred~~
12 ~~compensation or pension benefits and (I) the contract was~~
13 ~~purchased exclusively with funds of the employer in amounts~~
14 ~~computed as a uniform percentage of the compensation of each~~
15 ~~employee entitled to participate under the terms of the plan, (H)~~
16 ~~the contract has a stated maturity date occurring within 15 days~~
17 ~~prior to that order of liquidation, and (III) the employer also~~
18 ~~maintained at the time of the insolvency a tax deferred annuity~~
19 ~~plan or program described in Section 403(b) of the Internal~~
20 ~~Revenue Code.~~

21 ~~(E) Any plan or program of an employer, association, or similar~~
22 ~~entity to provide life, health, or annuity benefits to its employees~~
23 ~~or members to the extent that the plan or program is self-funded~~
24 ~~or uninsured, including, but not limited to, benefits payable by an~~
25 ~~employer, association, or similar entity under any of the following:~~

26 ~~(i) A multiple employer welfare arrangement as defined in~~
27 ~~Section 514 of the federal Employee Retirement Income Security~~
28 ~~Act of 1974, as amended.~~

29 ~~(ii) A minimum premium group insurance plan.~~

30 ~~(iii) A stop-loss group insurance plan.~~

31 ~~(iv) An administrative services only contract.~~

32 ~~(F) Any portion of a policy or contract to the extent that it~~
33 ~~provides dividends or experience rating credits, or provides that~~
34 ~~any fees or allowances be paid to any person, including the~~
35 ~~policyholder or contractholder, in connection with the service to~~
36 ~~or administration of the policy or contract.~~

37 ~~(C) A portion of a policy or contract to the extent that the rate~~
38 ~~of interest on which it is based or the interest rate, crediting rate,~~
39 ~~or similar factor determined by the use of an index or other~~
40 ~~external reference which is stated in the policy or contract and~~

1 employed in calculating returns or changes in value does both of
2 the following:

3 (i) Averaged over the period of four years prior to the date on
4 which the member insurer becomes an impaired or insolvent
5 insurer under this article exceeds the rate of interest determined
6 by subtracting two percentage points from Moody's Corporate
7 Bond Yield Average averaged for that same four-year period or
8 for the lesser period if the policy or contract was issued less than
9 four years before the member insurer becomes an impaired or
10 insolvent insurer under this article, not to go below a minimum of
11 0 percent.

12 (ii) On and after the date on which the member insurer becomes
13 an impaired or insolvent insurer under this article exceeds the
14 rate of interest determined by subtracting three percentage points
15 from Moody's Corporate Bond Yield Average as most recently
16 available, not to go below a minimum of 0 percent.

17 (D) An unallocated annuity contract.

18 (E) A portion of a policy or contract issued to a plan or program
19 of an employer, association, or other person to provide life, health,
20 or annuity benefits to its employees, members, or others, to the
21 extent that the plan or program is self-funded or uninsured,
22 including, but not limited to, benefits payable by an employer,
23 association, or other person under any of the following:

24 (i) A multiple employer welfare arrangement as defined in
25 Section 1144 of Title 29 of the United States Code.

26 (ii) A minimum premium group insurance plan.

27 (iii) A stop-loss group insurance plan.

28 (iv) An administrative services only contract.

29 (F) A portion of a policy or contract to the extent that it provides
30 for any of the following:

31 (i) Dividends or experience rating credits.

32 (ii) Voting rights.

33 (iii) Payment of any fees or allowances to any person, including
34 the policy or contract owner, in connection with the service to or
35 administration of the policy or contract.

36 (G) Any policy or contract issued in this state by a member
37 insurer at a time when it was not licensed or did not have a
38 certificate of authority to issue the policy or contract in this state.

39 (H) Any annuity issued by a charitable organization that is duly
40 qualified as such under applicable provisions of the Internal

1 Revenue Code, and that is not engaged in the business of insurance
2 as its primary business.

3 *(I) A portion of a policy or contract to the extent that the*
4 *assessments required by Section 1067.08 with respect to the policy*
5 *or contract are preempted or otherwise not permitted by federal*
6 *or state law.*

7 *(J) An obligation that does not arise under the express written*
8 *terms of the policy or contract issued by the insurer to the contract*
9 *owner or policy owner, including without limitation, any of the*
10 *following:*

11 *(i) Claims based on marketing materials.*

12 *(ii) Claims based on side letters, riders, or other documents*
13 *that were issued by the insurer without meeting applicable policy*
14 *form filing or approval requirements.*

15 *(iii) Misrepresentations of, or regarding, policy benefits.*

16 *(iv) Extracontractual claims.*

17 *(v) A claim for penalties or consequential or incidental damages.*

18 *(K) A contractual agreement that establishes the member*
19 *insurer's obligations to provide a book value accounting guaranty*
20 *for defined contribution benefit plan participants by reference to*
21 *a portfolio of assets that is owned by the benefit plan or its trustee,*
22 *which in each case is not an affiliate of the member insurer.*

23 *(L) A portion of a policy or contract to the extent it provides*
24 *for interest or other changes in value to be determined by the use*
25 *of an index or other external reference stated in the policy or*
26 *contract, but which have not been credited to the policy or contract,*
27 *or as to which the policy or contract owner's rights are subject to*
28 *forfeiture, as of the date the member insurer becomes an impaired*
29 *or insolvent insurer under this article, whichever is earlier. If a*
30 *policy's or contract's interest or changes in value are credited*
31 *less frequently than annually, then for purposes of determining*
32 *the values that have been credited and are not subject to forfeiture*
33 *pursuant to this subparagraph, the interest or change in value*
34 *determined by using the procedures defined in the policy or*
35 *contract shall be credited as if the contractual date of crediting*
36 *interest or changing values was the date of impairment or*
37 *insolvency, whichever is earlier, and shall not be subject to*
38 *forfeiture.*

39 *(M) A policy or contract providing any hospital, medical,*
40 *prescription drug, or other health care benefits pursuant to Part*

1 *C of Title XVIII of the Social Security Act (42 U.S.C. Sec. 1395w-21*
2 *et seq.) or Part D of Title XVIII of the Social Security Act (42*
3 *U.S.C. Sec. 1395w-101 et seq.), commonly known as Medicare*
4 *Parts C and D, or any regulations issued pursuant thereto.*

5 (c) The benefits for which the association may become liable
6 for life insurance and annuity policies shall in no event exceed the
7 lesser of the following:

8 (1) Eighty percent of the contractual obligations for each policy
9 or contract as modified pursuant to subparagraph (C) of paragraph
10 (2) of subdivision (b), for which the insurer is liable or would have
11 been liable if it were not an impaired or insolvent insurer.

12 (2) (A) With respect to any one life, regardless of the number
13 of policies or contracts:

14 ~~(i) Two hundred fifty thousand dollars (\$250,000) in life~~
15 ~~insurance death benefits, but not more than one hundred thousand~~
16 ~~dollars (\$100,000) in net cash surrender and net cash withdrawal~~
17 ~~values for life insurance.~~

18 ~~(ii) One hundred thousand dollars (\$100,000) in the present~~
19 ~~value of annuity benefits, including net cash surrender and net~~
20 ~~cash withdrawal values.~~

21 ~~(B) However, in no event shall the association be liable to~~
22 ~~expend more than two hundred fifty thousand dollars (\$250,000)~~
23 ~~in the aggregate with respect to any one individual under~~
24 ~~subparagraph (A).~~

25 ~~(C) With respect to any one owner of multiple policies of~~
26 ~~individual life insurance, whether the policyowner is an individual,~~
27 ~~firm, corporation, or other legal entity, and whether the persons~~
28 ~~insured are officers, employees, or other persons in whose lives~~
29 ~~the policyowner has an insurable interest, five million dollars~~
30 ~~(\$5,000,000) in benefits regardless of the number of the policies~~
31 ~~and contracts held by the owner.~~

32 *(i) Three hundred thousand dollars (\$300,000) in life insurance*
33 *death benefits, but not more than one hundred thousand dollars*
34 *(\$100,000) in net cash surrender and net cash withdrawal values*
35 *for life insurance.*

36 *(ii) Two hundred fifty thousand dollars (\$250,000) in the present*
37 *value of annuity benefits, including net cash surrender and net*
38 *cash withdrawal values.*

39 *(B) With respect to each payee of a structured settlement*
40 *annuity, or beneficiaries of the payee if deceased, two hundred*

1 *fifty thousand dollars (\$250,000) in present value annuity benefits,*
2 *in the aggregate, including net cash surrender and net cash*
3 *withdrawal values.*

4 *(C) Notwithstanding subparagraphs (A) and (B), in no event*
5 *shall the association be obligated to cover more than an aggregate*
6 *of three hundred thousand dollars (\$300,000) in benefits with*
7 *respect to any one life under subparagraphs (A) and (B).*

8 *(D) Notwithstanding subparagraphs (A), (B), and (C), with*
9 *respect to one owner of multiple nongroup policies of life*
10 *insurance, whether the policy owner is an individual, firm,*
11 *corporation, or other person, and whether the persons insured are*
12 *officers, managers, employees, or other persons, in no event shall*
13 *the association be obligated to cover more than five million dollars*
14 *(\$5,000,000) in benefits, regardless of the number of policies and*
15 *contracts held by the owner.*

16 (d) The health insurance benefits for which the association may
17 become liable shall in no event exceed the lesser of the following:

18 (1) The contractual obligations for which the insurer is liable
19 or for which the insurer would have been liable if it were not an
20 impaired or insolvent insurer.

21 (2) With respect to any one individual receiving health care
22 benefits, regardless of the number of policies or contracts, two
23 hundred thousand dollars (\$200,000) in health insurance benefits;
24 an amount that shall increase or decrease based upon changes in
25 the health care cost component of the consumer price index from
26 January 1, 1991, to the date on which the insurer becomes an
27 insolvent insurer.

28 ~~(e) An unallocated annuity contract that is not covered by the~~
29 ~~association may not be offered to an employer, after January 1,~~
30 ~~1994, unless prior to being offered to the employer, or the~~
31 ~~participation by the employee, the insurer or agent has disclosed~~
32 ~~to the employer, and employee in writing in a conspicuous manner~~
33 ~~that the contract is not covered by the association.~~

34 (e) *The limitations set forth in subdivisions (c) and (d) are*
35 *limitations on the benefits for which the association is obligated*
36 *before taking into account either its subrogation and assignment*
37 *rights or the extent to which those benefits could be provided out*
38 *of the assets of the impaired or insolvent insurer attributable to*
39 *covered policies. The costs of the association's obligations under*
40 *this article may be met by the use of assets attributable to covered*

1 *policies or reimbursed to the association pursuant to its*
2 *subrogation and assignment rights.*

3 *(f) In performing its obligations to provide coverage under*
4 *Section 1067.07, the association shall not be required to guarantee,*
5 *assume, reinsure, or perform, or cause to be guaranteed, assumed,*
6 *reinsured, or performed, the contractual obligations of the*
7 *insolvent or impaired insurer under a covered policy or contract*
8 *that do not materially affect the economic values or economic*
9 *benefits of the covered policy or contract.*

10 SEC. 3. *Section 1067.03 of the Insurance Code is amended to*
11 *read:*

12 1067.03. This article shall be ~~liberally~~ construed to effect the
13 purpose under Section 1067.01 ~~which shall constitute an aid and~~
14 ~~guide to interpretation.~~

15 SEC. 4. *Section 1067.04 of the Insurance Code is amended to*
16 *read:*

17 1067.04. As used in this article:

18 (a) “Account” means ~~any~~ *either of the three two* accounts created
19 under Section 1067.05.

20 (b) “Association” means the California Life and Health
21 Insurance Guarantee Association created pursuant to Section
22 1067.05.

23 (c) “Authorized assessment” means *an assessment, to be called*
24 *immediately or in the future from member insurers for a specified*
25 *amount, that is authorized by a resolution of the board of directors.*
26 *“Authorized,” when used in the context of assessments, means*
27 *authorized by a resolution of the board of directors. An assessment*
28 *is authorized when this resolution is passed.*

29 (d) “Benefit plan” means *a specific employee, union, or*
30 *association of natural persons benefit plan.*

31 (e) “Called assessment” means *an assessment as to which a*
32 *notice has been issued by the association to member insurers*
33 *requiring that an authorized assessment be paid within a timeframe*
34 *set forth in the notice. “Called,” when used in the context of*
35 *assessments, means required by notice to be paid by member*
36 *insurers. An authorized assessment becomes a called assessment*
37 *when notice is mailed by the association to member insurers.*

38 (e)

39 (f) “Commissioner” means the Insurance Commissioner.

40 (d)

1 (g) “Contractual obligation” means any obligation under a policy
 2 or contract, or certificate under a group policy or contract, or
 3 portion thereof, for which coverage is provided under Section
 4 1067.02.

5 (e)

6 (h) “Covered policy” means ~~any a policy or contract within the~~
 7 ~~scope of this article or portion of a policy or contract for which~~
 8 ~~coverage is provided~~ under Section 1067.02.

9 (f) ~~“Impaired insurer” means a member insurer that, after~~
 10 ~~October 1, 1990, is not an insolvent insurer, and (1) is deemed by~~
 11 ~~the commissioner to be potentially unable to fulfill its contractual~~
 12 ~~obligations or (2) is placed under an order of rehabilitation or~~
 13 ~~conservation by a court of competent jurisdiction.~~

14 (g) ~~“Health insurance” means the class of insurance described~~
 15 ~~as disability insurance in Section 106.~~

16 (i) *“Extracontractual claims” shall include, for example, claims*
 17 *relating to bad faith in the payment of claims, punitive or*
 18 *exemplary damages, or attorneys’ fees and costs.*

19 (j) *“Impaired insurer” means a member insurer which, after*
 20 *the effective date of this article, is not an insolvent insurer, and is*
 21 *placed under an order of rehabilitation or conservation by a court*
 22 *of competent jurisdiction.*

23 (h)

24 (k) “Insolvent insurer” means a member insurer that, after
 25 October 1, 1990, is placed under an order of liquidation by a court
 26 of competent jurisdiction with a finding of insolvency.

27 (i)

28 (l) “Member insurer” means any insurer licensed or which holds
 29 a certificate of authority to transact in this state any kind of
 30 insurance for which coverage is provided under Section 1067.02
 31 and includes any insurer whose license or certificate of authority
 32 in this state may have been suspended, revoked, not renewed, or
 33 voluntarily withdrawn, but does not include any of the following:

34 (1) ~~A fraternal benefit society.~~

35 (2) ~~A mandatory state pooling plan.~~

36 (3) ~~A mutual assessment company or any entity that operates~~
 37 ~~on an assessment basis.~~

38 (4) ~~An insurance exchange.~~

39 (5) ~~A nonprofit hospital service plan.~~

40 (6) ~~A health care service plan.~~

- 1 ~~(7) A grants and annuities society holding a certificate of~~
2 ~~authority under Section 11520.~~
3 ~~(8) Any entity similar to any of the above.~~
4 ~~(1) A hospital or medical service organization, whether for~~
5 ~~profit or nonprofit.~~
6 ~~(2) A health maintenance organization.~~
7 ~~(3) A fraternal benefit society.~~
8 ~~(4) A mandatory state pooling plan.~~
9 ~~(5) A mutual assessment company or other person that operates~~
10 ~~on an assessment basis.~~
11 ~~(6) An insurance exchange.~~
12 ~~(7) An organization that has a certificate or license limited to~~
13 ~~the issuance of charitable gift annuities.~~
14 ~~(8) A grants and annuities society holding a certificate of~~
15 ~~authority under Section 11520.~~
16 ~~(9) An entity similar to any of the above.~~
17 ~~(j)~~
18 ~~(m) “Moody’s Corporate Bond Yield Average” means the~~
19 ~~Monthly Average Corporates as published by Moody’s Investors~~
20 ~~Service, Inc., or any successor thereto.~~
21 ~~(k) “Person” means any individual, corporation, partnership,~~
22 ~~association, or voluntary organization.~~
23 ~~(l) “Premiums” means amounts received on covered policies or~~
24 ~~contracts less premiums, considerations, and deposits returned~~
25 ~~thereon, and less dividends and experience credits thereon.~~
26 ~~“Premiums” does not include any amounts received for any policies~~
27 ~~or contracts or for the portions of any policies or contracts for~~
28 ~~which coverage is not provided under subdivision (b) of Section~~
29 ~~1067.02 except that assessable premium shall not be reduced on~~
30 ~~account of paragraph (2) of subdivision (c) of Section 1067.02~~
31 ~~relating to limitations with respect to any one individual, any one~~
32 ~~participant, and any one contractholder; provided that “premiums”~~
33 ~~shall not include any premiums in excess of five million dollars~~
34 ~~(\$5,000,000) with respect to multiple policies of individual life~~
35 ~~insurance issued to any one owner, whether the policyowner is an~~
36 ~~individual, firm, corporation, or other legal entity, and whether~~
37 ~~the persons insured are officers, employees, or other persons in~~
38 ~~whose lives the policyowner has an insurable interest, regardless~~
39 ~~of the number of policies held by the owner.~~

1 (m) ~~“Resident” means any person who resides in this state at~~
2 ~~the time a member insurer is determined to be an impaired or~~
3 ~~insolvent insurer and to whom a contractual obligation is owed.~~
4 ~~A person may be a resident of only one state, which in the case of~~
5 ~~a person other than a natural person shall be its principal place of~~
6 ~~business.~~

7 (n) ~~“Supplemental contract” means any agreement entered into~~
8 ~~for the distribution of policy or contract proceeds.~~

9 (o) ~~“Unallocated annuity contract” means any annuity contract~~
10 ~~or group annuity certificate which is not issued to and owned by~~
11 ~~an individual, except to the extent of any annuity benefits~~
12 ~~guaranteed to an individual by an insurer under that contract or~~
13 ~~certificate, and except to the extent allowed in subparagraph (D)~~
14 ~~of paragraph (2) of subdivision (b) of Section 1067.02.~~

15 (n) *“Owner” of a policy or contract and “policy owner” and*
16 *“contract owner” mean the person who is identified as the legal*
17 *owner under the terms of the policy or contract or who is otherwise*
18 *vested with legal title to the policy or contract through a valid*
19 *assignment completed in accordance with the terms of the policy*
20 *or contract and properly recorded as the owner on the books of*
21 *the insurer. The terms owner, contract owner, and policy owner*
22 *do not include persons with a mere beneficial interest in a policy*
23 *or contract.*

24 (o) *“Person” means an individual, corporation, limited liability*
25 *company, partnership, association, governmental body or entity,*
26 *or voluntary organization.*

27 (p) *“Plan sponsor” means any of the following:*

28 (1) *The employer in the case of a benefit plan established or*
29 *maintained by a single employer.*

30 (2) *The employee organization in the case of a benefit plan*
31 *established or maintained by an employee organization.*

32 (3) *In a case of a benefit plan established or maintained by two*
33 *or more employers or jointly by one or more employers and one*
34 *or more employee organizations, the association, committee, joint*
35 *board of trustees, or other similar group of representatives of the*
36 *parties who establish or maintain the benefit plan.*

37 (q) (1) *“Premiums” means amounts or considerations, by*
38 *whatever name called, received on covered policies or contracts*
39 *less returned premiums, considerations, and deposits and less*
40 *dividends and experience credits.*

1 (2) “Premiums” does not include amounts or considerations
2 received for policies or contracts or for the portions of policies or
3 contracts for which coverage is not provided under subdivision
4 (b) of Section 1067.02, except that assessable premium shall not
5 be reduced on account of subparagraph (C) of paragraph (2) of
6 subdivision (b) of Section 1067.02 relating to interest limitations
7 and paragraph (2) of subdivision (c) of Section 1067.02 relating
8 to limitations with respect to one individual, one participant, and
9 one contract owner.

10 (3) “Premiums” does not include any of the following:

11 (A) Premiums on an unallocated annuity contract.

12 (B) With respect to multiple nongroup policies of life insurance
13 owned by one owner, whether the policy owner is an individual,
14 firm, corporation, or other person, and whether the persons insured
15 are officers, managers, employees, or other persons, premiums in
16 excess of five million dollars (\$5,000,000) with respect to these
17 policies or contracts, regardless of the number of policies or
18 contracts held by the owner.

19 (r) (1) “Principal place of business” of a plan sponsor or a
20 person other than a natural person means the single state in which
21 the natural persons who establish policy for the direction, control,
22 and coordination of the operations of the entity as a whole
23 primarily exercise that function, determined by the association in
24 its reasonable judgment by considering all the following factors:

25 (A) The state in which the primary executive and administrative
26 headquarters of the entity are located.

27 (B) The state in which the principal office of the chief executive
28 officer of the entity is located.

29 (C) The state in which the board of directors, or similar
30 governing persons, of the entity conducts the majority of its
31 meetings.

32 (D) The state in which the executive or management committee
33 of the board of directors, or similar governing persons, of the
34 entity conducts the majority of its meetings.

35 (E) The state from which the management of the overall
36 operations of the entity is directed.

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

1 *in the case of a plan sponsor, if more than 50 percent of the*
2 *participants in the benefit plan are employed in a single state, that*
3 *state shall be deemed to be the principal place of business of the*
4 *plan sponsor.*

5 (2) *The principal place of business of a plan sponsor of a benefit*
6 *plan shall be deemed to be the principal place of business of the*
7 *association, committee, joint board of trustees, or other similar*
8 *group of representatives of the parties who establish or maintain*
9 *the benefit plan that, in lieu of a specific or clear designation of*
10 *a principal place of business, shall be deemed to be the principal*
11 *place of business of the employer or employee organization that*
12 *has the largest investment in the benefit plan in question.*

13 (s) *“Receivership court” means the court in the insolvent or*
14 *impaired insurer’s state having jurisdiction over the conservation,*
15 *rehabilitation, or liquidation of the insurer.*

16 (t) *“Resident” means a person to whom a contractual obligation*
17 *is owed and who resides in this state on the date of entry of a court*
18 *order that determines a member insurer to be an impaired insurer*
19 *or a court order that determines a member insurer to be an*
20 *insolvent insurer. A person may be a resident of only one state,*
21 *which in the case of a person other than a natural person shall be*
22 *its principal place of business. Citizens of the United States who*
23 *are either residents of foreign countries, or residents of United*
24 *States’ possessions, territories, or protectorates that do not have*
25 *an association similar to the association created by this article*
26 *shall be deemed residents of the state of domicile of the insurer*
27 *that issued the policies or contracts.*

28 (u) *“State” means a state, the District of Columbia, Puerto*
29 *Rico, and a United States possession, territory, or protectorate.*

30 (v) *“Structured settlement annuity” means an annuity purchased*
31 *in order to fund periodic payments for a plaintiff or other claimant*
32 *in payment for, or with respect to, personal injury suffered by the*
33 *plaintiff or other claimant.*

34 (w) *“Supplemental contract” means a written agreement entered*
35 *into for the distribution of proceeds under a life, health, or annuity*
36 *policy or a life, health, or annuity contract.*

37 (x) *“Unallocated annuity contract” means an annuity contract*
38 *or group annuity certificate which is not issued to and owned by*
39 *an individual, except to the extent of any annuity benefits*

1 *guaranteed to an individual by an insurer under the contract or*
2 *certificate.*

3 *SEC. 5. Section 1067.05 of the Insurance Code is amended to*
4 *read:*

5 1067.05. (a) A nonprofit legal entity to be known as the
6 California Life and Health Insurance Guarantee Association shall
7 exist as a result of the merger of the Seastrand Health Insurance
8 Guaranty Association with and into the California Life Insurance
9 Guaranty Association pursuant to Section 1067.055. All member
10 insurers shall be and remain members of the association as a
11 condition of their authority to transact insurance in this state. The
12 association shall perform its functions under the plan of operation
13 established and approved under Section 1067.09 and shall exercise
14 its powers through a board of directors established under Section
15 1067.06. For purposes of administration and assessment, the
16 association shall maintain the following ~~three~~ *two* accounts:

17 ~~(1) The life insurance account.~~

18 ~~(2) The annuity account.~~

19 ~~(3) The health insurance account.~~

20 *(1) The life insurance and annuity account which includes both*
21 *of the following subaccounts:*

22 *(A) The life insurance account.*

23 *(B) The annuity account, which shall include annuity contracts*
24 *owned by a governmental retirement plan, or its trustee,*
25 *established under Section 401, 403(b), or 457 of the Internal*
26 *Revenue Code.*

27 *(2) The health insurance account.*

28 (b) The association shall come under the immediate supervision
29 of the commissioner and shall be subject to the applicable
30 provisions of the insurance laws of this state. Meetings or records
31 of the association may be opened to the public upon majority vote
32 of the board of directors of the association.

33 *SEC. 6. Section 1067.055 of the Insurance Code is amended*
34 *to read:*

35 1067.055. In order to provide for the merger of the Seastrand
36 Health Insurance Guaranty Association with and into the California
37 Life Insurance Guaranty Association, the following shall apply:

38 (a) Notwithstanding the repeal of the California Life Insurance
39 Guaranty Association Act and the Seastrand Health Insurance
40 Guaranty Association Act, the Seastrand Health Insurance Guaranty

1 Association shall, effective immediately prior to that repeal, be
2 merged with and into the California Life Insurance Guaranty
3 Association, which shall then be known as the California Life and
4 Health Insurance Guarantee Association.

5 (b) Notwithstanding the repeal of the California Life Insurance
6 Guaranty Association Act and the Seastrand Health Insurance
7 Guaranty Association Act, but subject to the last sentence of this
8 subdivision, all of the following shall apply:

9 (1) The association shall succeed, without other transfer, to all
10 the rights, powers, privileges, assets, and property of each of the
11 California Life Insurance Guaranty Association and the Seastrand
12 Health Insurance Guaranty Association, which for the purposes
13 of this section shall be referred collectively as the merging
14 associations. The association shall be subject to all debts,
15 obligations, and liabilities of each merging association in the same
16 manner as if the association had itself incurred them, in each case
17 under the law in effect prior to the effective date of this article, as
18 those rights, powers, privileges, obligations, debts, and liabilities
19 may be amended and restated in this article, ~~including, without~~
20 ~~limitation, the extension of coverage with respect to unallocated~~
21 ~~contracts as provided in subparagraph (D) of paragraph (2) of~~
22 ~~subdivision (b) of Section 1067.02, and in each case with respect~~
23 to member insurers that became impaired insurers or insolvent
24 insurers prior to the effective date of this article and after October
25 1, 1990. Without limiting the generality of the foregoing, the
26 association shall succeed to (A) all collected, uncollected, or
27 unbilled assessments of the merging associations, (B) all cash,
28 bank accounts, and accrued interest of the merging associations,
29 (C) all rights, powers, privileges, and obligations of the merging
30 associations under any contracts or commitments of the merging
31 association, (D) all subrogations, assignments, and creditor rights
32 and interests of the merging associations, and (E) all rights, powers,
33 privileges, and obligations of each of the trusts established on
34 December 31, 1993, by each of the merging associations as settlor.

35 (2) All rights of creditors and all liens upon the property of each
36 of the merging associations shall be preserved unimpaired,
37 provided that the liens upon property of a merging association
38 shall be limited to the property affected thereby immediately prior
39 to the effective date of this article.

1 (3) Any action or proceeding pending by or against a merging
2 association may be prosecuted to judgment, which shall bind the
3 association, or the association may be proceeded against or be
4 substituted in its place.

5 Notwithstanding the other provisions of this subdivision, all
6 debts, obligations, and liabilities of a merging association that were
7 to be paid out of a specified account of the merging association
8 shall be paid solely out of the assets of that merging association
9 that were available to that merging association to pay those debts
10 and liabilities, including, without limitation, collected, uncollected,
11 or unbilled assessments, and any and all subrogation, assignment,
12 and creditor rights, or out of assets in the same type of account of
13 the association.

14 (c) Notwithstanding any other provision to the contrary in this
15 article:

16 (1) It is the intent of this section to preserve rights, powers,
17 privileges, assets, property, debts, obligations, and liabilities of
18 each of the merging associations, and not to provide ~~contractholders~~
19 *contract owners* and ~~policyholders~~ *policy owners*, or their
20 respective payees, beneficiaries, or assignees, with duplicative
21 rights, powers, privileges, assets, or property.

22 (2) Accordingly, no ~~contractholder~~ *contract owner* and
23 ~~policyholder~~ *policy owner*, and no ~~contractholder's~~ *contract*
24 *owner's* or ~~policyholder's~~ *policy owner's* payee, beneficiary, or
25 assignee, shall be entitled to (A) a recovery from the association
26 that is duplicative of a previous recovery from either of the merging
27 associations, or the trust established by either merging association,
28 or (B) a recovery from the association on account of a claim against
29 either of the merging associations where the association is liable
30 with respect to a claim under the same policy or contract under
31 this article.

32 *SEC. 7. Section 1067.07 of the Insurance Code is amended to*
33 *read:*

34 ~~1067.07. (a) If a member insurer is an impaired domestic~~
35 ~~insurer, the association may, in its discretion, and subject to any~~
36 ~~conditions imposed by the association that do not impair the~~
37 ~~contractual obligations of the impaired insurer, that are approved~~
38 ~~by the commissioner, and that are, except in cases of court-ordered~~
39 ~~conservation or rehabilitation, also approved by the impaired~~
40 ~~insurer, do any of the following:~~

- 1 ~~(1) Guarantee, assume, or reinsure, or cause to be guaranteed,~~
2 ~~assumed, or reinsured, any or all of the policies or contracts of the~~
3 ~~impaired insurer.~~
- 4 ~~(2) Provide moneys, pledges, notes, guarantees, or other means~~
5 ~~proper to effectuate paragraph (1) and assure payment of the~~
6 ~~contractual obligations of the impaired insurer pending action~~
7 ~~under paragraph (1).~~
- 8 ~~(3) Loan money to the impaired insurer.~~
- 9 ~~(b) (1) If a member insurer is an impaired insurer, whether~~
10 ~~domestic, foreign, or alien, and the insurer is not paying claims~~
11 ~~timely, then subject to the preconditions specified in paragraph~~
12 ~~(2), the association shall, in its discretion, either:~~
- 13 ~~(A) Take any of the actions specified in subdivision (a), subject~~
14 ~~to the conditions therein.~~
- 15 ~~(B) Provide substitute benefits in lieu of the contractual~~
16 ~~obligations of the impaired insurer solely for health claims, periodic~~
17 ~~annuity benefit payments, death benefits, supplemental benefits,~~
18 ~~and cash withdrawals for policy or contract owners who petition~~
19 ~~therefor under claims of emergency or hardship in accordance with~~
20 ~~standards proposed by the association and approved by the~~
21 ~~commissioner.~~
- 22 ~~(2) The association shall be subject to the requirements of~~
23 ~~paragraph (1) only if subparagraphs (A) and (B) apply:~~
- 24 ~~(A) The laws of the state of domicile of the impaired member~~
25 ~~insurer provide that until all payments of or on account of the~~
26 ~~impaired insurer's contractual obligations by all guarantee~~
27 ~~associations, along with all expenses thereof and interest on all of~~
28 ~~those payments and expenses, shall have been repaid to the~~
29 ~~guarantee associations or a plan of repayment by the impaired~~
30 ~~insurer shall have been approved by the guarantee associations,~~
31 ~~all of the following apply:~~
- 32 ~~(i) The delinquency, rehabilitation, or conservation proceeding~~
33 ~~shall not be dismissed.~~
- 34 ~~(ii) Neither the impaired insurer nor its assets shall be returned~~
35 ~~to the control of its shareholders or private management.~~
- 36 ~~(iii) It shall not be permitted to solicit or accept new business~~
37 ~~or have any suspended or revoked license restored.~~
- 38 ~~(B) Either clause (i) or (ii) applies:~~

1 ~~(i) The impaired insurer is a domestic insurer, and it has been~~
2 ~~placed under an order of conservation or rehabilitation by a court~~
3 ~~of competent jurisdiction in this state.~~

4 ~~(ii) The impaired insurer is a foreign or alien insurer, and all of~~
5 ~~the following apply:~~

6 ~~(I) It has been prohibited from soliciting or accepting new~~
7 ~~business in this state.~~

8 ~~(II) Its certificate of authority has been suspended or revoked~~
9 ~~in this state.~~

10 ~~(III) A petition for conservation, rehabilitation, or liquidation~~
11 ~~has been filed in a court of competent jurisdiction in its state of~~
12 ~~domicile by the commissioner of the state.~~

13 *1067.07. (a) If a member insurer is an impaired insurer, the*
14 *association may, in its discretion, and subject to any conditions*
15 *imposed by the association that do not impair the contractual*
16 *obligations of the impaired insurer and that are approved by the*
17 *commissioner, do any of the following:*

18 *(1) Guarantee, assume, or reinsure, or cause to be guaranteed,*
19 *assumed, or reinsured, any or all of the policies or contracts of*
20 *the impaired insurer.*

21 *(2) Provide moneys, pledges, loans, notes, guarantees, or other*
22 *means as are proper to effectuate paragraph (1) and assure*
23 *payment of the contractual obligations of the impaired insurer*
24 *pending action under paragraph (1).*

25 ~~(e)~~

26 *(b) If a member insurer is an insolvent insurer, the association*
27 *shall, in its discretion, either do those things described in paragraph*
28 *(1) or in paragraph (2):*

29 *(1) (A) Guarantee, assume, or reinsure, or cause to be*
30 *guaranteed, assumed or reinsured, the policies or contracts of the*
31 *insolvent insurer; or*

32 *(B) Assure payment of the contractual obligations of the*
33 *insolvent insurer; and*

34 *(C) Provide those moneys, pledges, loans, notes, guarantees,*
35 *or other means as are reasonably necessary to discharge the*
36 *association's duties.*

37 ~~(2) With respect only to life and health insurance policies,~~
38 ~~provide benefits and coverages in accordance with subdivision~~
39 ~~(d).~~

1 ~~(d) When proceeding under subparagraph (B) of paragraph (1)~~
2 ~~of subdivision (b), or paragraph (2) of subdivision (c), the~~
3 ~~association shall, with respect to only life and health insurance~~
4 ~~policies:~~

5 ~~(1) Assure payment of benefits for premiums identical to the~~
6 ~~premiums and benefits, except for terms of conversion and~~
7 ~~renewability, that would have been payable under the policies of~~
8 ~~the insolvent insurer, for claims incurred:~~

9 ~~(A) With respect to group life insurance policies, not later than~~
10 ~~the earlier of the next renewal date under the policies or contracts~~
11 ~~or 45 days, but in no event less than 30 days, after the date on~~
12 ~~which the association becomes obligated with respect to the~~
13 ~~policies:~~

14 ~~(B) With respect to group health insurance policies, individual~~
15 ~~health insurance policies and individual life insurance policies,~~
16 ~~not later than the earlier of the next renewal date, if any, under the~~
17 ~~policies or contracts or one year, but in no event less than 30 days,~~
18 ~~from the date on which the association becomes obligated with~~
19 ~~respect to the policies:~~

20 ~~(2) Make diligent efforts to provide all known insureds or group~~
21 ~~policyholders, with respect to group policies, 30 days notice of the~~
22 ~~termination of the benefits provided.~~

23 ~~(3) With respect to individual policies, make available to each~~
24 ~~known insured, or owner if other than the insured, and with respect~~
25 ~~to an individual formerly insured under a group policy who is not~~
26 ~~eligible for replacement group coverage, make available substitute~~
27 ~~coverage on an individual basis in accordance with the provisions~~
28 ~~of paragraph (4), if the insureds had a right under law or the~~
29 ~~terminated policy to convert coverage to individual coverage or~~
30 ~~to continue an individual policy in force until a specified age or~~
31 ~~for a specified time, during which the insurer had no right~~
32 ~~unilaterally to make changes in any provision of the policy or had~~
33 ~~a right only to make changes in premium by class.~~

34 ~~(2) Provide benefits and coverages in accordance with the~~
35 ~~following provisions:~~

36 ~~(A) With respect to life and health insurance policies and~~
37 ~~annuities, assure payment of benefits for premiums identical to~~
38 ~~the premiums and benefits, except for terms of conversion and~~
39 ~~renewability, that would have been payable under the policies or~~
40 ~~contracts of the insolvent insurer, for claims incurred:~~

1 (i) With respect to group policies and contracts, not later than
2 the earlier of the next renewal date under those policies or
3 contracts or 45 days, but in no event less than 30 days, after the
4 date on which the association becomes obligated with respect to
5 the policies and contracts.

6 (ii) With respect to nongroup policies, contracts, and annuities,
7 not later than the earlier of the next renewal date, if any, under
8 the policies or contracts or one year, but in no event less than 30
9 days, from the date on which the association becomes obligated
10 with respect to the policies or contracts.

11 (B) Make diligent efforts to provide all known insureds or
12 annuitants, for nongroup policies and contracts, or group policy
13 owners with respect to group policies and contracts, 30 days'
14 notice of the termination, pursuant to subparagraph (A), of the
15 benefits provided.

16 (C) With respect to nongroup life and health insurance policies
17 and annuities covered by the association, make available to each
18 known insured or annuitant, or owner if other than the insured or
19 annuitant, and with respect to an individual formerly insured or
20 formerly an annuitant under a group policy who is not eligible for
21 replacement group coverage, make available substitute coverage
22 on an individual basis in accordance with the provisions of
23 subparagraph (D), if the insureds or annuitants had a right under
24 law or the terminated policy or annuity to convert coverage to
25 individual coverage or to continue an individual policy or annuity
26 in force until a specified age or for a specified time, during which
27 the insurer had no right unilaterally to make changes in any
28 provision of the policy or annuity or had a right only to make
29 changes in premium by class.

30 ~~(4) (A)~~

31 (D) (i) In providing the substitute coverage required under
32 ~~paragraph (3)~~ subparagraph (C), the association may offer either
33 to reissue the terminated coverage or to issue an alternative policy
34 and shall consider obtaining coverage for a medically uninsurable
35 person from the program established under Part 6.5 (commencing
36 with Section 12700) of Division 2.

37 ~~(B)~~

38 (ii) Alternative or reissued policies shall be offered without
39 requiring evidence of insurability, and shall not provide for any

1 waiting period or exclusion that would not have applied under the
2 terminated policy.

3 ~~(C)~~

4 *(iii)* The association may reinsure any alternative or reissued
5 policy.

6 ~~(5)-(A)~~

7 *(E) (i)* Alternative policies adopted by the association shall be
8 subject to the approval of the commissioner. The association may
9 adopt alternative policies of various types for future issuance
10 without regard to any particular impairment or insolvency.

11 ~~(B)~~

12 *(ii)* Alternative policies shall contain at least the minimum
13 statutory provisions required in this state and provide benefits that
14 shall not be unreasonable in relation to the premium charged. The
15 association shall set the premium in accordance with a table of
16 rates which it shall adopt. The premium shall reflect the amount
17 of insurance to be provided and the age and class of risk of each
18 insured, but shall not reflect any changes in the health of the
19 insured after the original policy was last underwritten.

20 ~~(C)~~

21 *(iii)* Any alternative policy issued by the association shall
22 provide coverage of a type similar to that of the policy issued by
23 the impaired or insolvent insurer, as determined by the association.

24 ~~(6)~~

25 *(F)* If the association elects to reissue terminated coverage at a
26 premium rate different from that charged under the terminated
27 policy, the premium shall be set by the association in accordance
28 with the amount of insurance provided and the age and class of
29 risk, subject to approval of the commissioner or by a court of
30 competent jurisdiction.

31 ~~(7)~~

32 *(G)* The association's obligations with respect to coverage under
33 any policy of the impaired or insolvent insurer or under any
34 reissued or alternative policy shall cease on the date ~~that the~~
35 coverage or policy is replaced by another similar policy by the
36 ~~policyholder~~ *policy owner*, the insured, or the association.

37 ~~(e) When proceeding under subparagraph (B) of paragraph (1)~~
38 ~~of subdivision (b) or under subdivision (c) with respect to any~~
39 ~~policy or contract carrying guaranteed minimum interest rates, the~~
40 ~~association shall assure the payment or crediting of a rate of interest~~

1 consistent with subparagraph (C) of paragraph (2) of subdivision
2 (b) of Section 1067.02.

3 (H) When proceeding under this paragraph with respect to a
4 policy or contract carrying guaranteed minimum interest rates,
5 the association shall assure the payment or crediting of a rate of
6 interest consistent with subparagraph (C) of paragraph (2) of
7 subdivision (b) of Section 1067.02.

8 (f)

9 (c) Nonpayment of premiums within 31 days after the date
10 required under the terms of any guaranteed, assumed, alternative,
11 or reissued policy or contract or substitute coverage shall terminate
12 the association's obligations under the policy or coverage under
13 this article with respect to that policy or coverage, except with
14 respect to any claims incurred or any net cash surrender value
15 which may be due in accordance with the provisions of this article.

16 (g)

17 (d) Premiums due for coverage after entry of an order of
18 liquidation of an insolvent insurer shall belong to and be payable
19 at the direction of the association, and the association shall be
20 liable for unearned premiums due to policy or contract owners
21 arising after the entry of that order.

22 (h)

23 (e) The protection provided by this article shall not apply where
24 any guarantee protection is provided to residents of this state by
25 the laws of the domiciliary state or jurisdiction of the impaired or
26 insolvent insurer other than this state.

27 (i)

28 (f) In carrying out its duties under ~~subdivisions (b) and (c)~~
29 *subdivision (b)*, the association may, subject to approval by ~~the a~~
30 *court of competent jurisdiction*, do either of the following:

31 (1) Impose permanent policy or contract liens in connection
32 with any guarantee, assumption, or reinsurance agreement, if the
33 association finds that the amounts which can be assessed under
34 this article are less than the amounts needed to assure full and
35 prompt performance of the association's duties under this article,
36 or that the economic or financial conditions as they affect member
37 insurers are sufficiently adverse to render the imposition of the
38 permanent policy or contract liens, to be in the public interest.

39 (2) ~~Impose temporary moratoriums or liens on payments of cash~~
40 ~~values and policy loans, or any other right to withdraw funds held~~

1 in conjunction with policies or contracts, in addition to any
2 contractual provisions for deferral of cash or policy loan value.

3 (j) ~~If the association fails to act within a reasonable period of~~
4 ~~time as provided in subparagraph (B) of paragraph (1) of~~
5 ~~subdivision (b), and subdivisions (c) and (d), with respect to an~~
6 ~~impaired or insolvent insurer, the commissioner shall have the~~
7 ~~powers and duties of the association under this article with respect~~
8 ~~to the impaired or insolvent insurer.~~

9 (2) *Impose temporary moratoriums or liens on payments of cash*
10 *values and policy loans, or any other right to withdraw funds held*
11 *in conjunction with policies or contracts, in addition to any*
12 *contractual provisions for deferral of cash or policy loan value.*
13 *In addition, in the event of a temporary moratorium or moratorium*
14 *charge imposed by the receivership court on payment of cash*
15 *values or policy loans, or on any other right to withdraw funds*
16 *held in conjunction with policies or contracts, out of the assets of*
17 *the impaired or insolvent insurer, the association may defer the*
18 *payment of cash values, policy loans, or other rights by the*
19 *association for the period of the moratorium or moratorium charge*
20 *imposed by the receivership court, except for claims covered by*
21 *the association to be paid in accordance with a hardship procedure*
22 *established by the liquidator or rehabilitator and approved by the*
23 *receivership court.*

24 (g) *A deposit in this state, held pursuant to law or required by*
25 *the commissioner for the benefit of creditors, including policy*
26 *owners, not turned over to the domiciliary liquidator upon the*
27 *entry of a final order of liquidation or order approving a*
28 *rehabilitation plan of an insurer domiciled in this state or in a*
29 *reciprocal state shall be promptly paid to the association. The*
30 *association shall be entitled to retain a portion of any amount so*
31 *paid to it equal to the percentage determined by dividing the*
32 *aggregate amount of policy owners' claims related to that*
33 *insolvency for which the association has provided statutory benefits*
34 *by the aggregate amount of all policy owners' claims in this state*
35 *related to that insolvency and shall remit to the domiciliary*
36 *receiver the amount so paid to the association less the amount*
37 *retained pursuant to this subdivision. Any amount so paid to the*
38 *association and retained by it shall be treated as a distribution of*
39 *estate assets pursuant to applicable state receivership law dealing*
40 *with early access disbursements.*

1 *(h) If the association fails to act within a reasonable period of*
2 *time with respect to an insolvent insurer, as provided in subdivision*
3 *(b), the commissioner shall have the powers and duties of the*
4 *association under this article with respect to the insolvent insurer.*

5 ~~(k)~~

6 *(i) The association may render assistance and advice to the*
7 *commissioner, upon his or her request, concerning rehabilitation,*
8 *payment of claims, continuance of coverage, or the performance*
9 *of other contractual obligations of any impaired or insolvent*
10 *insurer.*

11 ~~*(l) The association shall have standing to appear before any*~~
12 ~~*court in this state with jurisdiction over an impaired or insolvent*~~
13 ~~*insurer concerning which the association is or may become*~~
14 ~~*obligated under this article. That standing shall extend to all matters*~~
15 ~~*germane to the powers and duties of the association, including,*~~
16 ~~*but not limited to, proposals for reinsuring, modifying, or*~~
17 ~~*guaranteeing the policies or contracts of the impaired or insolvent*~~
18 ~~*insurer and the determination of the policies or contracts and*~~
19 ~~*contractual obligations. The association shall also have the right*~~
20 ~~*to appear or intervene before a court in another state with*~~
21 ~~*jurisdiction over an impaired or insolvent insurer for which the*~~
22 ~~*association is or may become obligated or with jurisdiction over*~~
23 ~~*a third party against whom the association may have rights through*~~
24 ~~*subrogation of the insurer's policyholders.*~~

25 *(j) The association shall have standing to appear or intervene*
26 *before a court or agency in this state with jurisdiction over an*
27 *impaired or insolvent insurer concerning which the association is*
28 *or may become obligated under this article or with jurisdiction*
29 *over any person or property against which the association may*
30 *have rights through subrogation or otherwise. Standing shall*
31 *extend to all matters germane to the powers and duties of the*
32 *association, including, but not limited to, proposals for reinsuring,*
33 *modifying, or guaranteeing the policies or contracts of the impaired*
34 *or insolvent insurer and the determination of the policies or*
35 *contracts and contractual obligations. The association shall also*
36 *have the right to appear or intervene before a court or agency in*
37 *another state with jurisdiction over an impaired or insolvent*
38 *insurer for which the association is or may become obligated or*
39 *with jurisdiction over any person or property against which the*
40 *association may have rights through subrogation or otherwise.*

1 ~~(m)~~

2 (k) (1) Any person receiving benefits under this article shall be
3 deemed to have assigned the rights under, and ~~any causes of action~~
4 ~~relating to~~, *any causes of action against any person for losses*
5 *arising under, resulting from, or otherwise relating to*, the covered
6 policy or contract to the association to the extent of the benefits
7 received because of this article, whether the benefits are payments
8 of or on account of contractual obligations, continuation of
9 coverage or provision of substitute or alternative coverages. The
10 association may require an assignment to it of those rights and
11 cause of action by any payee, policy or contract owner, beneficiary,
12 insured, or annuitant as a condition precedent to the receipt of any
13 right or benefits conferred by this article upon that person.

14 (2) The subrogation rights of the association under this
15 subdivision shall have the same priority against the assets of the
16 impaired or insolvent insurer as that possessed by the person
17 entitled to receive benefits under this article.

18 ~~(3) In addition to paragraphs (1) and (2), the association shall~~
19 ~~have all common law rights of subrogation and any other equitable~~
20 ~~or legal remedy that would have been available to the impaired or~~
21 ~~insolvent insurer or holder of a policy or contract with respect to~~
22 ~~the policy or contracts.~~

23 (3) *In addition to paragraphs (1) and (2), the association shall*
24 *have all common law rights of subrogation and any other equitable*
25 *or legal remedy that would have been available to the impaired*
26 *or insolvent insurer or owner, beneficiary, or payee of a policy or*
27 *contract with respect to the policy or contracts, including without*
28 *limitation, in the case of a structured settlement annuity, any rights*
29 *of the owner, beneficiary, or payee of the annuity, to the extent of*
30 *benefits received pursuant to this article, against a person*
31 *originally or by succession responsible for the losses arising from*
32 *the personal injury relating to the annuity or payment therefor,*
33 *excepting any person responsible solely by reason of serving as*
34 *an assignee in respect of a qualified assignment under Section 130*
35 *of the Internal Revenue Code.*

36 (4) *If the preceding provisions of this subdivision are invalid*
37 *or ineffective with respect to any person or claim for any reason,*
38 *the amount payable by the association with respect to the related*
39 *covered obligations shall be reduced by the amount realized by*
40 *any other person with respect to the person or claim that is*

1 *attributable to the policies, or portion thereof, covered by the*
2 *association.*

3 (5) *If the association has provided benefits with respect to a*
4 *covered obligation and a person recovers amounts as to which the*
5 *association has rights as described in the preceding paragraphs*
6 *of this subdivision, the person shall pay to the association the*
7 *portion of the recovery attributable to the policies, or portion*
8 *thereof, covered by the association.*

9 ~~(n) The association~~

10 (l) *In addition to the rights and powers elsewhere in this article,*
11 *the association may do any of the following:*

12 (1) *Enter into contracts as are necessary or proper to carry out*
13 *the provisions and purposes of this article.*

14 (2) *Sue or be sued, including taking any legal actions necessary*
15 *or proper to recover any unpaid assessments under Section 1067.08*
16 *and to settle claims or potential claims against it.*

17 (3) *Borrow money to effect the purposes of this article. Any*
18 *notes or other evidence of indebtedness of the association not in*
19 *default shall be legal investments for domestic insurers and may*
20 *be carried as admitted assets.*

21 (4) *Employ or retain ~~an executive director and other such~~*
22 *persons as are necessary to handle the financial transactions of*
23 *the association, and to perform other functions as become necessary*
24 *or proper under this article ~~provided that the executive director~~*
25 *shall be subject to the approval of the commissioner.*

26 (5) ~~Take legal action necessary to avoid payment of improper~~
27 ~~claims~~ *Take such legal action as may be necessary or appropriate*
28 *to avoid or recover payment of improper claims.*

29 (6) *Exercise, for the purposes of this article and to the extent*
30 *approved by the commissioner, the powers of a domestic life or*
31 *health insurer, but in no case may the association issue insurance*
32 *policies or annuity contracts other than those issued to perform its*
33 *obligations under this article.*

34 (7) *Organize itself as a corporation or in another legal form*
35 *permitted by the laws of the state.*

36 (8) *Request information from a person seeking coverage from*
37 *the association in order to aid the association in determining its*
38 *obligations under this article with respect to the person, and the*
39 *person shall promptly comply with the request.*

1 (9) *Take other necessary or appropriate action to discharge its*
2 *duties and obligations under this article or to exercise its powers*
3 *under this article.*

4 ~~(θ)~~

5 (m) *The association may join an organization of one or more*
6 *other state associations of similar purposes, to further the purposes*
7 *and administer the powers and duties of the association.*

8 ~~(ϕ)~~

9 (n) *There shall be no liability on the part of and no cause of*
10 *action shall arise against the association or against any transferee*
11 *from the association in connection with the transfer by reinsurance*
12 *or otherwise of all or any part of an impaired or insolvent insurer’s*
13 *business by reason of any action taken or any failure to take any*
14 *action by the impaired or insolvent insurer at any time.*

15 ~~(ϕ)~~

16 (o) *With respect to covered policies for which the association*
17 *becomes obligated after an entry of an order or liquidation or*
18 *rehabilitation, the association may elect to succeed to the rights of*
19 *the insolvent insurer arising after the date of the order of liquidation*
20 *or rehabilitation under any contract of reinsurance to which the*
21 *insolvent insurer was a party, to the extent that the contract*
22 *provides coverage for losses occurring after the date of the order*
23 *of liquidation or rehabilitation. As a condition to making this*
24 *election, the association must pay all unpaid premiums due under*
25 *the contract for coverage relating to periods before and after the*
26 *date of the order of liquidation or rehabilitation.*

27 (p) *The board of directors of the association shall have*
28 *discretion and may exercise reasonable business judgment to*
29 *determine the means by which the association is to provide the*
30 *benefits of this article in an economical and efficient manner.*

31 (q) *Where the association has arranged or offered to provide*
32 *the benefits of this article to a covered person under a plan or*
33 *arrangement that fulfills the association’s obligations under this*
34 *article, the person shall not be entitled to benefits from the*
35 *association in addition to or other than those provided under the*
36 *plan or arrangement.*

37 (r) *The venue in a suit against the association arising under the*
38 *article shall be in Los Angeles County. The association shall not*
39 *be required to give an appeal bond in an appeal that relates to a*
40 *cause of action arising under this article.*

1 (s) In carrying out its duties in connection with guaranteeing,
2 assuming, or reinsuring policies or contracts under subdivision
3 (a) or (b), the association may, subject to approval of the
4 receivership court, issue substitute coverage for a policy or
5 contract that provides an interest rate, crediting rate, or similar
6 factor determined by use of an index or other external reference
7 stated in the policy or contract employed in calculating returns or
8 changes in value by issuing an alternative policy or contract in
9 accordance with all of the following provisions:

10 (1) In lieu of the index or other external reference provided for
11 in the original policy or contract, the alternative policy or contract
12 provides for a fixed interest rate, payment of dividends with
13 minimum guarantees, or a different method for calculating interest
14 or changes in value.

15 (2) There is no requirement for evidence of insurability, waiting
16 period, or other exclusion that would not have applied under the
17 replaced policy or contract.

18 (3) The alternative policy or contract is substantially similar
19 to the replaced policy or contract in all other material terms.

20 SEC. 8. Section 1067.08 of the Insurance Code is amended to
21 read:

22 1067.08. (a) For the purpose of providing the funds necessary
23 to carry out the powers and duties of the association, the board of
24 directors shall assess the member insurers, separately for each
25 account, at the time and for the amounts as the board finds
26 necessary. Assessments shall be due not more than 30 days after
27 prior written notice to the member insurers and shall accrue interest
28 at the rate of 10 percent per annum on and after the due date.

29 (b) There shall be two *classes* of assessments, as follows:

30 (1) Class A assessments shall be ~~made~~ *authorized and called*
31 for the purpose of meeting administrative and legal costs and other
32 expenses and examinations conducted under the authority of
33 subdivision (e) of Section 1067.11. Class A assessments may be
34 ~~made~~ *authorized and called* whether or not related to a particular
35 impaired or insolvent insurer.

36 (2) Class B assessments shall be ~~made~~ *authorized and called*
37 to the extent necessary to carry out the powers and duties of the
38 association under Section 1067.07 with regard to an impaired or
39 an insolvent insurer.

1 (c) (1) The amount of any class A assessment shall be
2 determined by the board and may be made on a pro rata or non-pro
3 rata basis. If pro rata, the board may provide that it be credited
4 against future class B assessments. A non-pro rata assessment shall
5 not exceed two hundred fifty dollars (\$250) per member insurer
6 ~~in any one calendar year~~ *at the discretion of the board of directors*
7 *and such assessments shall be authorized and called on a non-pro*
8 *rata basis.* The amount of any class B assessment shall be allocated
9 for assessment purposes among the accounts pursuant to an
10 allocation formula that may be based on the premiums or reserves
11 of the impaired or insolvent insurer or any other standard deemed
12 by the board in its sole discretion as being fair and reasonable
13 under the circumstances.

14 (2) Class B assessments against member insurers for each
15 account shall be in the proportion that the premiums received on
16 business in this state by each assessed member insurer on policies
17 or contracts covered by each account for the three most recent
18 calendar years for which information is available preceding the
19 year in which the insurer became impaired or insolvent, as the case
20 may be, bears to premiums received on business in this state for
21 those calendar years by all assessed member insurers.

22 (3) Assessments for funds to meet the requirements of the
23 association with respect to an impaired or insolvent insurer shall
24 ~~not be made~~ *authorized and called* until necessary to implement
25 the purposes of this article. Classification of assessments under
26 subdivision (b) and computation of assessments under this
27 subdivision shall be made with a reasonable degree of accuracy,
28 recognizing that exact determinations may not always be possible.
29 *The association shall notify each member insurer of its anticipated*
30 *pro rata share of an authorized assessment not yet called within*
31 *180 days after the assessment is authorized.*

32 (d) The association may abate or defer, in whole or in part, the
33 assessment of a member insurer if, in the opinion of the board,
34 payment of the assessment would endanger the ability of the
35 member insurer to fulfill its contractual obligations. In the event
36 an assessment against a member insurer is abated, or deferred in
37 whole or in part, the amount by which that assessment is abated
38 or deferred may be assessed against the other member insurers in
39 a manner consistent with the basis for assessments set forth in this
40 section. *Once the conditions that caused a deferral have been*

1 *removed or rectified, the member insurer shall pay all assessments*
2 *that were deferred pursuant to a repayment plan approved by the*
3 *association.*

4 ~~(e) (1) The total of all assessments upon a member insurer for~~
5 ~~any account shall not in any one calendar year exceed 1 percent~~
6 ~~of the insurer's average premiums received in this state on the~~
7 ~~policies and contracts covered by the account during the three~~
8 ~~calendar years preceding the year in which the insurer became an~~
9 ~~impaired or insolvent insurer. If the maximum assessment, together~~
10 ~~with the other assets of the association in any account, does not~~
11 ~~provide in any one year in that account an amount sufficient to~~
12 ~~carry out the responsibilities of the association, the necessary~~
13 ~~additional funds shall be assessed as soon thereafter as permitted~~
14 ~~by this article.~~

15 *(e) (1) (A) Subject to the provisions of subparagraph (B), the*
16 *total of all assessments authorized by the association with respect*
17 *to a member insurer for each subaccount of the life insurance and*
18 *annuity account and for the health account shall not in one*
19 *calendar year exceed 2 percent of that member insurer's average*
20 *annual premiums received in this state on the policies and contracts*
21 *covered by the subaccount or account during the three calendar*
22 *years preceding the year in which the insurer became an impaired*
23 *or insolvent insurer.*

24 *(B) If two or more assessments are authorized in one calendar*
25 *year with respect to insurers that become impaired or insolvent*
26 *in different calendar years, the average annual premiums for*
27 *purposes of the aggregate assessment percentage limitation*
28 *referenced in subparagraph (A) shall be equal and limited to the*
29 *higher of the three-year average annual premiums for the*
30 *applicable subaccount or account as calculated pursuant to this*
31 *section.*

32 *(C) If the maximum assessment, together with the other assets*
33 *of the association in an account, does not provide in one year in*
34 *either account an amount sufficient to carry out the responsibilities*
35 *of the association, the necessary additional funds shall be assessed*
36 *as soon thereafter as permitted by this article.*

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

1 (f) The board may, by an equitable method as established in the
2 plan of operation, refund to member insurers, in proportion to the
3 contribution of each insurer to that account, the amount by which
4 the assets of the account exceed the amount the board finds is
5 necessary to carry out during the coming year the obligations of
6 the association with regard to that account, including assets
7 accruing from assignment, subrogation, net realized gains, and
8 income from investments. A reasonable amount may be retained
9 in any account to provide funds for the continuing expenses of the
10 association and for future losses.

11 (g) It shall be proper for any member insurer, in determining
12 its premium rates and ~~policyowner~~ *policy owner* dividends as to
13 ~~life or annuity~~ *any kind* of insurance within the scope of this article,
14 to consider the amount reasonably necessary to meet its assessment
15 obligations under this article.

16 (h) The association shall issue to each insurer paying an
17 assessment under this article, other than class A assessment, a
18 certificate of contribution, in a form prescribed by the
19 commissioner, for the amount of the assessment so paid. All
20 outstanding certificates shall be of equal dignity and priority
21 without reference to amounts or date of issue. A certificate of
22 contribution may be shown by the insurer in its financial statement
23 as an asset in the form and for the amount, if any, and period of
24 time as the commissioner may approve.

25 (i) (1) Subject to the provisions of paragraph (3), the plan of
26 operation adopted pursuant to Section 1067.09 shall contain
27 provisions whereby each member insurer ~~is required to~~ *may* recoup
28 over a reasonable length of time a sum reasonably calculated to
29 recoup the assessments with respect to the health insurance account
30 paid by the member insurer under this article by way of a surcharge
31 on premiums charged for health insurance policies to which this
32 article applies. Amounts recouped shall not be considered
33 premiums for any other purpose, including the computation of
34 gross premium tax or agent's commission.

35 (2) Member insurers who collect surcharges in excess of
36 assessments paid pursuant to this section for an insolvent insurer
37 shall remit the excess to the association as an additional assessment
38 within 120 days after the end of the collection period as determined
39 by the association. The excess shall be applied to reduce future
40 health insurance account assessments for that insurer.

1 (3) The plan of operation may permit a member insurer to omit
2 the collection of the surcharge from its insureds when it determines
3 the amount of the surcharge collectible from each insured would
4 be unreasonably small in relation to the potential confusion of or
5 objection by the insureds even if the aggregate surcharges
6 collectible from all insureds exceeds the expense of collection.

7 (j) Any statement of the amount of surcharge ~~required to be~~
8 provided by the association shall include a description of, and
9 purpose for, the California Life and Health Insurance Guarantee
10 Association, as follows:

11
12 “Companies writing health insurance business in California are
13 required to participate in the California Life and Health Insurance
14 Guarantee Association. If a company writing health insurance
15 becomes insolvent, the California Life and Health Insurance
16 Guarantee Association settles unpaid claims and assesses each
17 insurance company for its fair share.”

18 “California law ~~requires~~ *allows* all companies to surcharge
19 policies to recover these assessments. If your policy is surcharged,
20 “CA Surcharge” with an amount will be displayed on your
21 premium notice.”

22
23 *(k) (1) A member insurer that wishes to protest all or part of*
24 *an assessment shall pay when due the full amount of the assessment*
25 *as set forth in the notice provided by the association. The payment*
26 *shall be available to meet association obligations during the*
27 *pendency of the protest or any subsequent appeal. Payment shall*
28 *be accompanied by a statement in writing that the payment is made*
29 *under protest and setting forth a brief statement of the grounds*
30 *for the protest.*

31 *(2) Within 60 days following the payment of an assessment*
32 *under protest by a member insurer, the association shall notify*
33 *the member insurer in writing of its determination with respect to*
34 *the protest unless the association notifies the member insurer that*
35 *additional time is required to resolve the issues raised by the*
36 *protest.*

37 *(3) Within 30 days after a final decision has been made, the*
38 *association shall notify the protesting member insurer in writing*
39 *of that final decision. Within 60 days of receipt of notice of the*

1 *final decision, the protesting member insurer may appeal that final*
2 *action to the commissioner.*

3 (4) *In the alternative to rendering a final decision with respect*
4 *to a protest based on a question regarding the assessment base,*
5 *the association may refer protests to the commissioner for a final*
6 *decision, with or without a recommendation from the association.*

7 (5) *If the protest or appeal on the assessment is upheld, the*
8 *amount paid in error or excess shall be returned to the member*
9 *company. Interest on a refund due a protesting member shall be*
10 *paid at the rate actually earned by the association.*

11 (l) *The association may request information of member insurers*
12 *in order to aid in the exercise of its power under this section, and*
13 *member insurers shall promptly comply with a request.*

14 *SEC. 9. Section 1067.09 of the Insurance Code is amended to*
15 *read:*

16 1067.09. (a) (1) The association shall submit to the
17 commissioner a plan of operation and any amendments thereto
18 necessary or suitable to assure the fair, reasonable, and equitable
19 administration of the association. The plan of operation and any
20 amendments thereto shall become effective upon the
21 commissioner's written approval or unless he or she has not
22 disapproved it within 30 days.

23 (2) If the association fails to submit a suitable plan of operation
24 within 120 days following the effective date of this article or if at
25 any time thereafter the association fails to submit suitable
26 amendments to the plan, the commissioner shall, after notice and
27 hearing, adopt and promulgate those reasonable rules *as are*
28 *necessary or advisable to effectuate the provisions of this article.*
29 The rules shall continue in force until modified by the
30 commissioner or superseded by a plan submitted by the association
31 and approved by the commissioner.

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

33 (c) The plan of operation shall, in addition to requirements
34 enumerated elsewhere in this article, do all of the following:

35 (1) Establish procedures for handling the assets of the
36 association.

37 (2) Establish the amount and method of reimbursing members
38 of the board of directors under Section 1067.06.

39 (3) Establish regular places and times for meetings including
40 telephone conference calls of the board of directors.

1 (4) Establish procedures for records to be kept of all financial
2 transactions of the association, its agents, and the board of
3 directors.

4 (5) Establish the procedure whereby selections for the board of
5 directors will be made and submitted to the commissioner.

6 (6) Establish any additional procedures for assessments under
7 Section 1067.08.

8 (7) Contain additional provisions necessary or proper for the
9 execution of the powers and duties of the association.

10 (8) *Establish procedures whereby a director may be removed*
11 *for cause, including in the case where a member insurer director*
12 *becomes an impaired or insolvent insurer.*

13 (9) *Require the board of directors to establish a policy and*
14 *procedures for addressing conflicts of interests.*

15 (d) The plan of operation may provide that any or all powers
16 and duties of the association, including its administration, except
17 those under paragraph (3) of subdivision-(n) (l) of Section 1067.07
18 and Section 1067.08, are delegated to a corporation, association,
19 or other organization which performs or will perform functions
20 similar to those of this association, or its equivalent, in two or more
21 states. That corporation, association, or organization shall be
22 reimbursed for any payments made on behalf of the association
23 and shall be paid for its performance of any function of the
24 association. A delegation under this subdivision shall take effect
25 only with the approval of both the board of directors and the
26 commissioner, and may be made only to a corporation, association,
27 or organization which extends protection not substantially less
28 favorable and effective than that provided by this article.

29 *SEC. 10. Section 1067.10 of the Insurance Code is amended*
30 *to read:*

31 1067.10. In addition to the duties and powers enumerated
32 elsewhere in this article:

33 (a) The commissioner shall do all of the following:

34 (1) Upon request of the board of directors, provide the
35 association with a statement of the premiums in this and any other
36 appropriate states for each member insurer.

37 (2) When an impairment is declared and the amount of the
38 impairment is determined, serve a demand upon the impaired
39 insurer to make good the impairment within a reasonable time;
40 notice to the impaired insurer shall constitute notice to its

1 shareholders, if any; the failure of the insurer to promptly comply
2 with such demand shall not excuse the association from the
3 performance of its powers and duties under this article.

4 (3) In any liquidation or rehabilitation proceeding involving a
5 domestic insurer, be appointed as the liquidator or rehabilitator.

6 (b) The commissioner may suspend or revoke, after notice and
7 hearing, the certificate of authority to transact insurance in this
8 state of any member insurer which fails to pay an assessment when
9 due or fails to comply with the plan of operation. As an alternative
10 the commissioner may levy a forfeiture on any member insurer
11 which fails to pay an assessment when due. The forfeiture shall
12 not exceed 5 percent of the unpaid assessment per month, but no
13 forfeiture shall be less than one hundred dollars (\$100) per month.

14 ~~(e) Any action of the board of directors or the association may
15 be appealed to the commissioner by any member insurer if the
16 appeal is taken within 60 days of the final action being appealed.
17 If a member company is appealing an assessment, the amount
18 assessed shall be paid to the association and available to meet
19 association obligations during the pendency of an appeal. If the
20 appeal on the assessment is upheld, the amount paid in error or
21 excess shall be returned to the member company. Any final action
22 or order of the commissioner shall be subject to judicial review in
23 a court of competent jurisdiction.~~

24 *(c) A final action of the board of directors or the association
25 may be appealed to the commissioner by a member insurer if the
26 appeal is taken within 60 days of its receipt of notice of the final
27 action being appealed. A final action or order of the commissioner
28 shall be subject to judicial review in a court of competent
29 jurisdiction in accordance with the laws of this state that apply to
30 the actions or orders of the commissioner.*

31 (d) The liquidator, rehabilitator, or conservator of any impaired
32 insurer or insolvent insurer may notify all interested persons of
33 the effect of this article.

34 *SEC. 11. Section 1067.11 of the Insurance Code is amended
35 to read:*

36 1067.11. To aid in the detection and prevention of insurer
37 insolvencies or impairments:

38 (a) It shall be the duty of the commissioner to do the following:

1 (1) To notify the commissioners of all the other states, territories
2 of the United States, and the District of Columbia when he or she
3 takes any of the following actions against a member insurer:

4 (A) Revocation of license.

5 (B) Suspension of license.

6 (C) Makes any formal order that the company restrict its
7 premium writing, obtain additional contributions to surplus,
8 withdraw from the state, reinsure all or any part of its business, or
9 increase capital, surplus, or any other account for the security of
10 ~~policyholders~~ *policy owners* or creditors.

11 The notice shall be mailed to all commissioners within 30 days
12 following the action taken or the date on which the action occurs.

13 (2) To report to the board of directors, the Legislature, and the
14 Governor when he or she has taken any of the actions set forth in
15 paragraph (1) or has received a report from any other commissioner
16 indicating that any action has been taken in another state. The
17 report to the board of directors, the Legislature, and the Governor
18 shall contain all significant details of the action taken on the report
19 received from another commissioner.

20 (3) To report to the board of directors when he or she has
21 reasonable cause to believe from any examination, whether
22 completed or in process, of any member company that the company
23 may be an impaired or insolvent insurer.

24 (4) To furnish to the board of directors the NAIC Insurance
25 Regulatory Information System (IRIS) ratios and listings of
26 companies not included in the ratios developed by the National
27 Association of Insurance Commissioners, and the board may use
28 the information contained therein in carrying out its duties and
29 responsibilities under this section. The report and the information
30 contained therein shall be kept confidential by the board of
31 directors until that time as it is made public by the commissioner
32 or other lawful authority.

33 (b) The commissioner may seek the advice and
34 recommendations of the board of directors concerning any matter
35 affecting his or her duties and responsibilities regarding the
36 financial condition of member insurers and companies seeking
37 admission to transact insurance business in this state.

38 (c) The board of directors may, upon majority vote, make reports
39 and recommendations to the commissioner upon any matter
40 germane to the solvency, liquidation, rehabilitation, or conservation

1 of any member insurer or germane to the solvency of any company
2 seeking to do an insurance business in this state. Those reports and
3 recommendations shall not be considered public documents.

4 ~~(d) It shall be the duty of the board of directors, upon majority
5 vote, to notify the commissioner of any information indicating any
6 member insurer may be an impaired or insolvent insurer.~~

7 *(d) The board of directors may, upon majority vote, notify the
8 commissioner of any information indicating a member insurer may
9 be an impaired or insolvent insurer.*

10 (e) The board of directors may, upon majority vote, request that
11 the commissioner order an examination of any member insurer
12 which the board in good faith believes may be an impaired or
13 insolvent insurer. Within 30 days of the receipt of the request, the
14 commissioner shall begin the examination. The examination may
15 be conducted as a National Association of Insurance
16 Commissioners examination or may be conducted by persons that
17 the commissioner designates. The cost of the examination shall
18 be paid by the association and the examination report shall be
19 treated as are other examination reports. In no event shall the
20 examination report be released to the board of directors prior to
21 its release to the public, but this shall not preclude the
22 commissioner from complying with subdivision (a).

23 The commissioner shall notify the board of directors when the
24 examination is completed. The request for an examination shall
25 be kept on file by the commissioner but it shall not be open to
26 public inspection prior to the release of the examination report to
27 the public.

28 (f) The board of directors may, upon majority vote, make
29 recommendations to the commissioner for the detection and
30 prevention of insurer insolvencies.

31 ~~(g) The board of directors shall, at the conclusion of any insurer
32 insolvency in which the association was obligated to pay covered
33 claims, prepare a report to the commissioner containing the
34 information that it may have in its possession bearing on the history
35 and causes of the insolvency. The board shall cooperate with the
36 boards of directors of guaranty associations in other states in
37 preparing a report on the history and causes of insolvency of a
38 particular insurer, and may adopt by reference any report prepared
39 by the other associations.~~

40 (h)

1 (g) Reports, information, and recommendations from the board
2 to the commissioner and from the commissioner to the board under
3 this ~~Section 1067.11~~ *section* shall be treated as confidential and
4 shall not be considered public documents except as otherwise
5 specifically provided in this section or by specific action of the
6 board or commissioner.

7 *SEC. 12. Section 1067.12 of the Insurance Code is amended*
8 *to read:*

9 1067.12. (a) ~~Nothing in this article shall~~ *This article shall not*
10 *be construed to reduce the liability for unpaid assessments of the*
11 *insureds of an impaired or insolvent insurer operating under a plan*
12 *with assessment liability.*

13 ~~(b) Records shall be kept of all negotiations and meetings in~~
14 ~~which the association or its representatives are involved to discuss~~
15 ~~the activities of the association in carrying out its powers and duties~~
16 ~~under Section 1067.07. Records of the negotiations or meetings~~
17 ~~shall be made public only upon the termination of a liquidation,~~
18 ~~rehabilitation, or conservation proceeding involving the impaired~~
19 ~~or insolvent insurer, upon the termination of the impairment or~~
20 ~~insolvency of the insurer, or upon the order of a court of competent~~
21 ~~jurisdiction. Nothing in this subdivision shall limit the duty of the~~
22 ~~association to render a report of its activities under Section 1067.13.~~

23 *(b) Records shall be kept of all meetings of the board of directors*
24 *to discuss the activities of the association in carrying out its powers*
25 *and duties under Section 1067.07. The records of the association*
26 *with respect to an impaired or insolvent insurer shall not be*
27 *disclosed prior to the termination of a liquidation, rehabilitation,*
28 *or conservation proceeding involving the impaired or insolvent*
29 *insurer, except upon the termination of the impairment or*
30 *insolvency of the insurer, or upon the order of a court of competent*
31 *jurisdiction. Nothing in this subdivision shall limit the duty of the*
32 *association to render a report of its activities under Section*
33 *1067.13.*

34 (c) For the purpose of carrying out its obligations under this
35 article, the association shall be deemed to be a creditor of the
36 impaired or insolvent insurer to the extent of assets attributable to
37 covered policies reduced by any amounts to which the association
38 is entitled as subrogee pursuant to Section 1067.07. Assets of the
39 impaired or insolvent insurer attributable to covered policies shall
40 be used to continue all covered policies and pay all contractual

1 obligations of the impaired or insolvent insurer as required by this
2 article. Assets attributable to covered policies, as used in this
3 subdivision, are that proportion of the assets which the reserves
4 that should have been established for those policies bear to the
5 reserves that should have been established for all policies of
6 insurance written by the impaired or insolvent insurer.

7 *(d) As a creditor of the impaired or insolvent insurer as*
8 *established in subdivision (c) and consistent with Section 1035.5,*
9 *the association and other similar associations shall be entitled to*
10 *receive a disbursement of assets out of the marshaled assets, from*
11 *time to time as the assets become available to reimburse it, as a*
12 *credit against contractual obligations under this article. If the*
13 *liquidator has not, within 120 days of a final determination of*
14 *insolvency of an insurer by the receivership court, made an*
15 *application to the court for the approval of a proposal to disburse*
16 *assets out of marshaled assets to guaranty associations having*
17 *obligations because of the insolvency, then the association shall*
18 *be entitled to make application to the receivership court for*
19 *approval of its own proposal to disburse these assets.*

20 ~~(d)~~

21 *(e) (1) Prior to the termination of any liquidation, rehabilitation,*
22 *or conservation proceeding, the court may take into consideration*
23 *the contributions of the respective parties, including the association,*
24 *the shareholders, and policy owners of the insolvent insurer, and*
25 *any other party with a bona fide interest, in making an equitable*
26 *distribution of the ownership rights of the insolvent insurer. In the*
27 *determination, consideration shall be given to the welfare of the*
28 ~~*policyholders*~~ *policy owners of the continuing or successor insurer.*

29 *(2) No distribution to stockholders, if any, of an impaired or*
30 *insolvent insurer shall be made until and unless the total amount*
31 *of valid claims of the association with interest thereon for funds*
32 *expended in carrying out its powers and duties under Section*
33 *1067.07 with respect to the insurer have been fully recovered by*
34 *the association.*

35 ~~(e)~~

36 *(f) (1) If an order for liquidation or rehabilitation of an insurer*
37 *domiciled in this state has been entered, the receiver appointed*
38 *under the order shall have a right to recover on behalf of the*
39 *insurer, from any affiliate that controlled it, the amount of*
40 *distributions, other than stock dividends paid by the insurer on its*

1 capital stock, made at any time during the five years preceding the
2 petition for liquidation or rehabilitation subject to the limitations
3 of paragraphs (2) to (4), inclusive.

4 (2) No such distribution shall be recoverable if the insurer shows
5 that when paid the distribution was lawful and reasonable, and that
6 the insurer did not know and could not reasonably have known
7 that the distribution might adversely affect the ability of the insurer
8 to fulfill its contractual obligations.

9 (3) Any person who was an affiliate that controlled the insurer
10 at the time the distributions were paid shall be liable up to the
11 amount of distributions he or she received. Any person who was
12 an affiliate that controlled the insurer at the time the distributions
13 were declared, shall be liable up to the amount of distributions he
14 or she would have received if they had been paid immediately. If
15 two or more persons are liable with respect to the same
16 distributions, they shall be jointly and severally liable.

17 (4) The maximum amount recoverable under this subdivision
18 shall be the amount needed in excess of all other available assets
19 of the insolvent insurer to pay the contractual obligations of the
20 insolvent insurer.

21 (5) If any person liable under paragraph (3) is insolvent, all its
22 affiliates that controlled it at the time the distribution was paid,
23 shall be jointly and severally liable for any resulting deficiency in
24 the amount recovered from the insolvent affiliate.

25 *SEC. 13. Section 1067.13 of the Insurance Code is amended*
26 *to read:*

27 1067.13. The association shall be subject to examination and
28 regulation by the commissioner. The board of directors shall submit
29 to the commissioner, the Governor, and the Legislature each year,
30 not later than 120 days after the association's fiscal year, a financial
31 report in a form approved by the commissioner and a report of its
32 activities during the preceding fiscal year. *Upon the request of a*
33 *member insurer, the association shall provide the member insurer*
34 *with a copy of the report.*

35 *SEC. 14. Section 1067.16 of the Insurance Code is amended*
36 *to read:*

37 1067.16. All proceedings in which the insolvent insurer is a
38 party in any court in this state shall be stayed not less than ~~60~~ 180
39 days from the date an order of liquidation, rehabilitation, or
40 conservation is final, to permit proper legal action by the

1 association on any matters germane to its powers or duties. As to
2 judgment under any decision, order, verdict, or finding based on
3 default the association may apply to have the judgment set aside
4 by the same court that made the judgment and shall be permitted
5 to defend against the suit on the merits.

6 *SEC. 15. Section 1067.17 of the Insurance Code is amended*
7 *to read:*

8 1067.17. (a) No person, including an insurer, agent, or affiliate
9 of an insurer shall make, publish, disseminate, circulate, or place
10 before the public, or cause directly or indirectly, to be made,
11 published, disseminated, circulated, or placed before the public,
12 in any newspaper, magazine, or other publication, or in the form
13 of a notice, circular, pamphlet, letter, or poster, or over any radio
14 station or television station, or in any other way, any advertisement,
15 announcement, or statement, written or oral, which uses the
16 existence of the California Life and Health Insurance Guarantee
17 Association for the purpose of sales, solicitation, or inducement
18 to purchase any form of insurance covered by the California Life
19 and Health Insurance Guarantee Association Act. Provided,
20 however, that this section shall not apply to the California Life
21 and Health Insurance Guarantee Association or any other entity
22 which does not sell or solicit insurance.

23 (b) (1) The association shall prepare a summary document
24 describing the general purposes and current limitations of the article
25 and complying with subdivision (c). This document shall be
26 submitted to the commissioner for approval. Sixty days after
27 receiving approval, no insurer may deliver a policy or contract
28 described in paragraph (1) of subdivision (b) of Section 1067.02
29 to a policyholder or contractholder unless the document is delivered
30 to the policy or contract holder prior to or at the time of delivery
31 of the policy or contract except if subdivision (d) applies. The
32 document should also be available upon request by the
33 policyholder. The distribution, delivery, or contents or
34 interpretation of this document shall not mean that either the policy
35 or the contract or the holder thereof would be covered in the event
36 of the impairment or insolvency of a member insurer. The
37 description document shall be revised by the association as
38 amendments to the article may require. Failure to receive this
39 document does not give the policyholder, contractholder, certificate
40 holder, or insured any greater rights than those stated in this article.

1 *This paragraph shall remain operative only until paragraph (2)*
2 *becomes operative.*

3 (2) *Within 180 days of the effective date of the act that amended*
4 *this section in the 2009–10 Regular Session, the association shall*
5 *prepare a summary document describing the general purposes*
6 *and current limitations of the article and complying with*
7 *subdivision (c). This document shall be submitted to the*
8 *commissioner for approval. At the expiration of the 60th day after*
9 *the date on which the commissioner approves the document, an*
10 *insurer may not deliver a policy or contract described in paragraph*
11 *(1) of subdivision (b) of Section 1067.02 to a policy or contract*
12 *owner unless the summary document is delivered to the policy or*
13 *contract owner at the time of delivery of the policy or contract.*
14 *The document shall also be available upon request by a policy*
15 *owner. The distribution, delivery, or contents or interpretation of*
16 *this document does not guarantee that either the policy or the*
17 *contract or the owner of the policy or contract is covered in the*
18 *event of the impairment or insolvency of a member insurer. The*
19 *description document shall be revised by the association, as*
20 *amendments to the article may require. Failure to receive this*
21 *document does not give the policy owner, contract owner,*
22 *certificate holder, or insured any greater rights than those stated*
23 *in this article.*

24 (c) *The document prepared under subdivision (b) shall contain*
25 *a clear and conspicuous disclaimer on its face. The commissioner*
26 *shall promulgate a rule establishing the form and content of the*
27 *disclaimer. The disclaimer shall do all of the following:*

28 (1) *State the name and address of the life and health insurance*
29 *guarantee association and insurance department.*

30 (2) *Prominently warn the ~~policyholder~~ policy owner or*
31 *~~contractholder~~ contract owner that the California Life and Health*
32 *Insurance Guarantee Association may not cover the policy or, if*
33 *coverage is available, it will be subject to substantial limitations*
34 *and exclusions and conditioned on continued residence in the state.*

35 (3) *State that the insurer and its agents are prohibited by law*
36 *from using the existence of the California Life and Health*
37 *Insurance Guarantee Association for the purpose of sales,*
38 *solicitation, or inducement to purchase any form of insurance.*

39 (4) *Emphasize—State that the ~~policyholder~~ policy owner or*
40 *~~contractholder~~ contract owner should not rely on coverage under*

1 the California Life and Health Insurance Guarantee Association
2 when selecting an insurer.

3 (5) Provide other information as directed by the commissioner.

4 ~~(d) No insurer or agent may deliver a policy or contract~~
5 ~~described in paragraph (1) of subdivision (b) of Section 1067.02,~~
6 ~~and excluded under subparagraph (A) of paragraph (2) of~~
7 ~~subdivision (b) of Section 1067.02 from coverage under this article~~
8 ~~unless the insurer or agent, prior to or at the time of delivery, gives~~
9 ~~the policyholder or contractholder a separate written notice which~~
10 ~~clearly and conspicuously discloses that the policy or contract is~~
11 ~~not covered by the California Life and Health Insurance Guarantee~~
12 ~~Association. The commissioner shall by rule specify the form and~~
13 ~~content of the notice.~~

14 SECTION 1. ~~Section 1067.01 of the Insurance Code is~~
15 ~~amended to read:~~

16 ~~1067.01. (a) The purpose of this article is to protect, subject~~
17 ~~to certain limitations, the persons specified in Section 1067.02~~
18 ~~against failure in the performance of contractual obligations, arising~~
19 ~~under life and health insurance policies and annuity contracts~~
20 ~~specified in Section 1067.02, because of the impairment or~~
21 ~~insolvency of the member insurer that issued the policies or~~
22 ~~annuities and other contracts.~~

23 ~~(b) To provide this protection, an association of insurers is~~
24 ~~created to pay benefits and to continue coverages as limited herein,~~
25 ~~and members of the association are subject to assessment to provide~~
26 ~~funds to carry out the purposes of this article.~~