

AMENDED IN ASSEMBLY JUNE 29, 2010

AMENDED IN ASSEMBLY JUNE 1, 2010

**SENATE BILL**

**No. 1408**

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**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

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An act to amend 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, *and declaring the urgency thereof, to take effect immediately.*

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 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.

*This bill would declare that it is to take effect immediately as an urgency statute.*

Vote: ~~majority~~<sup>2/3</sup>. Appropriation: no. Fiscal committee: 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 (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 the policies or contracts, other than structured settlement annuities,  
32 and in each case who either:

33 (A) Are residents of this state.

1 (B) Are not residents, but only under all of the following  
2 conditions:

3 (i) The insurer that issued the policies or contracts is domiciled  
4 in this state.

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

7 (iii) The persons are not eligible for coverage by ~~an~~ *the*  
8 association in ~~any other~~ *their resident* state due to the fact that the  
9 insurer was not licensed in ~~the state at the time specified in the~~  
10 *that state at the time specified in that* state's guaranty association  
11 law.

12 (3) For structured settlement annuities specified in subdivision  
13 (b), paragraphs (1) and (2) of this subdivision shall not apply, and  
14 this article shall, except as provided in paragraphs (4) and (5) of  
15 this subdivision, provide coverage to a person who is a payee under  
16 a structured settlement annuity, or beneficiary of a payee if the  
17 payee is deceased, if the payee is either:

18 (A) A resident of this state, regardless of where the contract  
19 owner resides.

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

22 (i) The contract owner of the structured settlement annuity is a  
23 resident, or the contract owner of the structured settlement annuity  
24 is not a resident, but the insurer that issued the structured settlement  
25 annuity is domiciled in this state, and the state in which the contract  
26 owner resides has an association similar to the association created  
27 by this article.

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

31 (4) This article shall not provide coverage to a person who is a  
32 payee, or beneficiary, of a contract owner resident of this state, if  
33 the payee, or beneficiary, is afforded coverage by the association  
34 of another state.

35 (5) This article is intended to provide coverage to a person who  
36 is a resident of this state and, in special circumstances, to a  
37 nonresident. In order to avoid duplicate coverage, if a person who  
38 would otherwise receive coverage under this article is provided  
39 coverage under the laws of any other state, the person shall not be  
40 provided coverage under this article. In determining the application

1 of the provisions of this paragraph in situations where a person  
2 could be covered by the association of more than one state, whether  
3 as an owner, payee, beneficiary, or assignee, this article shall be  
4 construed in conjunction with other state laws to result in coverage  
5 by only one association.

6 (b) (1) This article shall provide coverage to the persons  
7 specified in subdivision (a) for direct, nongroup life, health, or  
8 annuity policies or contracts, and supplemental contracts to any  
9 of these, and for certificates under direct group policies and  
10 contracts, except as limited by this article. Annuity contracts and  
11 certificates under group annuity contracts include allocated funding  
12 agreements, structured settlement annuities, and any immediate  
13 or deferred annuity contracts. The health policies and contracts  
14 covered under this article include, but are not limited to, basic  
15 hospital, medical, and surgical insurance, major medical insurance,  
16 disability income insurance, disability insurance, including  
17 insurance appertaining to injury, disablement, or death resulting  
18 to the insured from accidents, and appertaining to disablements  
19 resulting to the insured from sickness, and long-term care  
20 insurance, including any net cash surrender and net cash withdrawal  
21 values.

22 (2) This article shall not provide coverage for any of the  
23 following:

24 (A) Any portion of a policy or contract not guaranteed by the  
25 insurer, or under which the risk is borne by the policy owner or  
26 contract owner.

27 (B) Any policy or contract of reinsurance, unless assumption  
28 certificates have been issued pursuant to the reinsurance policy or  
29 contract.

30 (C) A portion of a policy or contract to the extent that the rate  
31 of interest on which it is based or the interest rate, crediting rate,  
32 or similar factor determined by the use of an index or other external  
33 reference which is stated in the policy or contract and employed  
34 in calculating returns or changes in value does both of the  
35 following:

36 (i) Averaged over the period of four years prior to the date on  
37 which the member insurer becomes an impaired or insolvent insurer  
38 under this article exceeds the rate of interest determined by  
39 subtracting two percentage points from Moody's Corporate Bond  
40 Yield Average averaged for that same four-year period or for the

1 lesser period if the policy or contract was issued less than four  
2 years before the member insurer becomes an impaired or insolvent  
3 insurer under this article, not to go below a minimum of 0 percent.

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

9 (D) An unallocated annuity contract.

10 (E) A portion of a policy or contract issued to a plan or program  
11 of an employer, association, or other person to provide life, health,  
12 or annuity benefits to its employees, members, or others, to the  
13 extent that the plan or program is self-funded or uninsured,  
14 including, but not limited to, benefits payable by an employer,  
15 association, or other person under any of the following:

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

18 (ii) A minimum premium group insurance plan.

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

20 (iv) An administrative services only contract.

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

23 (i) Dividends or experience rating credits.

24 (ii) Voting rights.

25 (iii) Payment of any fees or allowances to any person, including  
26 the policy or contract owner, in connection with the service to or  
27 administration of the policy or contract.

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

31 (H) Any annuity issued by a charitable organization that is duly  
32 qualified as such under applicable provisions of the Internal  
33 Revenue Code, and that is not engaged in the business of insurance  
34 as its primary business.

35 (I) A portion of a policy or contract to the extent that the  
36 assessments required by Section 1067.08 with respect to the policy  
37 or contract are preempted or otherwise not permitted by federal  
38 or state law.

39 (J) An obligation that does not arise under the express written  
40 terms of the policy or contract issued by the insurer to the contract

- 1 owner or policy owner, including without limitation, any of the  
2 following:
- 3 (i) Claims based on marketing materials.
  - 4 (ii) Claims based on side letters, riders, or other documents that  
5 were issued by the insurer without meeting applicable policy form  
6 filing or approval requirements.
  - 7 (iii) Misrepresentations of, or regarding, policy benefits.
  - 8 (iv) Extracontractual claims.
  - 9 (v) A claim for penalties or consequential or incidental damages.
- 10 (K) A contractual agreement that establishes the member  
11 insurer's obligations to provide a book value accounting guaranty  
12 for defined contribution benefit plan participants by reference to  
13 a portfolio of assets that is owned by the benefit plan or its trustee,  
14 which in each case is not an affiliate of the member insurer.
- 15 (L) A portion of a policy or contract to the extent it provides  
16 for interest or other changes in value to be determined by the use  
17 of an index or other external reference stated in the policy or  
18 contract, but which have not been credited to the policy or contract,  
19 or as to which the policy or contract owner's rights are subject to  
20 forfeiture, as of the date the member insurer becomes an impaired  
21 or insolvent insurer under this article, whichever is earlier. If a  
22 policy's or contract's interest or changes in value are credited less  
23 frequently than annually, then for purposes of determining the  
24 values that have been credited and are not subject to forfeiture  
25 pursuant to this subparagraph, the interest or change in value  
26 determined by using the procedures defined in the policy or  
27 contract shall be credited as if the contractual date of crediting  
28 interest or changing values was the date of impairment or  
29 insolvency, whichever is earlier, and shall not be subject to  
30 forfeiture.
- 31 (M) A policy or contract providing any hospital, medical,  
32 prescription drug, or other health care benefits pursuant to Part C  
33 of Title XVIII of the Social Security Act (42 U.S.C. Sec. 1395w-21  
34 et seq.) or Part D of Title XVIII of the Social Security Act (42  
35 U.S.C. Sec. 1395w-101 et seq.), commonly known as Medicare  
36 Parts C and D, or any regulations issued pursuant thereto.
- 37 (c) The benefits for which the association may become liable  
38 for life insurance and annuity policies shall in no event exceed the  
39 lesser of the following:

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

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

7 (i) Three hundred thousand dollars (\$300,000) in life insurance  
8 death benefits, but not more than one hundred thousand dollars  
9 (\$100,000) in net cash surrender and net cash withdrawal values  
10 for life insurance.

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

14 (B) With respect to each payee of a structured settlement  
15 annuity, or beneficiaries of the payee if deceased, two hundred  
16 fifty thousand dollars (\$250,000) in present value annuity benefits,  
17 in the aggregate, including net cash surrender and net cash  
18 withdrawal values.

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

23 (D) Notwithstanding subparagraphs (A), (B), and (C), with  
24 respect to one owner of multiple nongroup policies of life  
25 insurance, whether the policy owner is an individual, firm,  
26 corporation, or other person, and whether the persons insured are  
27 officers, managers, employees, or other persons, in no event shall  
28 the association be obligated to cover more than five million dollars  
29 (\$5,000,000) in benefits, regardless of the number of policies and  
30 contracts held by the owner.

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

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

36 (2) With respect to any one individual receiving health care  
37 benefits, regardless of the number of policies or contracts, two  
38 hundred thousand dollars (\$200,000) in health insurance benefits;  
39 an amount that shall increase or decrease based upon changes in  
40 the health care cost component of the consumer price index from

1 January 1, 1991, to the date on which the insurer becomes an  
2 insolvent insurer.

3 (e) The limitations set forth in subdivisions (c) and (d) are  
4 limitations on the benefits for which the association is obligated  
5 before taking into account either its subrogation and assignment  
6 rights or the extent to which those benefits could be provided out  
7 of the assets of the impaired or insolvent insurer attributable to  
8 covered policies. The costs of the association's obligations under  
9 this article may be met by the use of assets attributable to covered  
10 policies or reimbursed to the association pursuant to its subrogation  
11 and assignment rights.

12 (f) In performing its obligations to provide coverage under  
13 Section 1067.07, the association shall not be required to guarantee,  
14 assume, reinsure, or perform, or cause to be guaranteed, assumed,  
15 reinsured, or performed, the contractual obligations of the insolvent  
16 or impaired insurer under a covered policy or contract that do not  
17 materially affect the economic values or economic benefits of the  
18 covered policy or contract.

19 SEC. 3. Section 1067.03 of the Insurance Code is amended to  
20 read:

21 1067.03. This article shall be *liberally* construed to effect the  
22 purpose under Section 1067.01.

23 SEC. 4. Section 1067.04 of the Insurance Code is amended to  
24 read:

25 1067.04. As used in this article:

26 (a) "Account" means either of the two accounts created under  
27 Section 1067.05.

28 (b) "Association" means the California Life and Health  
29 Insurance Guarantee Association created pursuant to Section  
30 1067.05.

31 (c) "Authorized assessment" means an assessment, to be called  
32 immediately or in the future from member insurers for a specified  
33 amount, that is authorized by a resolution of the board of directors.  
34 "Authorized," when used in the context of assessments, means  
35 authorized by a resolution of the board of directors. An assessment  
36 is authorized when this resolution is passed.

37 (d) "Benefit plan" means a specific employee, union, or  
38 association of natural persons benefit plan.

39 (e) "Called assessment" means an assessment as to which a  
40 notice has been issued by the association to member insurers



1 requiring that an authorized assessment be paid within a timeframe  
2 set forth in the notice. “Called,” when used in the context of  
3 assessments, means required by notice to be paid by member  
4 insurers. An authorized assessment becomes a called assessment  
5 when notice is mailed by the association to member insurers.

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

7 (g) “Contractual obligation” means any obligation under a policy  
8 or contract, or certificate under a group policy or contract, or  
9 portion thereof, for which coverage is provided under Section  
10 1067.02.

11 (h) “Covered policy” means a policy or contract or portion of  
12 a policy or contract for which coverage is provided under Section  
13 1067.02.

14 (i) “Extracontractual claims” shall include, for example, claims  
15 relating to bad faith in the payment of claims, punitive or  
16 exemplary damages, or ~~attorneys’~~ attorney’s fees and costs.

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

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

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

30 (1) A hospital or medical service organization, whether for profit  
31 or nonprofit.

32 (2) A health maintenance organization.

33 (3) A fraternal benefit society.

34 (4) A mandatory state pooling plan.

35 (5) A mutual assessment company or other person that operates  
36 on an assessment basis.

37 (6) An insurance exchange.

38 (7) An organization that has a certificate or license limited to  
39 the issuance of charitable gift annuities.

1 (8) A grants and annuities society holding a certificate of  
2 authority under Section 11520.

3 (9) An entity similar to any of the above.

4 (m) “Moody’s Corporate Bond Yield Average” means the  
5 Monthly Average Corporates as published by Moody’s Investors  
6 Service, Inc., or any successor thereto.

7 (n) “Owner” of a policy or contract and “policy owner” and  
8 “contract owner” mean the person who is identified as the legal  
9 owner under the terms of the policy or contract or who is otherwise  
10 vested with legal title to the policy or contract through a valid  
11 assignment completed in accordance with the terms of the policy  
12 or contract and properly recorded as the owner on the books of the  
13 insurer. The terms owner, contract owner, and policy owner do  
14 not include persons with a mere beneficial interest in a policy or  
15 contract.

16 (o) “Person” means an individual, corporation, limited liability  
17 company, partnership, association, governmental body or entity,  
18 or voluntary organization.

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

20 (1) The employer in the case of a benefit plan established or  
21 maintained by a single employer.

22 (2) The employee organization in the case of a benefit plan  
23 established or maintained by an employee organization.

24 (3) In a case of a benefit plan established or maintained by two  
25 or more employers or jointly by one or more employers and one  
26 or more employee organizations, the association, committee, joint  
27 board of trustees, or other similar group of representatives of the  
28 parties who establish or maintain the benefit plan.

29 (q) (1) “Premiums” means amounts or considerations, by  
30 whatever name called, received on covered policies or contracts  
31 less returned premiums, considerations, and deposits and less  
32 dividends and experience credits.

33 (2) “Premiums” does not include amounts or considerations  
34 received for policies or contracts or for the portions of policies or  
35 contracts for which coverage is not provided under subdivision  
36 (b) of Section 1067.02, except that assessable premium shall not  
37 be reduced on account of subparagraph (C) of paragraph (2) of  
38 subdivision (b) of Section 1067.02 relating to interest limitations  
39 and paragraph (2) of subdivision (c) of Section 1067.02 relating

1 to limitations with respect to one individual, one participant, and  
2 one contract owner.

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

4 (A) Premiums on an unallocated annuity contract.

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

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

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

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

22 (C) The state in which the board of directors, or similar  
23 governing persons, of the entity conducts the majority of its  
24 meetings.

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

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

30 (F) In the case of a benefit plan sponsored by affiliated  
31 companies comprising a consolidated corporation, the state in  
32 which the holding company or controlling affiliate has its principal  
33 place of business as determined using the above factors. However,  
34 in the case of a plan sponsor, if more than 50 percent of the  
35 participants in the benefit plan are employed in a single state, that  
36 state shall be deemed to be the principal place of business of the  
37 plan sponsor.

38 (2) The principal place of business of a plan sponsor of a benefit  
39 plan shall be deemed to be the principal place of business of the  
40 association, committee, joint board of trustees, or other similar

1 group of representatives of the parties who establish or maintain  
2 the benefit plan that, in lieu of a specific or clear designation of a  
3 principal place of business, shall be deemed to be the principal  
4 place of business of the employer or employee organization that  
5 has the largest investment in the benefit plan in question.

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

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

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

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

27 (w) “Supplemental contract” means a written agreement entered  
28 into for the distribution of proceeds under a life, health, or annuity  
29 policy or a life, health, or annuity contract.

30 (x) “Unallocated annuity contract” means an annuity contract  
31 or group annuity certificate which is not issued to and owned by  
32 an individual, except to the extent of any annuity benefits  
33 guaranteed to an individual by an insurer under the contract or  
34 certificate.

35 SEC. 5. Section 1067.05 of the Insurance Code is amended to  
36 read:

37 1067.05. (a) A nonprofit legal entity to be known as the  
38 California Life and Health Insurance Guarantee Association shall  
39 exist as a result of the merger of the Seastrand Health Insurance  
40 Guaranty Association with and into the California Life Insurance

1 Guaranty Association pursuant to Section 1067.055. All member  
2 insurers shall be and remain members of the association as a  
3 condition of their authority to transact insurance in this state. The  
4 association shall perform its functions under the plan of operation  
5 established and approved under Section 1067.09 and shall exercise  
6 its powers through a board of directors established under Section  
7 1067.06. For purposes of administration and assessment, the  
8 association shall maintain the following two accounts:

9 (1) The life insurance and annuity account which includes both  
10 of the following subaccounts:

11 (A) The life insurance account.

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

15 (2) The health insurance account.

16 (b) The association shall come under the immediate supervision  
17 of the commissioner and shall be subject to the applicable  
18 provisions of the insurance laws of this state. Meetings or records  
19 of the association may be opened to the public upon majority vote  
20 of the board of directors of the association.

21 SEC. 6. Section 1067.055 of the Insurance Code is amended  
22 to read:

23 1067.055. In order to provide for the merger of the Seastrand  
24 Health Insurance Guaranty Association with and into the California  
25 Life Insurance Guaranty Association, the following shall apply:

26 (a) Notwithstanding the repeal of the California Life Insurance  
27 Guaranty Association Act and the Seastrand Health Insurance  
28 Guaranty Association Act, the Seastrand Health Insurance Guaranty  
29 Association shall, effective immediately prior to that repeal, be  
30 merged with and into the California Life Insurance Guaranty  
31 Association, which shall then be known as the California Life and  
32 Health Insurance Guarantee Association.

33 (b) Notwithstanding the repeal of the California Life Insurance  
34 Guaranty Association Act and the Seastrand Health Insurance  
35 Guaranty Association Act, but subject to the last sentence of this  
36 subdivision, all of the following shall apply:

37 (1) The association shall succeed, without other transfer, to all  
38 the rights, powers, privileges, assets, and property of each of the  
39 California Life Insurance Guaranty Association and the Seastrand  
40 Health Insurance Guaranty Association, which for the purposes

1 of this section shall be referred collectively as the merging  
2 associations. The association shall be subject to all debts,  
3 obligations, and liabilities of each merging association in the same  
4 manner as if the association had itself incurred them, in each case  
5 under the law in effect prior to the effective date of this article, as  
6 those rights, powers, privileges, obligations, debts, and liabilities  
7 may be amended and restated in this article, and in each case with  
8 respect to member insurers that became impaired insurers or  
9 insolvent insurers prior to the effective date of this article and after  
10 October 1, 1990. Without limiting the generality of the foregoing,  
11 the association shall succeed to (A) all collected, uncollected, or  
12 unbilled assessments of the merging associations, (B) all cash,  
13 bank accounts, and accrued interest of the merging associations,  
14 (C) all rights, powers, privileges, and obligations of the merging  
15 associations under any contracts or commitments of the merging  
16 association, (D) all subrogations, assignments, and creditor rights  
17 and interests of the merging associations, and (E) all rights, powers,  
18 privileges, and obligations of each of the trusts established on  
19 December 31, 1993, by each of the merging associations as settlor.

20 (2) All rights of creditors and all liens upon the property of each  
21 of the merging associations shall be preserved unimpaired,  
22 provided that the liens upon property of a merging association  
23 shall be limited to the property affected thereby immediately prior  
24 to the effective date of this article.

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

29 Notwithstanding the other provisions of this subdivision, all  
30 debts, obligations, and liabilities of a merging association that were  
31 to be paid out of a specified account of the merging association  
32 shall be paid solely out of the assets of that merging association  
33 that were available to that merging association to pay those debts  
34 and liabilities, including, without limitation, collected, uncollected,  
35 or unbilled assessments, and any and all subrogation, assignment,  
36 and creditor rights, or out of assets in the same type of account of  
37 the association.

38 (c) Notwithstanding any other provision to the contrary in this  
39 article:

1 (1) It is the intent of this section to preserve rights, powers,  
2 privileges, assets, property, debts, obligations, and liabilities of  
3 each of the merging associations, and not to provide contract  
4 owners and policy owners, or their respective payees, beneficiaries,  
5 or assignees, with duplicative rights, powers, privileges, assets, or  
6 property.

7 (2) Accordingly, no contract owner and policy owner, and no  
8 contract owner's or policy owner's payee, beneficiary, or assignee,  
9 shall be entitled to (A) a recovery from the association that is  
10 duplicative of a previous recovery from either of the merging  
11 associations, or the trust established by either merging association,  
12 or (B) a recovery from the association on account of a claim against  
13 either of the merging associations where the association is liable  
14 with respect to a claim under the same policy or contract under  
15 this article.

16 SEC. 7. Section 1067.07 of the Insurance Code is amended to  
17 read:

18 1067.07. (a) If a member insurer is an impaired insurer, the  
19 association may, in its discretion, and subject to any conditions  
20 imposed by the association that do not impair the contractual  
21 obligations of the impaired insurer and that are approved by the  
22 commissioner, do any of the following:

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

26 (2) Provide moneys, pledges, loans, notes, guarantees, or other  
27 means as are proper to effectuate paragraph (1) and assure payment  
28 of the contractual obligations of the impaired insurer pending  
29 action under paragraph (1).

30 (b) If a member insurer is an insolvent insurer, the association  
31 shall, in its discretion, either do those things described in paragraph  
32 (1) or in paragraph (2):

33 (1) (A) Guarantee, assume, or reinsure, or cause to be  
34 guaranteed, assumed, or reinsured, the policies or contracts of the  
35 insolvent insurer; or

36 (B) Assure payment of the contractual obligations of the  
37 insolvent insurer; and

38 (C) Provide moneys, pledges, loans, notes, guarantees, or other  
39 means reasonably necessary to discharge the association's duties.

1 (2) Provide benefits and coverages in accordance with the  
2 following provisions:

3 (A) With respect to life and health insurance policies and  
4 annuities, assure payment of benefits for premiums identical to  
5 the premiums and benefits, except for terms of conversion and  
6 renewability, that would have been payable under the policies or  
7 contracts of the insolvent insurer, for claims incurred:

8 (i) With respect to group policies and contracts, not later than  
9 the earlier of the next renewal date under those policies or contracts  
10 or 45 days, but in no event less than 30 days, after the date on  
11 which the association becomes obligated with respect to the  
12 policies and contracts.

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

18 (B) Make diligent efforts to provide all known insureds or  
19 annuitants, for nongroup policies and contracts, or group policy  
20 owners with respect to group policies and contracts, 30 days' notice  
21 of the termination, pursuant to subparagraph (A), of the benefits  
22 provided.

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

37 (D) (i) In providing the substitute coverage required under  
38 subparagraph (C), the association may offer either to reissue the  
39 terminated coverage or to issue an alternative policy and shall  
40 consider obtaining coverage for a medically uninsurable person



1 from the program established under Part 6.5 (commencing with  
2 Section 12700) of Division 2.

3 (ii) Alternative or reissued policies shall be offered without  
4 requiring evidence of insurability, and shall not provide for any  
5 waiting period or exclusion that would not have applied under the  
6 terminated policy.

7 (iii) The association may reinsure any alternative or reissued  
8 policy.

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

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

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

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

35 (H) When proceeding under this paragraph with respect to a  
36 policy or contract carrying guaranteed minimum interest rates, the  
37 association shall assure the payment or crediting of a rate of interest  
38 consistent with subparagraph (C) of paragraph (2) of subdivision  
39 (b) of Section 1067.02.

1 (c) Nonpayment of premiums within 31 days after the date  
2 required under the terms of any guaranteed, assumed, alternative,  
3 or reissued policy or contract or substitute coverage shall terminate  
4 the association's obligations under the policy or coverage under  
5 this article with respect to that policy or coverage, except with  
6 respect to any claims incurred or any net cash surrender value  
7 which may be due in accordance with the provisions of this article.

8 (d) Premiums due for coverage after entry of an order of  
9 liquidation of an insolvent insurer shall belong to and be payable  
10 at the direction of the association, and the association shall be  
11 liable for unearned premiums due to policy or contract owners  
12 arising after the entry of that order.

13 (e) The protection provided by this article shall not apply where  
14 any guarantee protection is provided to residents of this state by  
15 the laws of the domiciliary state or jurisdiction of the impaired or  
16 insolvent insurer other than this state.

17 (f) In carrying out its duties under subdivision (b), the  
18 association may, subject to approval by a court of competent  
19 jurisdiction, do either of the following:

20 (1) Impose permanent policy or contract liens in connection  
21 with any guarantee, assumption, or reinsurance agreement, if the  
22 association finds that the amounts which can be assessed under  
23 this article are less than the amounts needed to assure full and  
24 prompt performance of the association's duties under this article,  
25 or that the economic or financial conditions as they affect member  
26 insurers are sufficiently adverse to render the imposition of the  
27 permanent policy or contract liens, to be in the public interest.

28 (2) Impose temporary moratoriums or liens on payments of cash  
29 values and policy loans, or any other right to withdraw funds held  
30 in conjunction with policies or contracts, in addition to any  
31 contractual provisions for deferral of cash or policy loan value. In  
32 addition, in the event of a temporary moratorium or moratorium  
33 charge imposed by the receivership court on payment of cash  
34 values or policy loans, or on any other right to withdraw funds  
35 held in conjunction with policies or contracts, out of the assets of  
36 the impaired or insolvent insurer, the association may defer the  
37 payment of cash values, policy loans, or other rights by the  
38 association for the period of the moratorium or moratorium charge  
39 imposed by the receivership court, except for claims covered by  
40 the association to be paid in accordance with a hardship procedure

1 established by the liquidator or rehabilitator and approved by the  
2 receivership court.

3 (g) A deposit in this state, held pursuant to law or required by  
4 the commissioner for the benefit of creditors, including policy  
5 owners, not turned over to the domiciliary liquidator upon the entry  
6 of a final order of liquidation or order approving a rehabilitation  
7 plan of an insurer domiciled in this state or in a reciprocal state  
8 shall be promptly paid to the association. The association shall be  
9 entitled to retain a portion of any amount so paid to it equal to the  
10 percentage determined by dividing the aggregate amount of policy  
11 owners' claims related to that insolvency for which the association  
12 has provided statutory benefits by the aggregate amount of all  
13 policy owners' claims in this state related to that insolvency and  
14 shall remit to the domiciliary receiver the amount so paid to the  
15 association less the amount retained pursuant to this subdivision.  
16 Any amount so paid to the association and retained by it shall be  
17 treated as a distribution of estate assets pursuant to applicable state  
18 receivership law dealing with early access disbursements.

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

23 (i) The association may render assistance and advice to the  
24 commissioner, upon his or her request, concerning rehabilitation,  
25 payment of claims, continuance of coverage, or the performance  
26 of other contractual obligations of any impaired or insolvent  
27 insurer.

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

1 insolvent insurer for which the association is or may become  
2 obligated or with jurisdiction over any person or property against  
3 which the association may have rights through subrogation or  
4 otherwise.

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

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

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

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

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

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

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

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

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

18 ~~(4) Employ or retain such persons as are necessary to handle~~  
19 ~~the financial transactions of the association, and to perform other~~  
20 ~~functions as become necessary or proper under this article.~~

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

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

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

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

35 (8) Request information from a person seeking coverage from  
36 the association in order to aid the association in determining its  
37 obligations under this article with respect to the person, and the  
38 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 (m) The association may join an organization of one or more  
5 other state associations of similar purposes, to further the purposes  
6 and administer the powers and duties of the association.

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

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

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

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

34 ~~(r) The venue in a suit against the association arising under the  
35 article shall be in Los Angeles County. The association shall not~~

36 *(r) The association shall not* be required to give an appeal bond  
37 in an appeal that relates to a cause of action arising under this  
38 article.

39 (s) In carrying out its duties in connection with guaranteeing,  
40 assuming, or reinsuring policies or contracts under subdivision (a)

1 or (b), the association may, subject to approval of the receivership  
2 court, issue substitute coverage for a policy or contract that  
3 provides an interest rate, crediting rate, or similar factor determined  
4 by use of an index or other external reference stated in the policy  
5 or contract employed in calculating returns or changes in value by  
6 issuing an alternative policy or contract in accordance with all of  
7 the following provisions:

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

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

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

18 SEC. 8. Section 1067.08 of the Insurance Code is amended to  
19 read:

20 1067.08. (a) For the purpose of providing the funds necessary  
21 to carry out the powers and duties of the association, the board of  
22 directors shall assess the member insurers, separately for each  
23 account, at the time and for the amounts as the board finds  
24 necessary. Assessments shall be due not more than 30 days after  
25 prior written notice to the member insurers and shall accrue interest  
26 at the rate of 10 percent per annum on and after the due date.

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

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

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

38 (c) (1) The amount of any class A assessment shall be  
39 determined at the discretion of the board of directors and such  
40 assessments shall be authorized and called on a ~~non-pro~~ *non pro*

1 rata basis. The amount of any class B assessment shall be allocated  
2 for assessment purposes among the accounts pursuant to an  
3 allocation formula that may be based on the premiums or reserves  
4 of the impaired or insolvent insurer or any other standard deemed  
5 by the board in its sole discretion as being fair and reasonable  
6 under the circumstances.

7 (2) Class B assessments against member insurers for each  
8 account shall be in the proportion that the premiums received on  
9 business in this state by each assessed member insurer on policies  
10 or contracts covered by each account for the three most recent  
11 calendar years for which information is available preceding the  
12 year in which the insurer became impaired or insolvent, as the case  
13 may be, bears to premiums received on business in this state for  
14 those calendar years by all assessed member insurers.

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

25 (d) The association may abate or defer, in whole or in part, the  
26 assessment of a member insurer if, in the opinion of the board,  
27 payment of the assessment would endanger the ability of the  
28 member insurer to fulfill its contractual obligations. In the event  
29 an assessment against a member insurer is abated, or deferred in  
30 whole or in part, the amount by which that assessment is abated  
31 or deferred may be assessed against the other member insurers in  
32 a manner consistent with the basis for assessments set forth in this  
33 section. Once the conditions that caused a deferral have been  
34 removed or rectified, the member insurer shall pay all assessments  
35 that were deferred pursuant to a repayment plan approved by the  
36 association.

37 (e) (1) (A) Subject to the provisions of subparagraph (B), the  
38 total of all assessments authorized by the association with respect  
39 to a member insurer for each subaccount of the life insurance and  
40 annuity account and for the health account shall not in one calendar



1 year exceed 2 percent of that member insurer's average annual  
2 premiums received in this state on the policies and contracts  
3 covered by the subaccount or account during the three calendar  
4 years preceding the year in which the insurer became an impaired  
5 or insolvent insurer.

6 (B) If two or more assessments are authorized in one calendar  
7 year with respect to insurers that become impaired or insolvent in  
8 different calendar years, the average annual premiums for purposes  
9 of the aggregate assessment percentage limitation referenced in  
10 subparagraph (A) shall be equal and limited to the higher of the  
11 three-year average annual premiums for the applicable subaccount  
12 or account as calculated pursuant to this section.

13 (C) If the maximum assessment, together with the other assets  
14 of the association in an account, does not provide in one year in  
15 either account an amount sufficient to carry out the responsibilities  
16 of the association, the necessary additional funds shall be assessed  
17 as soon thereafter as permitted by this article.

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

22 (f) The board may, by an equitable method as established in the  
23 plan of operation, refund to member insurers, in proportion to the  
24 contribution of each insurer to that account, the amount by which  
25 the assets of the account exceed the amount the board finds is  
26 necessary to carry out during the coming year the obligations of  
27 the association with regard to that account, including assets  
28 accruing from assignment, subrogation, net realized gains, and  
29 income from investments. A reasonable amount may be retained  
30 in any account to provide funds for the continuing expenses of the  
31 association and for future losses.

32 (g) It shall be proper for any member insurer, in determining  
33 its premium rates and policy owner dividends as to any kind of  
34 insurance within the scope of this article, to consider the amount  
35 reasonably necessary to meet its assessment obligations under this  
36 article.

37 (h) The association shall issue to each insurer paying an  
38 assessment under this article, other than class A assessment, a  
39 certificate of contribution, in a form prescribed by the  
40 commissioner, for the amount of the assessment so paid. All

1 outstanding certificates shall be of equal dignity and priority  
2 without reference to amounts or date of issue. A certificate of  
3 contribution may be shown by the insurer in its financial statement  
4 as an asset in the form and for the amount, if any, and period of  
5 time as the commissioner may approve.

6 (i) (1) Subject to the provisions of paragraph (3), the plan of  
7 operation adopted pursuant to Section 1067.09 shall contain  
8 provisions whereby each member insurer may recoup over a  
9 reasonable length of time a sum reasonably calculated to recoup  
10 the assessments with respect to the health insurance account paid  
11 by the member insurer under this article by way of a surcharge on  
12 premiums charged for health insurance policies to which this article  
13 applies. Amounts recouped shall not be considered premiums for  
14 any other purpose, including the computation of gross premium  
15 tax or agent's commission.

16 (2) Member insurers who collect surcharges in excess of  
17 assessments paid pursuant to this section for an insolvent insurer  
18 shall remit the excess to the association as an additional assessment  
19 within 120 days after the end of the collection period as determined  
20 by the association. The excess shall be applied to reduce future  
21 health insurance account assessments for that insurer.

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

28 (j) Any statement of the amount of surcharge provided by the  
29 association shall include a description of, and purpose for, the  
30 California Life and Health Insurance Guarantee Association, as  
31 follows:

32  
33 “Companies writing health insurance business in California are  
34 required to participate in the California Life and Health Insurance  
35 Guarantee Association. If a company writing health insurance  
36 becomes insolvent, the California Life and Health Insurance  
37 Guarantee Association settles unpaid claims and assesses each  
38 insurance company for its fair share.”

39 “California law allows all companies to surcharge policies to  
40 recover these assessments. If your policy is surcharged, “CA

1 Surcharge” with an amount will be displayed on your premium  
2 notice.”

3  
4 (k) (1) A member insurer that wishes to protest all or part of  
5 an assessment shall pay when due the full amount of the assessment  
6 as set forth in the notice provided by the association. The payment  
7 shall be available to meet association obligations during the  
8 pendency of the protest or any subsequent appeal. Payment shall  
9 be accompanied by a statement in writing that the payment is made  
10 under protest and setting forth a brief statement of the grounds for  
11 the protest.

12 (2) Within 60 days following the payment of an assessment  
13 under protest by a member insurer, the association shall notify the  
14 member insurer in writing of its determination with respect to the  
15 protest unless the association notifies the member insurer that  
16 additional time is required to resolve the issues raised by the  
17 protest.

18 (3) Within 30 days after a final decision has been made, the  
19 association shall notify the protesting member insurer in writing  
20 of that final decision. Within 60 days of receipt of notice of the  
21 final decision, the protesting member insurer may appeal that final  
22 action to the commissioner.

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

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

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

34 SEC. 9. Section 1067.09 of the Insurance Code is amended to  
35 read:

36 1067.09. (a) (1) The association shall submit to the  
37 commissioner a plan of operation and any amendments thereto  
38 necessary or suitable to ~~assure~~ ensure the fair, reasonable, and  
39 equitable administration of the association. The plan of operation  
40 and any amendments thereto shall become effective upon the

1 commissioner's written approval or unless he or she has not  
2 disapproved it within 30 days.

3 (2) If the association fails to submit a suitable plan of operation  
4 within 120 days following the effective date of this article or if at  
5 any time thereafter the association fails to submit suitable  
6 amendments to the plan, the commissioner shall, after notice and  
7 hearing, adopt and promulgate those reasonable rules as are  
8 necessary or advisable to effectuate the provisions of this article.  
9 The rules shall continue in force until modified by the  
10 commissioner or superseded by a plan submitted by the association  
11 and approved by the commissioner.

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

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

15 (1) Establish procedures for handling the assets of the  
16 association.

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

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

21 (4) Establish procedures for records to be kept of all financial  
22 transactions of the association, its agents, and the board of  
23 directors.

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

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

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

30 (8) Establish procedures whereby a director may be removed  
31 for cause, including in the case where a member insurer director  
32 becomes an impaired or insolvent insurer.

33 (9) Require the board of directors to establish a policy and  
34 procedures for addressing conflicts of interests.

35 (d) The plan of operation may provide that any or all powers  
36 and duties of the association, including its administration, except  
37 those under paragraph (3) of subdivision (l) of Section 1067.07  
38 and Section 1067.08, are delegated to a corporation, association,  
39 or other organization which performs or will perform functions  
40 similar to those of this association, or its equivalent, in two or more

1 states. That corporation, association, or organization shall be  
2 reimbursed for any payments made on behalf of the association  
3 and shall be paid for its performance of any function of the  
4 association. A delegation under this subdivision shall take effect  
5 only with the approval of both the board of directors and the  
6 commissioner, and may be made only to a corporation, association,  
7 or organization which extends protection not substantially less  
8 favorable and effective than that provided by this article.

9 SEC. 10. Section 1067.10 of the Insurance Code is amended  
10 to read:

11 1067.10. In addition to the duties and powers enumerated  
12 elsewhere in this article:

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

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

17 (2) When an impairment is declared and the amount of the  
18 impairment is determined, serve a demand upon the impaired  
19 insurer to make good the impairment within a reasonable time;  
20 notice to the impaired insurer shall constitute notice to its  
21 shareholders, if any; the failure of the insurer to promptly comply  
22 with such demand shall not excuse the association from the  
23 performance of its powers and duties under this article.

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

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

34 (c) A final action of the board of directors or the association  
35 may be appealed to the commissioner by a member insurer if the  
36 appeal is taken within 60 days of its receipt of notice of the final  
37 action being appealed. A final action or order of the commissioner  
38 shall be subject to judicial review in a court of competent  
39 jurisdiction in accordance with the laws of this state that apply to  
40 the actions or orders of the commissioner.

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

4 SEC. 11. Section 1067.11 of the Insurance Code is amended  
5 to read:

6 1067.11. To aid in the detection and prevention of insurer  
7 insolvencies or impairments:

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

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

12 (A) Revocation of license.

13 (B) Suspension of license.

14 (C) Makes any formal order that the company restrict its  
15 premium writing, obtain additional contributions to surplus,  
16 withdraw from the state, reinsure all or any part of its business, or  
17 increase capital, surplus, or any other account for the security of  
18 policy owners or creditors.

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

21 (2) To report to the board of directors, the Legislature, and the  
22 Governor when he or she has taken any of the actions set forth in  
23 paragraph (1) or has received a report from any other commissioner  
24 indicating that any action has been taken in another state. The  
25 report to the board of directors, the Legislature, and the Governor  
26 shall contain all significant details of the action taken on the report  
27 received from another commissioner.

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

32 (4) To furnish to the board of directors the NAIC Insurance  
33 Regulatory Information System (IRIS) ratios and listings of  
34 companies not included in the ratios developed by the National  
35 Association of Insurance Commissioners, and the board may use  
36 the information contained therein in carrying out its duties and  
37 responsibilities under this section. The report and the information  
38 contained therein shall be kept confidential by the board of  
39 directors until that time as it is made public by the commissioner  
40 or other lawful authority.

1 (b) The commissioner may seek the advice and  
2 recommendations of the board of directors concerning any matter  
3 affecting his or her duties and responsibilities regarding the  
4 financial condition of member insurers and companies seeking  
5 admission to transact insurance business in this state.

6 (c) The board of directors may, upon majority vote, make reports  
7 and recommendations to the commissioner upon any matter  
8 germane to the solvency, liquidation, rehabilitation, or conservation  
9 of any member insurer or germane to the solvency of any company  
10 seeking to do an insurance business in this state. Those reports and  
11 recommendations shall not be considered public documents.

12 (d) The board of directors ~~may~~ *shall*, upon majority vote, notify  
13 the commissioner of any information indicating a member insurer  
14 may be an impaired or insolvent insurer.

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

28 The commissioner shall notify the board of directors when the  
29 examination is completed. The request for an examination shall  
30 be kept on file by the commissioner but it shall not be open to  
31 public inspection prior to the release of the examination report to  
32 the public.

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

36 (g) Reports, information, and recommendations from the board  
37 to the commissioner and from the commissioner to the board under  
38 this section shall be treated as confidential and shall not be  
39 considered public documents except as otherwise specifically

1 provided in this section or by specific action of the board or  
2 commissioner.

3 SEC. 12. Section 1067.12 of the Insurance Code is amended  
4 to read:

5 1067.12. (a) This article shall not be construed to reduce the  
6 liability for unpaid assessments of the insureds of an impaired or  
7 insolvent insurer operating under a plan with assessment liability.

8 (b) Records shall be kept of all meetings of the board of directors  
9 to discuss the activities of the association in carrying out its powers  
10 and duties under Section 1067.07. The records of the association  
11 with respect to an impaired or insolvent insurer shall not be  
12 disclosed *to the public* prior to the termination of a liquidation,  
13 rehabilitation, or conservation proceeding involving the impaired  
14 or insolvent insurer, except upon the termination of the impairment  
15 or insolvency of the insurer, or upon the order of a court of  
16 competent jurisdiction. Nothing in this subdivision shall limit the  
17 duty of the association to render a report of its activities under  
18 Section 1067.13.

19 (c) For the purpose of carrying out its obligations under this  
20 article, the association shall be deemed to be a creditor of the  
21 impaired or insolvent insurer to the extent of assets attributable to  
22 covered policies reduced by any amounts to which the association  
23 is entitled as subrogee pursuant to Section 1067.07. Assets of the  
24 impaired or insolvent insurer attributable to covered policies shall  
25 be used to continue all covered policies and pay all contractual  
26 obligations of the impaired or insolvent insurer as required by this  
27 article. Assets attributable to covered policies, as used in this  
28 subdivision, are that proportion of the assets which the reserves  
29 that should have been established for those policies bear to the  
30 reserves that should have been established for all policies of  
31 insurance written by the impaired or insolvent insurer.

32 (d) As a creditor of the impaired or insolvent insurer as  
33 established in subdivision (c) and consistent with Section 1035.5,  
34 the association and other similar associations shall be entitled to  
35 receive a disbursement of assets out of the marshaled assets, from  
36 time to time as the assets become available to reimburse it, as a  
37 credit against contractual obligations under this article. If the  
38 liquidator has not, within 120 days of *an order directing the*  
39 *liquidation of the business of an insolvent insurer* or a final  
40 determination of insolvency of an insurer by the receivership court,



1 made an application to the court for the approval of a proposal to  
2 disburse assets out of marshaled assets to guaranty associations  
3 having obligations because of the insolvency, then the association  
4 shall be entitled to make application to the receivership court for  
5 approval of its own proposal to disburse these assets.

6 (e) (1) Prior to the termination of any liquidation, rehabilitation,  
7 or conservation proceeding, the court may take into consideration  
8 the contributions of the respective parties, including the association,  
9 the shareholders, and policy owners of the insolvent insurer, and  
10 any other party with a bona fide interest, in making an equitable  
11 distribution of the ownership rights of the insolvent insurer. In the  
12 determination, consideration shall be given to the welfare of the  
13 policy owners of the continuing or successor insurer.

14 (2) No distribution to stockholders, if any, of an impaired or  
15 insolvent insurer shall be made until and unless the total amount  
16 of valid claims of the association with interest thereon for funds  
17 expended in carrying out its powers and duties under Section  
18 1067.07 with respect to the insurer have been fully recovered by  
19 the association.

20 (f) (1) If an order for liquidation or rehabilitation of an insurer  
21 domiciled in this state has been entered, the receiver appointed  
22 under the order shall have a right to recover on behalf of the  
23 insurer, from any affiliate that controlled it, the amount of  
24 distributions, other than stock dividends paid by the insurer on its  
25 capital stock, made at any time during the five years preceding the  
26 petition for liquidation or rehabilitation subject to the limitations  
27 of paragraphs (2) to (4), inclusive.

28 (2) No such distribution shall be recoverable if the insurer shows  
29 that when paid the distribution was lawful and reasonable, and that  
30 the insurer did not know and could not reasonably have known  
31 that the distribution might adversely affect the ability of the insurer  
32 to fulfill its contractual obligations.

33 (3) Any person who was an affiliate that controlled the insurer  
34 at the time the distributions were paid shall be liable up to the  
35 amount of distributions he or she received. Any person who was  
36 an affiliate that controlled the insurer at the time the distributions  
37 were declared, shall be liable up to the amount of distributions he  
38 or she would have received if they had been paid immediately. If  
39 two or more persons are liable with respect to the same  
40 distributions, they shall be jointly and severally liable.

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

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

9 SEC. 13. Section 1067.13 of the Insurance Code is amended  
10 to read:

11 1067.13. The association shall be subject to examination and  
12 regulation by the commissioner. The board of directors shall submit  
13 to the commissioner, the Governor, and the Legislature each year,  
14 not later than 120 days after the association's fiscal year, a financial  
15 report in a form approved by the commissioner and a report of its  
16 activities during the preceding fiscal year. Upon the request of a  
17 member insurer, the association shall provide the member insurer  
18 with a copy of the report.

19 SEC. 14. Section 1067.16 of the Insurance Code is amended  
20 to read:

21 1067.16. All proceedings in which the insolvent insurer is a  
22 party in any court in this state shall be stayed not less than 180  
23 days from the date an order of liquidation, rehabilitation, or  
24 conservation is final, to permit proper legal action by the  
25 association on any matters germane to its powers or duties. As to  
26 judgment under any decision, order, verdict, or finding based on  
27 default the association may apply to have the judgment set aside  
28 by the same court that made the judgment and shall be permitted  
29 to defend against the suit on the merits.

30 SEC. 15. Section 1067.17 of the Insurance Code is amended  
31 to read:

32 1067.17. (a) No person, including an insurer, agent, or affiliate  
33 of an insurer shall make, publish, disseminate, circulate, or place  
34 before the public, or cause directly or indirectly, to be made,  
35 published, disseminated, circulated, or placed before the public,  
36 in any newspaper, magazine, or other publication, or in the form  
37 of a notice, circular, pamphlet, letter, or poster, or over any radio  
38 station or television station, or in any other way, any advertisement,  
39 announcement, or statement, written or oral, which uses the  
40 existence of the California Life and Health Insurance Guarantee

1 Association for the purpose of sales, solicitation, or inducement  
2 to purchase any form of insurance covered by the California Life  
3 and Health Insurance Guarantee Association Act. Provided,  
4 however, that this section shall not apply to the California Life  
5 and Health Insurance Guarantee Association or any other entity  
6 which does not sell or solicit insurance.

7 (b) (1) The association shall prepare a summary document  
8 describing the general purposes and current limitations of the article  
9 and complying with subdivision (c). This document shall be  
10 submitted to the commissioner for approval. Sixty days after  
11 receiving approval, no insurer may deliver a policy or contract  
12 described in paragraph (1) of subdivision (b) of Section 1067.02  
13 to a policyholder or contractholder unless the document is delivered  
14 to the policy or contract holder prior to or at the time of delivery  
15 of the policy or contract except if subdivision (d) applies. The  
16 document should also be available upon request by the  
17 policyholder. The distribution, delivery, or contents or  
18 interpretation of this document shall not mean that either the policy  
19 or the contract or the holder thereof would be covered in the event  
20 of the impairment or insolvency of a member insurer. The  
21 description document shall be revised by the association as  
22 amendments to the article may require. Failure to receive this  
23 document does not give the policyholder, contractholder, certificate  
24 holder, or insured any greater rights than those stated in this article.  
25 This paragraph shall remain operative only until paragraph (2)  
26 becomes operative.

27 (2) Within 180 days of the effective date of the act that amended  
28 this section in the 2009–10 Regular Session, the association shall  
29 prepare a summary document describing the general purposes and  
30 current limitations of the article and complying with subdivision  
31 (c). This document shall be submitted to the commissioner for  
32 approval. At the expiration of the 60th day after the date on which  
33 the commissioner approves the document, an insurer may not  
34 deliver a policy or contract described in paragraph (1) of  
35 subdivision (b) of Section 1067.02 to a policy or contract owner  
36 unless the summary document is delivered to the policy or contract  
37 owner at the time of delivery of the policy or contract. The  
38 document shall also be available upon request by a policy owner.  
39 The distribution, delivery, or contents or interpretation of this  
40 document does not guarantee that either the policy or the contract

1 or the owner of the policy or contract is covered in the event of  
2 the impairment or insolvency of a member insurer. The description  
3 document shall be revised by the association, as amendments to  
4 the article may require. Failure to receive this document does not  
5 give the policy owner, contract owner, certificate holder, or insured  
6 any greater rights than those stated in this article.

7 (c) The document prepared under subdivision (b) shall contain  
8 a clear and conspicuous disclaimer on its face. The commissioner  
9 shall promulgate a rule establishing the form and content of the  
10 disclaimer. The disclaimer shall do all of the following:

11 (1) State the name and address of the life and health insurance  
12 guarantee association and insurance department.

13 (2) Prominently warn the policy owner or contract owner that  
14 the California Life and Health Insurance Guarantee Association  
15 may not cover the policy or, if coverage is available, it will be  
16 subject to substantial limitations and exclusions and conditioned  
17 on continued residence in the state.

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

22 (4) State that the policy owner or contract owner should not rely  
23 on coverage under the California Life and Health Insurance  
24 Guarantee Association when selecting an insurer.

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

26 *SEC. 16. This act is an urgency statute necessary for the*  
27 *immediate preservation of the public peace, health, or safety within*  
28 *the meaning of Article IV of the Constitution and shall go into*  
29 *immediate effect. The facts constituting the necessity are:*

30 *In order to increase benefits payable to consumers in the event*  
31 *of the insolvency of a life or health insurance company as soon as*  
32 *possible, to make California’s insurance regulatory statutes*  
33 *governing the administration of an insolvency of a life or health*  
34 *insurance company more consistent with those in other states, and*  
35 *to resolve any possible gaps in coverage, it is necessary that this*  
36 *act take effect immediately.*

O