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## HOUSE BILL NO. 448

AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the House Committee on Commerce and Labor  
on February 2, 2010)

(Patrons Prior to Substitute—Delegates Ware, R.L. and Cole [HB 574])

A BILL to amend and reenact §§ 38.2-1442 and 38.2-1700 through 38.2-1715 of the Code of Virginia, relating to the Virginia Life, Accident and Sickness Insurance Guaranty Association.

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-1442 and 38.2-1700 through 38.2-1715 of the Code of Virginia are amended and reenacted as follows:

§ 38.2-1442. Guaranty association obligations.

A domestic insurer may invest in any obligation not in default of the Virginia Life, Accident and Sickness Insurance Guaranty Association issued pursuant to subdivision L 3 of subsection J of § 38.2-1704 or the Virginia Property and Casualty Insurance Guaranty Association issued pursuant to subdivision 2 of subsection B of § 38.2-1606.

§ 38.2-1700. Purpose and applicability of chapter.

A. The purpose of this chapter is to protect, subject to certain limitations, policyowners, insureds, beneficiaries, annuitants, payees, and assignees of life insurance policies, accident and sickness insurance policies, annuity contracts, and supplemental contracts the persons specified in subsection B against failure to fulfill in the performance of contractual obligations due to, under life and accident and sickness insurance policies and annuity contracts specified in subsection C because of the impairment or insolvency of the insurers issuing those member insurer that issued the policies or contracts. This chapter shall be construed to effect this purpose. To provide this protection, (i) an association of insurers is created to enable the guaranty of payment of pay benefits and of continuation of coverages to continue coverage as limited by this chapter, (ii) and members of the Association are subject to assessments to provide funds to carry out the purpose of this chapter; and (iii) the Association is authorized to assist the Commission, in the prescribed manner, in the detection and prevention of insurer impairments or insolvencies.

B. This chapter shall provide coverage for the policies and contracts specified in subsection C as follows:

1. This chapter shall provide coverage, for the policies and contracts specified in subsection C, to persons who, regardless of where they reside, except for nonresident certificate holders under group policies or contracts, are the beneficiaries, assignees, or payees of the persons covered under subdivision B 2.

2. This chapter shall provide coverage, for the policies and contracts specified in subsection C, to persons who are owners of or certificate holders under the policies or contracts, other than unallocated annuity contracts and structured settlement annuities, and in each case who:

a. Are residents; or

b. Are not residents and (i) the insurer that issued the policies or contracts is domiciled in the Commonwealth, (ii) the states in which the persons reside have associations similar to the Association, and (iii) the persons are not eligible for coverage by an association in any other state due to the fact that the insurer was not licensed in the state at the time specified in the state's guaranty association law.

3. For unallocated annuity contracts specified in subsection C, subdivisions B 1 and B 2 shall not apply, and this chapter, except as provided in subdivisions B 5 and B 6, shall provide coverage to persons who are the owners of the unallocated annuity contracts if the contracts are issued to or in connection with a specific benefit plan whose plan sponsor has its principal place of business in this Commonwealth.

4. For structured settlement annuities specified in subsection C, subdivision B 1 and B 2 shall not apply and this chapter, except as provided in subdivisions B 5 and B 6, shall provide coverage to a person who is a payee under a structured settlement annuity, or beneficiary of a payee if the payee is deceased, if the payee:

a. Is a resident, regardless of where the contract owner resides; or

b. Is not a resident and both (i) the contract owner of the structured settlement annuity is (a) a resident or (b) not a resident but the insurer that issued the structured settlement annuity is domiciled in the Commonwealth and the state in which the contract owner resides has an association similar to the Association; and (ii) neither the payee or beneficiary, nor the contract owner is eligible for coverage by the association of the state in which the payee or contract owner resides.

5. This chapter shall not provide coverage to:

60 a. A person who is a payee, or beneficiary, of a contract owner resident of the Commonwealth if the  
61 payee, or beneficiary, is afforded any coverage by the association of another state; or

62 b. A person covered under subdivision B 3 if any coverage is provided by the association of another  
63 state to the person.

64 6. This chapter is intended to provide coverage to a person who is a resident of the Commonwealth  
65 and, in special circumstances, to a nonresident. In order to avoid duplicate coverage, if a person who  
66 would otherwise receive coverage under this chapter is provided coverage under the laws of any other  
67 state, the person shall not be provided coverage under this chapter. In determining the application of  
68 the provisions of this subdivision in situations where a person could be covered by the association of  
69 more than one state, whether as an owner, payee, beneficiary, or assignee, this chapter shall be  
70 construed in conjunction with other state laws to result in coverage by only one association.

71 C. This chapter shall apply to:

72 1. Provide coverage to the persons specified in subsection B for direct, nongroup life insurance  
73 policies, accident and sickness insurance policies, or annuity policies or contracts; and contracts  
74 supplemental to life, accident and sickness insurance policies and annuity contracts to any of these, for  
75 certificates under direct group policies and contracts, and for unallocated annuity contracts issued by  
76 member insurers licensed to transact insurance in this Commonwealth at any time, in each case except  
77 as limited by this chapter. Annuity contracts and certificates under group annuity contracts include  
78 guaranteed investment contracts, deposit administration contracts, unallocated funding agreements,  
79 allocated funding agreements, structured settlement annuities, and any immediate or deferred annuity  
80 contracts. This chapter shall apply also to dental benefit contracts entered into with a dental plan  
81 organization as provided in Chapter 61 (§ 38.2-6100 et seq.) of this title.

82 C2. This chapter shall not apply to Not provide coverage for:

83 1a. That A portion or part of a variable life insurance or variable annuity of a policy or contract not  
84 guaranteed by an insurer;

85 2. That portion or part of any policy or contract or under which the risk is borne by the policyholder  
86 policy or contract owner;

87 3b. Any A policy or contract, or part of a policy or contract assumed by the impaired or insolvent  
88 insurer under a contract of reinsurance, other than reinsurance for which unless assumption certificates  
89 have been issued pursuant to the reinsurance policy or contract;

90 4c. Any A portion of a policy or contract issued by cooperative nonprofit life benefit companies,  
91 mutual assessment life, accident and sickness insurance companies, burial societies, fraternal benefit  
92 societies, dental and optometric services plans and health services plans not subject to § 38.2-4213 to the  
93 extent that the rate of interest on which it is based, or the interest rate, crediting rate, or similar factor  
94 determined by use of an index or other external reference stated in the policy or contract employed in  
95 calculating returns or changes in value:

96 (1) Averaged over the period of four years prior to the date on which the member insurer becomes  
97 an impaired or insolvent insurer under this chapter, whichever is earlier, exceeds the rate of interest  
98 determined by subtracting two percentage points from Moody's Corporate Bond Yield Average averaged  
99 for that same four-year period or for such lesser period if the policy or contract was issued less than  
100 four years before the member insurer becomes an impaired or insolvent insurer under this chapter,  
101 whichever is earlier; and

102 (2) On and after the date on which the member insurer becomes an impaired or insolvent insurer  
103 under this chapter, whichever is earlier, exceeds the rate of interest determined by subtracting three  
104 percentage points from Moody's Corporate Bond Yield Average as most recently available;

105 d. A portion of a policy or contract issued to a plan or program of an employer, association, or  
106 other person to provide life, health, or annuity benefits to its employees, members, or others, to the  
107 extent that the plan or program is self-funded or uninsured, including but not limited to benefits payable  
108 by an employer, association, or other person under:

109 (1) A multiple employer welfare arrangement as defined in 29 U.S.C. § 1144;

110 (2) A minimum premium group insurance plan;

111 (3) A stop-loss agreement described in subsection B of § 38.2-109; or

112 (4) An administrative services only contract;

113 e. A portion of a policy or contract to the extent that it provides for

114 (1) Dividends or experience rating credits;

115 (2) Voting rights; or

116 (3) Payment of any fees or allowances to any person, including the policy or contract owner, in  
117 connection with the service to or administration of the policy or contract;

118 f. A policy or contract issued in the Commonwealth by a member insurer at a time when its license  
119 to issue the policy or contract in the Commonwealth had been suspended, revoked, not renewed, or  
120 voluntarily withdrawn;

121 g. An unallocated annuity contract issued to or in connection with a benefit plan protected under the

federal Pension Benefit Guaranty Corporation, regardless of whether the federal Pension Benefit Guaranty Corporation has yet become liable to make any payments with respect to the benefit plan;

h. A portion of an unallocated annuity contract that is not issued to or in connection with a specific employee, union, or association of natural persons benefit plan;

i. A portion of a policy or contract to the extent that the assessments required by § 38.2-1705 with respect to the policy or contract are preempted by federal or state law;

j. An obligation that does not arise under the express written terms of the policy or contract issued by the insurer to the contract owner or policy owner, including:

(1) Claims based on marketing materials;

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

(3) Misrepresentations of or regarding policy benefits;

(4) Extra-contractual claims; or

(5) A claim for penalties or consequential or incidental damages;

k. A contractual agreement that establishes the member insurer's obligations to provide a book value accounting guaranty for defined contribution benefit plan participants by reference to a portfolio of assets that is owned by the benefit plan or its trustee, which in each case is not an affiliate of the member insurer;

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

m. A policy or contract providing any hospital, medical, prescription drug or other health care benefits pursuant to Part C or Part D of Subchapter XVIII, chapter 7 of Title 42 of the United States Code (known as Medicare Parts C and D) or any regulations issued pursuant thereto; or

5 n. Any contract or certificate which is not issued to and owned by an individual, except to the extent of (i) any annuity benefits guaranteed to an individual by an insurer under such contract or certificate, (ii) any annuity benefits payable for the benefit of an individual by an insurer under an annuity contract issued to fund a structured settlement agreement on account of personal injury or sickness, or (iii) any life insurance benefits and accident and sickness insurance benefits guaranteed payable to any person by an insurer A charitable gift annuity as defined in § 38.2-106.1.

D. This chapter shall provide coverage for the policies and contracts specified in subsection B The benefits that the Association may become obligated to cover shall in no event exceed the lesser of:

1. To persons who, regardless of where they reside (except for nonresident certificate holders under group policies or contracts), are the beneficiaries, assignees or payees of the persons covered under subdivision 2 The contractual obligations for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer; or

2. To persons who are owners of or certificate holders under such policies or contracts (other than structured settlement annuities); and who

a. are residents; or

b. are not residents, but only under all of the following conditions: (i) the insurers which issued such policies or contracts are domiciled in this state; (ii) such insurers at the time of issuance of such policies or contracts did not hold a license or certificate of authority in the states in which such persons reside; and (iii) such persons are not eligible for coverage by an association of another state where such association is similar to the association created by this chapter; and

3. For structured settlement annuities described in clause (ii) of subdivision C 5; subdivisions 1 and 2 of this subsection shall not apply, and this chapter shall provide coverage to a person who is a payee (or beneficiary of a payee if the payee is deceased) under such a structured settlement annuity, if the payee (i) is a resident, regardless of where the contract owner resides; or (ii) is not a resident, but only under both of the following conditions: (a) (1) the contract owner of the structured settlement annuity is a resident or (2) the contract owner of the structured settlement annuity is not a resident, but the insurer that issued the structured settlement annuity is domiciled in this Commonwealth, and the state in which the contract owner resides has an association similar to the association created by this chapter, and (b) neither the payee (or beneficiary) nor the contract owner is eligible for coverage by the association of the state in which the payee or contract owner resides. In determining the application of the provisions

183 of this subdivision in situations where a person could be covered by the association of more than one  
184 state, whether as an owner, payee, beneficiary or assignee, this subdivision shall be construed in  
185 conjunction with other state laws to result in coverage by only one association With respect to:

186 a. One life, regardless of the number of policies or contracts:

187 (1) \$300,000 in life insurance death benefits, but not more than \$100,000 in net cash surrender and  
188 net cash withdrawal values for life insurance;

189 (2) In health insurance benefits, (i) \$100,000 for coverage not defined as disability insurance, basic  
190 hospital, medical and surgical insurance, major medical insurance or long-term care insurance  
191 including any net cash surrender and net cash withdrawal values; (ii) \$300,000 for accident and  
192 sickness insurance that constitutes disability insurance or long-term care insurance; and (iii) \$500,000  
193 for accident and sickness insurance that constitutes basic hospital medical and surgical insurance or  
194 major medical insurance; and

195 (3) \$250,000 in the present value of annuity benefits, including net cash surrender and net cash  
196 withdrawal values;

197 b. Each individual participating in a benefit plan established under Section 401, 403(b) or 457 of the  
198 U.S. Internal Revenue Code who (i) selected an investment option that includes investment in  
199 unallocated annuity contracts and (ii) is covered by such an unallocated annuity contract, including the  
200 beneficiaries of each such individual if deceased, in the aggregate, \$250,000 in present value of annuity  
201 benefits, including net cash surrender and net cash withdrawal values;

202 c. Each payee of a structured settlement annuity (or beneficiary or beneficiaries of the payee if  
203 deceased), \$250,000 in present value annuity benefits, in the aggregate, including net cash surrender  
204 and net cash withdrawal values, if any; and

205 d. One plan sponsor whose plans own directly or in trust one or more unallocated annuity contracts  
206 part or all of any of which is not included in subdivision 2 b, \$5 million in benefits, irrespective of the  
207 number of contracts with respect to the plan sponsor. However, in the case where one or more  
208 unallocated annuity contracts are covered contracts under this chapter and are owned by a trust or  
209 other entity for the benefit or two or more plan sponsors, coverage shall be afforded by the Association  
210 if the largest interest in the trust or entity owning the contract or contracts is held by a plan sponsor  
211 whose principal place of business is in the Commonwealth and in no event shall the Association be  
212 obligated to cover more than \$5 million in benefits with respect to all such unallocated contracts.

213 In no event shall the Association be obligated to cover (i) more than an aggregate of \$350,000 in  
214 benefits with respect to any one life under subdivisions D 2 a, b, and c except with respect to benefits  
215 for basic hospital, medical and surgical insurance, and major medical insurance under subdivision D 2  
216 a (2), in which case the aggregate liability of the Association shall not exceed \$500,000 with respect to  
217 any one individual, or (ii) with respect to one owner of multiple nongroup policies of life insurance,  
218 whether the policy owner is an individual, firm, corporation, or other person, and whether the persons  
219 insured are officers, managers, employees, or other persons, more than \$5,000,000 in benefits,  
220 regardless of the number of policies and contracts held by the owner.

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

227 E. Any member insurer which has been declared insolvent and is placed under a final order of  
228 liquidation, rehabilitation, or conservation by a court of competent jurisdiction prior to July 1, 1991,  
229 shall be subject to the provisions of Chapter 17 as this chapter existed prior to July 1, 1991.

230 E. In performing its obligations to provide coverage under § 38.2-1704, the Association shall not be  
231 required to guarantee, assume, reinsure or perform, or cause to be guaranteed, assumed, reinsured or  
232 performed, the contractual obligations of the insolvent or impaired insurer under a covered policy or  
233 contract that the Association has determined, with the concurrence of the Commission, do not materially  
234 affect the economic values or economic benefits of the covered policy or contract.

235 § 38.2-1701. Definitions.

236 As used in this chapter:

237 "Account" means any one of the ~~three~~ two accounts created under § 38.2-1702.

238 "Association" means the Virginia Life, Accident and Sickness Insurance Guaranty Association created  
239 under § 38.2-1702.

240 "Authorized assessment" or the term "authorized" when used in the context of assessments means  
241 that a resolution by the board of directors has been passed whereby an assessment will be called  
242 immediately or in the future from member insurers for a specified amount. An assessment is authorized  
243 when the resolution is passed.

244 "Benefit plan" means a specific employee, union, or association of natural persons benefit plan.

"Called assessment" or the term "called" when used in the context of assessments means that a notice has been issued by the Association to member insurers requiring that an authorized assessment be paid within the time frame set forth within the notice. An authorized assessment becomes a called assessment when notice is mailed by the Association to member insurers.

"Contractual obligation" means ~~any~~ an obligation under ~~covered policies~~ a policy or contract or certificate under a group policy or contract, or portion thereof for which coverage is provided under § 38.2-1700.

"Covered policy" means ~~any~~ a policy or contract ~~within the scope of this chapter~~ or portion of a policy or contract for which coverage is provided under § 38.2-1700.

"Extra-contractual claims" shall include, for example, claims relating to bad faith in the payment of claims, punitive or exemplary damages, or attorney fees and costs.

"Impaired insurer" means a ~~solvent~~ member insurer considered by the Commission to be potentially unable to fulfill its contractual obligations.

"Insolvent insurer" means a member insurer that ~~becomes insolvent and~~ is placed under a ~~final~~ an order of liquidation, ~~rehabilitation, or conservation~~ by a court of competent jurisdiction with a finding of insolvency.

"Member insurer" means ~~any person~~ an insurer licensed to ~~write~~ transact in this Commonwealth any class of insurance to which this chapter applies under § 38.2-1700, including an insurer whose license to transact the business of insurance in the Commonwealth has been suspended, revoked, not renewed or voluntarily withdrawn, but does not include cooperative nonprofit life benefit companies, health maintenance organizations, mutual assessment life, accident and sickness insurance companies, burial societies, fraternal benefit societies, dental and optometric services plans, and health services plans not subject to this chapter pursuant to § 38.2-4213.

"Moody's Corporate Bond Yield Average" means the Monthly Average Corporates as published by Moody's Investors Service, Inc., or any successor thereto.

"Owner" of a policy or contract or "policy owner" and "contract owner" means the person who is identified as the legal owner under the terms of the policy or contract or who is otherwise vested with legal title to the policy or contract through a valid assignment completed in accordance with the terms of the policy or contract and properly recorded as the owner on the books of the insurer. The terms "owner," "contract owner," and "policy owner" do not include persons with a mere beneficial interest in a policy or contract.

"Plan sponsor" means: (i) the employer, in the case of a benefit plan established or maintained by a single employer; (ii) the employee organization in the case of a benefit plan established or maintained by an employee organization; or (iii) in the case of a benefit plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan.

"Premiums" means ~~direct gross insurance premiums and annuity amounts or considerations, by whatever name called, received on covered policies or contracts, less any return of returned premiums, and considerations, and deposits on covered policies, and less dividends paid or credited to policyholders on this business and experience credits.~~ "Premiums" does not include amounts or considerations received for policies or contracts or for the portions of policies or contracts for which coverage is not provided under subsection C of § 38.2-1700 except that assessable premium shall not be reduced on account of subdivision C 2 of § 38.2-1700 relating to interest limitations and subsection D 2 of § 38.2-1700 relating to limitations with respect to one individual, one participant, and one contract owner. "Premiums" ~~do~~ shall not include (i) premiums and considerations on contracts between insurers and reinsurers for coverage in excess of \$5,000,000 on an unallocated annuity contract covered under subdivision D 2 d of § 38.2-1700 or (ii) with respect to multiple nongroup policies of life insurance owned by one owner, whether the policy owner is an individual, firm, corporation, or other person, and whether the persons insured are officers, managers, employees or other persons, premiums for coverage in excess of \$5,000,000 with respect to these policies or contracts, regardless of the number of policies or contracts held by the owner.

"Principal place of business" of a plan sponsor or a person other than a natural person means the single state in which the natural persons who establish policy for the direction, control, and coordination of the operations of the entity as a whole primarily exercise that function, determined by the Association in its reasonable judgment by considering the following factors: (i) the state in which the primary executive and administrative headquarters of the entity is located; (ii) the state in which the principal office of the chief executive officer of the entity is located; (iii) the state in which the board of directors (or similar governing person or persons) of the entity conducts the majority of its meetings; (iv) the state from which the management of the overall operations of the entity is directed; and in the case of a benefit plan sponsored by affiliated companies comprising a consolidated corporation, the

state in which the holding company or controlling affiliate has its principal place of business as determined using these factors. However, in the case of a plan sponsor, if more than 50 percent of the participants in the benefit plan are employed in a single state, that state shall be deemed to be the principal place of business of the plan sponsor. The principal place of business of a plan sponsor described in clause (iii) of the definition of plan sponsor in this section shall be deemed to be the principal place of business of the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan that, in lieu of a specific or clear designation of a principal place of business, shall be deemed to be the principal place of business of the employer or employee organization that has the largest investment in the benefit plan in question.

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

"Resident" means ~~any~~ a person to whom a contractual obligation is owed and who resides in ~~this~~ the Commonwealth at the time on the date a member with contractual obligations is determined to be insurer becomes an impaired or insolvent insurer or a court order is entered that determines a member insurer to be an insolvent insurer. A person may be a resident of only one state, which in the case of a person other than a natural person shall be its principal place of business. Citizens of the United States that are either (i) residents of foreign countries, or (ii) residents of United States possessions, territories, or protectorates that do not have an association similar to the Association, shall be deemed residents of the state of domicile of the insurer that issued the policies or contracts.

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

"Supplemental contract" means a written agreement entered into for the distribution of proceeds under a life, health, or annuity policy or contract.

"Unallocated annuity contract" means an annuity contract or group annuity certificate that is not issued to and owned by an individual or a trust created by an individual for the benefit of one or more individuals, except to the extent of any annuity benefits guaranteed to an individual or such a trust by an insurer under the contract or certificate.

§ 38.2-1702. Association; creation; memberships; accounts; supervision.

A. The Association is a nonprofit legal entity ~~to be~~ known as the Virginia Life, Accident and Sickness Insurance Guaranty Association, created by former § 38.1-482.20, ~~shall continue in existence.~~ All member insurers shall ~~continue to be~~ and remain members of the Association as a condition of their license to transact the business of insurance in this Commonwealth. The Association shall perform its functions under the plan of operation established and approved under § 38.2-1706 and shall exercise its powers through a board of directors established under § 38.2-1703. For purposes of administration and assessment, the Association shall maintain ~~three~~ two accounts: (i) the accident and sickness insurance account; and (ii) the life insurance and annuity account; ~~and (iii), which includes the following subaccounts: (a) the life insurance account, (b) the annuity account, which shall include unallocated annuity contracts covered under subdivision D 2 b of § 38.2-1700, but shall otherwise exclude unallocated annuities, and (c) the unallocated annuity account, which shall consist of contracts covered under subdivision D 2 d of § 38.2-1700, but shall otherwise exclude unallocated annuities.~~

B. The Association shall come under the immediate supervision of the Commission and shall be subject to the applicable provisions of the insurance laws of ~~this~~ the Commonwealth. Meetings or records of the Association may be opened to the public upon majority vote of the board of directors of the Association.

§ 38.2-1703. Board of directors of Association.

A. The board of directors of the Association shall consist of not less than five nor more than nine member insurers serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the Commission. Vacancies on the board shall be filled for the remainder of the term by a majority vote of the remaining board members, subject to the approval of the Commission.

B. In approving selections ~~or in appointing members to the board~~ the Commission shall consider, among other things, whether all domestic and foreign member insurers are fairly represented.

C. Members of the board may be reimbursed from the assets of the Association for expenses incurred by them as members of the board of directors but members of the board shall not be otherwise compensated by the Association for their services.

§ 38.2-1704. Powers and duties of Association.

In addition to the powers and duties enumerated in other sections of this chapter:

A. ~~In the case of~~ If the member insurer is an impaired domestic insurer, the Association may, in its discretion and subject to (i) any conditions imposed by the Association other than those that do not impair the contractual obligations of the impaired insurer; (ii) approval by the impaired insurer and (iii) approval that are approved by the Commission; the Association may:

1. Guarantee, *assume*, or reinsure, or cause to be guaranteed, assumed, or reinsured, any or all of the covered policies or contracts of the impaired insurer; and

2. Provide moneys, pledges, loans, notes, guarantees or other means required for compliance with as are proper to effectuate subdivision 1 of this subsection and assure payment of the contractual obligations of the impaired insurer pending action under that subdivision; and

3. ~~Loan money to the impaired insurer.~~

B. ~~In~~ If the case of member insurer is an insolvent insurer, the Association shall, in its discretion and subject to the approval of the Commission, either:

1. a. Guarantee, assume, or reinsure or cause to be guaranteed, assumed, or reinsured the covered policies of the insolvent insurer;

2. ~~Assure~~ or assure payment of the contractual obligations of the insolvent insurer; and

3 b. Provide moneys, pledges, notes, guarantees, or other means reasonably necessary to discharge its duties; or

2. Provide benefits and coverages in accordance with the following provisions:

a. With respect to life and health insurance policies and annuities, assure payment of benefits for premiums identical to the premiums and benefits, except for terms of conversion and renewability, that would have been payable under the policies or contracts of the insolvent insurer, for claims incurred:

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

(2) With respect to nongroup policies, contracts, and annuities, not later than the earlier of the next renewal date, if any, under the policies or contracts or one year, but in no event less than 30 days, from the date on which the Association becomes obligated with respect to the policies or contracts;

b. Make diligent efforts to provide all known insureds or annuitants (for nongroup policies and contracts), or group policy owners with respect to group policies and contracts, 30 days' notice of the termination, pursuant to subdivision 2 a, of the benefits provided;

c. With respect to nongroup life and health insurance policies and annuities covered by the Association, make available to each known insured or annuitant, or owner if other than the insured or annuitant, and with respect to an individual formerly insured or formerly an annuitant under a group policy who is not eligible for replacement group coverage, make available substitute coverage on an individual basis in accordance with the provisions of subdivision 2 d, if the insureds or annuitants had a right under law or the terminated policy or annuity to convert coverage to individual coverage or to continue an individual policy or annuity in force until a specified age or for a specified time, during which the insurer had no right unilaterally to make changes in any provision of the policy or annuity or had a right only to make changes in premium by class;

d. In providing the substitute coverage required under subdivision 2 c, the Association may offer either to reissue the terminated coverage or to issue an alternative policy. Alternative or reissued policies shall be offered without requiring evidence of insurability, and shall not provide for any waiting period or exclusion that would not have applied under the terminated policy. The Association may reinsure any alternative or reissued policy;

e. Alternative policies adopted by the Association shall be subject to the approval of the domiciliary insurance commissioner and the receivership court. The Association may adopt alternative policies of various types for future issuance without regard to any particular impairment or insolvency. Alternative policies shall contain at least the minimum statutory provisions required in this Commonwealth and provide benefits that shall not be unreasonable in relation to the premium charged. The Association shall set the premium in accordance with a table of rates that it shall adopt. The premium shall reflect the amount of insurance to be provided and the age and class of risk of each insured, but shall not reflect any changes in the health of the insured after the original policy was last underwritten. Any alternative policy issued by the Association shall provide coverage of a type similar to that of the policy issued by the impaired or insolvent insurer, as determined by the Association;

f. If the Association elects to reissue terminated coverage at a premium rate different from that charged under the terminated policy, the premium shall be set by the Association in accordance with the amount of insurance provided and the age and class of risk, subject to approval of the domiciliary insurance commissioner and the receivership court;

g. The Association's obligations with respect to coverage under any policy of the impaired or insolvent insurer or under any reissued or alternative policy shall cease on the date the coverage or policy is replaced by another similar policy by the policy owner, the insured or the Association; and

h. When proceeding under subdivision B 2 with respect to a policy or contract carrying guaranteed minimum interest rates, the Association shall assure the payment or crediting of a rate of interest consistent with subdivision C 2 c of § 38.2-1700.

C. Nonpayment of premiums within 31 days after the date required under the terms of any



429 guaranteed, assumed, alternative, or reissued policy or contract or substitute coverage shall terminate  
 430 the Association's obligations under the policy or coverage under this chapter with respect to the policy  
 431 or coverage, except with respect to any claims incurred or any net cash surrender value that may be  
 432 due in accordance with the provisions of this chapter.

433 D. Premiums due for coverage after entry of an order of liquidation of an insolvent insurer shall  
 434 belong to and be payable at the direction of the Association. If the liquidator of an insolvent insurer  
 435 requests, the Association shall provide a report to the liquidator regarding such premium collected by  
 436 the Association. The Association shall be liable for unearned premiums due to policy or contract owners  
 437 arising after the entry of the order.

438 C. ~~Subsection B E.~~ The protection provided by this chapter shall not apply in the case of a foreign  
 439 or alien insurer where the Commission has determined that the foreign or alien insurer's domiciliary  
 440 jurisdiction or state of entry provides substantially similar protection by statute or regulation for  
 441 residents of this Commonwealth.

442 ~~D. + F.~~ In carrying out its duties under subsection B of this section, the Association may request  
 443 that:

444 1. Subject to approval by the Commission, impose permanent policy liens or contract liens be  
 445 imposed in connection with any a guarantee, assumption, or reinsurance agreement, and those liens may  
 446 be imposed if the court: if the Association finds

447 a. Finds that the amounts which that can be assessed under this chapter are less than the amounts  
 448 needed to assure full and prompt performance of the insolvent insurer's contractual obligations  
 449 Association's duties under this chapter, or that economic or financial conditions as they affect member  
 450 insurers are sufficiently adverse so that to render the imposition of such permanent policy or contract  
 451 liens are to be in the public interest; and

452 b. Approves the specific policy or contract liens to be used.

453 2. Before being obligated under subsection B of this section, the Association may request that  
 454 Subject to approval by the Commission, impose temporary moratoriums or liens be imposed on  
 455 payments of cash values and policy loans or any other right to withdraw funds held in conjunction with  
 456 policies or contracts, in addition to any contractual provisions for deferral of cash or policy loan values;  
 457 and the temporary moratoriums and liens may be imposed if they are approved by the court. In addition,  
 458 in the event of a temporary moratorium or moratorium charge imposed by the receivership court on  
 459 payment of cash values or policy loans, or on any other right to withdraw funds held in conjunction  
 460 with policies or contracts, out of the assets of the impaired or insolvent insurer, the Association may  
 461 defer the payment of cash values, policy loans, or other rights by the Association for the period of the  
 462 moratorium or moratorium charge imposed by the receivership court, except for claims covered by the  
 463 Association to be paid in accordance with a hardship procedure established by the liquidator or  
 464 rehabilitator and approved by the receivership court.

465 G. A deposit in this Commonwealth, held pursuant to law or required by the Commission for the  
 466 benefit of creditors, including policy owners, not turned over to the domiciliary liquidator upon the  
 467 entry of a final order of liquidation or order approving a rehabilitation plan of an insurer domiciled in  
 468 this Commonwealth or in a reciprocal state, pursuant to Article 7 (§ 38.2-1045 et seq.) of Chapter 10  
 469 shall be promptly paid to the Association. The Association shall be entitled to retain a portion of any  
 470 amount so paid to it equal to the percentage determined by dividing the aggregate amount of policy  
 471 owners' claims related to that insolvency for which the Association has provided statutory benefits by  
 472 the aggregate amount of all policy owners' claims in this Commonwealth related to that insolvency and  
 473 shall remit to the domiciliary receiver the amount so paid to the Association less the amount retained  
 474 pursuant to this subsection. Any amount so paid to the Association and retained by it shall be treated as  
 475 a distribution of estate assets pursuant to applicable state receivership law dealing with early access  
 476 disbursements.

477 E H. If the Association fails to act as provided in subsection B of this section within a reasonable  
 478 period of time with respect to an insolvent insurer, as provided in subsection B, the Commission, on  
 479 behalf of the Association, shall exercise have the powers and duties of the Association under this  
 480 chapter with respect to the insolvent insurers insurer.

481 F I. Upon request, the The Association may provide render assistance and advice to the Commission,  
 482 upon the Commission's request, concerning rehabilitation, payment of claims, continuation of coverage,  
 483 or the performance of other contractual obligations of an impaired or insolvent insurer.

484 G J. The Association shall have standing to appear or intervene before the Commission or any court  
 485 or agency in this the Commonwealth regarding with jurisdiction over an impaired or insolvent insurer  
 486 concerning which the Association is or may become obligated under this chapter or with jurisdiction  
 487 over any person or property against which the Association may have rights through subrogation or  
 488 otherwise. Standing shall extend to all matters germane to the powers and duties of the Association,  
 489 including, but not limited to, proposals for reinsuring, modifying, or guaranteeing the covered policies or  
 490 contracts of the impaired or insolvent insurer and the determination of the covered policies or contracts



and contractual obligations. *The Association shall also have the right to appear or intervene before a court or agency in another state with jurisdiction over an impaired or insolvent insurer for which the Association is or may become obligated or with jurisdiction over any person or property against whom the Association may have rights through subrogation or otherwise.*

*H K. 1. Any person receiving benefits under this chapter shall be deemed to have assigned the rights under, and any causes of action against any person for losses arising under, resulting from, or otherwise relating to, the covered policy or contract to the Association to the extent of the benefits received because of this chapter, whether the benefits are payments of or on account of contractual obligations or, continuation of coverage, or provision of substitute or alternative coverages. The Association shall may require an assignment to it of those such rights and causes of action by any payee, policy or contract owner, beneficiary, insured, or annuitant as a condition prior precedent to the receipt of any rights right or benefits conferred by this chapter upon that the person. The Association shall be subrogated to those rights against the assets of any insolvent insurer.*

*2. The subrogation rights of the Association under this subsection shall have the same priority against the assets of the insolvent insurer as that possessed by the person entitled to receive benefits under this chapter.*

*3. In addition to the rights provided by subdivisions K 1 and K 2, the Association shall have all common law rights of subrogation and any other equitable or legal remedy that would have been available to the impaired or insolvent insurer or owner, beneficiary, or payee of a policy or contract with respect to the policy or contract, including, in the case of a structured settlement annuity, any rights of the owner, beneficiary, or payee of the annuity, to the extent of benefits received pursuant to this chapter, against a person originally or by succession responsible for the losses arising from the personal injury relating to the annuity or payment therefor, excepting any such person responsible solely by reason of serving as an assignee in respect of a qualified assignment under § 130 of the Internal Revenue Code.*

*4. If subdivision K 1 through K 3 are invalid or ineffective with respect to any person or claim for any reason, the amount payable by the Association with respect to the related covered obligations shall be reduced by the amount realized by any other person with respect to the person or claim that is attributable to the policies, or portion thereof, covered by the Association.*

*5. If the Association has provided benefits with respect to a covered obligation and a person recovers amounts to which the Association has rights as described in subdivisions K 1 through K 4, the person shall pay to the Association the portion of the recovery attributable to the policies, or portion thereof, covered by the Association.*

*I. The contractual obligations for which the Association may become liable shall in no event exceed the lesser of:*

*1. The contractual obligations for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer; or*

*2. With respect to any one life, regardless of the number of policies or contracts:*

*a. \$300,000 in life insurance death benefits, but not more than \$100,000 in net cash surrender and net cash withdrawal values for life insurance;*

*b. \$300,000 in health insurance benefits, including any net cash surrender and net cash withdrawal values;*

*c. \$100,000 in the present value of annuity benefits, including net cash surrender and net cash withdrawal values; and*

*d. \$250,000 in the present value of annuity benefits where the annuity is established and maintained as one of the following types of accounts:*

*(1) Individual retirement accounts described in § 408(a) of the Internal Revenue Code of 1986, 26 U.S.C. § 408(a);*

*(2) Eligible deferred compensation plan accounts described in § 457 of the Internal Revenue Code of 1986, 26 U.S.C. § 457; and*

*(3) Individual account plans defined in § 3(34) of the Employee Retirement Income Security Act, 29 U.S.C. § 1002, and any plan described in § 401(d) of the Internal Revenue Code of 1986, 26 U.S.C. § 401(d), to the extent that participants and beneficiaries under such plans have a right to direct the investment of assets held in individual accounts maintained on their behalf by the plans.*

*However, in no event shall the Association be liable to expend more than \$350,000 in the aggregate with respect to any one individual.*

*J L. The In addition to the rights and powers granted to it elsewhere in this chapter, the Association may:*

*1. Enter into such contracts as are necessary or proper to fulfill carry out the provisions and purposes of this chapter;*

*2. Sue or be sued, including taking any legal actions necessary or proper for recovery of to recover*

552 any unpaid assessments under § 38.2-1705 *and to settle any claims or potential claims against it;*

553 3. Borrow money to effect the purposes of this chapter. Any notes or other evidence of indebtedness  
554 of the Association not in default shall be Category 1 investments, as defined in § 38.2-1401, for  
555 domestic insurers;

556 4. Employ or retain *such persons as are necessary or appropriate* to handle the financial transactions  
557 of the Association, and to perform other functions ~~required by~~ *as become necessary or proper* under this  
558 chapter;

559 5. Negotiate and contract with any liquidator, rehabilitator, conservator, or ancillary receiver to carry  
560 out the powers and duties of the Association;

561 6. Take *such* legal action ~~required~~ *as may be necessary or appropriate* to avoid or recover payment  
562 of improper claims;

563 7. Exercise, for the purposes of this chapter and to the extent approved by the Commission, the  
564 powers of a domestic life or accident and sickness insurer, but in no case ~~shall~~ *may* the Association  
565 issue insurance policies or annuity contracts other than those issued to perform ~~the contractual~~ *its*  
566 obligations of the ~~impaired or insolvent insurer~~ under this chapter;

567 8. Organize itself as a corporation or in other legal form permitted by the laws of the  
568 Commonwealth;

569 9. Request information from a person seeking coverage from the Association in order to aid the  
570 Association in determining its obligations under this chapter with respect to the person, and the person  
571 shall promptly comply with the request; and

572 10. Take other necessary or appropriate action to discharge its duties and obligations under this  
573 chapter or to exercise its powers under this chapter.

574 M. The Association may join an organization of one or more other state associations of similar  
575 purposes, to further the purposes and administer the powers and duties of the Association.

576 N. 1. a. At any time within 180 days of the date of the order of liquidation, the Association may  
577 elect to succeed to the rights and obligations of the ceding member insurer that relate to policies or  
578 annuities covered, in whole or in part, by the Association, in each case under any one or more  
579 reinsurance contracts entered into by the insolvent insurer and its reinsurers and selected by the  
580 Association. Any such assumption shall be effective as of the date of the order of liquidation. The  
581 election shall be effected by the Association or any agent of the Association on the Association's behalf  
582 sending written notice, return receipt requested, to the affected reinsurers.

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

591 c. The following shall apply to reinsurance contracts so assumed by the Association:

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

599 (2) The Association shall be entitled to any amounts payable by the reinsurer under the reinsurance  
600 contracts with respect to losses or events that occur in periods after the date of the order of liquidation  
601 and that relate to policies or annuities covered, in whole or in part, by the Association, provided that,  
602 upon receipt of any such amounts, the Association shall be obliged to pay to the beneficiary, under the  
603 policy or annuity on account of which the amounts were paid, a portion of the amount equal to the  
604 lesser of (i) the amount received by the Association and (ii) the excess of the amount received by the  
605 Association over the amount equal to the benefits paid by the Association on account of the policy or  
606 annuity less the retention of the insurer applicable to the loss or event;

607 (3) Within 30 days following the Association's election (the "election date"), the Association and each  
608 reinsurer under contracts assumed by the Association shall calculate the net balance due to or from the  
609 Association under each reinsurance contract as of the election date with respect to policies or annuities  
610 covered, in whole or in part, by the Association, which calculation shall give full credit to all items paid  
611 by either the insurer or its receiver or the reinsurer prior to the election date. The reinsurer shall pay  
612 the receiver any amounts due for losses or events prior to the date of the order of liquidation, subject to  
613 any set-off for premiums unpaid for periods prior to the date, and the Association or reinsurer shall pay

any remaining balance due the other, in each case within five days of the completion of the aforementioned calculation. Any disputes over the amounts due to either the Association or the reinsurer shall be resolved by arbitration pursuant to the terms of the affected reinsurance contract or, if the contract contains no arbitration clause, as otherwise provided by law. If the receiver has received any amounts due the Association pursuant to subdivision N 1 c (2), the receiver shall remit the same to the Association as promptly as practicable; and

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

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

a. Neither the Association nor the reinsurer shall have any rights or obligations under reinsurance contracts that the Association has the right to assume under subdivision N 1, whether for periods prior to or after the date of the order of liquidation; and the reinsurer, the receiver, and the Association shall, to the extent practicable, provide each other data and records reasonably requested;

b. Provided that once the Association has elected to assume a reinsurance contract, the parties' rights and obligations shall be governed by subdivision N 1.

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

4. When policies or annuities, or covered obligations with respect thereto, are transferred to an assuming insurer, reinsurance on the policies or annuities may also be transferred by the Association, in the case of contracts assumed under subdivision N 1, subject to the following:

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

b. The obligations described in subdivision N 1 shall no longer apply with respect to matters arising after the effective date of the transfer; and

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

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

6. Except as otherwise provided in this section, nothing in this subsection shall alter or modify the terms and conditions of any reinsurance contract. Nothing in this section shall abrogate or limit any rights of any reinsurer to claim that it is entitled to rescind a reinsurance contract. Nothing in this section shall give a policy holder or beneficiary an independent cause of action against a reinsurer that is not otherwise set forth in the reinsurance contract. Nothing in this section shall limit or affect the Association's rights as a creditor of the estate against the assets of the estate. Nothing in this section shall apply to reinsurance agreements covering property or casualty risks.

O. The board of directors of the Association shall have discretion and may exercise good faith business judgment to determine the means by which the Association is to provide the benefits of this chapter in an economical and efficient manner.

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

Q. Venue in a suit against the Association arising under the chapter shall be in the circuit court of the city or county in which the Association has its principal place of business except that any suit to which the Commission is a party shall be brought before the Commission. The Association shall not be required to give an appeal bond in an appeal that relates to a cause of action arising under this chapter.

R. In carrying out its duties in connection with guaranteeing, assuming, or reinsuring policies or contracts under subsection A or B, the Association may, subject to approval of the receivership court, issue substitute coverage for a policy or contract that provides an interest rate, crediting rate or similar

675 factor determined by use of an index or other external reference stated in the policy or contract  
676 employed in calculating returns or changes in value by issuing an alternative policy or contract in  
677 accordance with the following provisions:

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

681 2. There is no requirement for evidence of insurability, waiting period, or other exclusion that would  
682 not have applied under the replaced policy or contract; and

683 3. The alternative policy or contract is similar to the replaced policy or contract in all other  
684 material terms.

685 § 38.2-1705. Assessments.

686 A. For the purpose of providing the funds necessary to carry out the powers and duties of the  
687 Association, the board of directors shall assess the member insurers, separately for each account, at any  
688 such time and for any amounts as the board finds necessary. Assessments shall be due not less than  
689 thirty 30 days after prior written notice has been given to the member insurers. ~~Interest~~ Late payments  
690 shall be accrue interest from the due date compounded quarterly and be, based upon the average ninety  
691 90 day treasury bill rate for the most recently completed calendar quarter as published in the Federal  
692 Reserve Bulletin. ~~Interest will accrue on and after the due date shall be subject to a minimum charge of~~  
693 \$50.

694 B. There shall be two classes of assessments, as follows:

695 1. Class A assessments shall be ~~made authorized and called~~ for the purpose of meeting  
696 administrative and legal costs and other expenses, including the cost of examinations conducted under  
697 the authority of § 38.2-1708 E. Class A assessments may be ~~made authorized and called~~ whether or not  
698 related to a particular impaired or insolvent insurer.

699 2. Class B assessments shall be ~~made authorized and called~~ to the extent necessary to carry out the  
700 powers and duties of the Association under § 38.2-1704 with regard to an impaired or an insolvent  
701 insurer.

702 C. 1. The amount of any Class A assessment shall be determined by the board and may be ~~made~~  
703 ~~authorized and called for current member insurers~~ on a pro-rata or nonpro-rata basis. If pro rata, the  
704 board may provide that it be credited against future Class B assessments. ~~A The total of all nonpro-rata~~  
705 ~~assessment assessments~~ shall not exceed \$200 \$500 per member insurer in any one calendar year. ~~With~~  
706 ~~respect to any insurer that became impaired or insolvent after January 1, 1991, the~~ The amount of any a  
707 Class B assessment shall be allocated for assessment purposes among the accounts pursuant to an  
708 allocation formula which may be based on the premiums or reserves of the impaired or insolvent insurer  
709 or any other standard deemed by the board in its sole discretion as being fair and reasonable under the  
710 circumstances.

711 2. Class B assessments against member insurers for each account and subaccount shall be in the  
712 proportion that the premiums received on business in this Commonwealth by each assessed member  
713 insurer on policies or contracts covered by each account and subaccount for the three most recent  
714 calendar years for which information is available preceding the year in which the insurer became  
715 impaired or insolvent or, in the case of an assessment with respect to an impaired insurer, the three  
716 most recent calendar years for which information is available preceding the year in which the insurer  
717 became impaired, bear to such premiums received on business in this Commonwealth for such those  
718 calendar years by all assessed member insurers.

719 3. Assessments for funds to meet the requirements of the Association with respect to an impaired or  
720 insolvent insurer shall not be ~~made authorized or called~~ until necessary to implement the purposes of  
721 this chapter. Classification of assessments under subsection B of this section and computation of  
722 assessments under this subsection shall be made with a reasonable degree of accuracy, recognizing that  
723 exact determinations may not always be possible. The Association shall notify each member insurer of  
724 its anticipated pro-rata share of an authorized assessment not yet called within 180 days after the  
725 assessment is authorized.

726 D. The Association may abate or defer, in whole or in part, the assessment of a member insurer if,  
727 in the opinion of the board, payment of the assessment would endanger the ability of the member  
728 insurer to fulfill its contractual obligations. In the event an assessment against a member insurer is  
729 abated or deferred in whole or in part, the amount by which the assessment is abated or deferred may  
730 be assessed against the other member insurers in a manner consistent with the basis for assessments set  
731 forth in this section. Once the conditions that caused a deferral have been removed or rectified, the  
732 member insurer shall pay all assessments that were deferred pursuant to a repayment plan approved by  
733 the Association.

734 E. The 1. a. Subject to the provisions of subdivision E 1 b, the total of all assessments upon a  
735 authorized by the Association with respect to a member insurer for each subaccount of the life insurance  
736 and annuity account and for the accident and sickness insurance account shall not in any one calendar

year exceed two percent of ~~the~~ that member insurer's average annual premiums received in the Commonwealth on the policies and contracts covered by the subaccount or account in this Commonwealth during the three calendar year years preceding the assessment year in which the insurer became an impaired or insolvent insurer.

b. If two or more assessments are authorized in one calendar year with respect to insurers that become impaired or insolvent in different calendar years, the average annual premiums for purposes of the aggregate assessment percentage limitation referenced in subdivision E 1 a shall be equal and limited to the higher of the three-year average annual premiums for the applicable subaccount or account as calculated pursuant to this section.

c. If the maximum assessment, together with the other assets of the Association in ~~any~~ an account, does not provide in ~~any~~ one year in ~~any~~ that account an amount sufficient to carry out the responsibilities of the Association, the necessary additional funds shall be assessed as soon thereafter as permitted by this chapter.

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

3. If the maximum assessment for a subaccount of the life and annuity account in one year does not provide an amount sufficient to carry out the responsibilities of the Association, then pursuant to subdivision C 2, the board shall access the other subaccounts of the life and annuity account for the necessary additional amount, subject to the maximum stated in subdivision E 1.

F. The board, by an equitable method as established in the plan of operation, may refund to member insurers, in proportion to the contribution of each insurer to that account, the amount by which the assets of the account exceed the amount the board finds is necessary to fulfill carry out during the coming year the Association's obligations during the coming year of the Association with regard to that account, including assets accruing from assignment, subrogation, net realized gains and income from investments. In determining the refunds, assets accruing from net realized gains and income from investments shall be included. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the Association and for future losses if refunds are impractical and claims.

G. It shall be proper for any member insurer, in determining its premium rates and policy owner dividends as to any kind of insurance within the scope of this chapter, to consider the amount reasonably necessary to meet its Class A assessment obligations in determining its premium rates and policyowner dividends for any class of insurance covered by under this chapter.

H. The Association shall issue to each insurer paying an assessment under this chapter, other than a Class A assessment, a certificate of contribution, in a form prescribed by the Commission, for the amount of the assessment so paid, excluding interest penalties. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer ~~on~~ in its financial statement as an asset. This shall be shown in a such form, ~~in an~~ and for such amount, if any, and for a period of time approved by as the Commission may approve.

1. 1. A member insurer that wishes to protest all or part of an assessment shall pay when due the full amount of the assessment as set forth in the notice provided by the Association. The payment shall be available to meet Association obligations during the pendency of the protest or any subsequent appeal. Payment shall be accompanied by a statement in writing that the payment is made under protest and setting forth a brief statement of the grounds for the protest.

2. Within 60 days following the payment of an assessment under protest by a member insurer, the Association shall notify the member insurer in writing of its determination with respect to the protest unless the Association notifies the member insurer that additional time is required to resolve the issues raised by the protest.

3. Within 30 days after a final decision has been made, the Association shall notify the protesting member insurer in writing of that final decision. Within 60 days of receipt of notice of the final decision, the protesting member insurer may appeal that final action to the Commission.

4. In the alternative to rendering a final decision with respect to a protest based on a question regarding the assessment base, the Association may refer the protest to the Commission for a final decision, with or without a recommendation from the Association.

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

J. The Association may request information of member insurers in order to aid in the exercise of its power under this section and member insurers shall promptly comply with a request.

§ 38.2-1706. Plan of operation.

A. 1. Neither the plan of operation nor any amendment to it shall become effective until submitted to

798 and approved by the Commission. The Commission shall approve the plan or any amendment to it if it  
799 assures the fair, reasonable, and equitable administration of the Association.

800 2. The Association's plan of operation approved under former § 38.1-482.24 shall remain in effect  
801 until modified in accordance with subdivision 3 of this subsection. *The Association shall from time to*  
802 *time submit to the Commission any amendments to the plan of operation necessary or suitable to assure*  
803 *the fair, reasonable, and equitable administration of the Association. Any amendments to the plan of*  
804 *operation shall become effective upon the Commission's written approval or unless they have not been*  
805 *disapproved within 60 days.*

806 3 2. If at any time the Association fails to submit suitable amendments to the plan, the Commission  
807 shall, after notice and hearing, adopt and promulgate such reasonable rules that as are necessary or  
808 advisable to effect effectuate the provisions of this chapter. ~~These~~ The rules shall continue in force until  
809 modified by the Commission or superseded by a an amended plan or amendment submitted by the  
810 Association and approved by the Commission.

811 B. All member insurers shall comply with the plan of operation.

812 C. The plan of operation shall, in addition to requirements enumerated elsewhere in this chapter:

813 1. Establish procedures for handling assets of the Association-;

814 2. Establish the amount and method of reimbursing members of the board of directors under  
815 § 38.2-1703-;

816 3. Establish regular places and times for meetings, including telephone conference calls, of the board  
817 of directors-;

818 4. Establish procedures to keep for records to be kept of all financial transactions of the Association,  
819 its agents, and the board of directors-;

820 5. Establish the procedures for submitting to the Commission whereby selections for the board of  
821 directors- will be made and submitted to the Commission;

822 6. Establish any additional procedures for assessments under § 38.2-1705-;

823 7. Establish a plan for equitable distribution of refunds to members-;

824 8. Contain additional provisions necessary or proper for the execution of the powers and duties of the  
825 Association-;

826 9. Establish procedures whereby a director may be removed for cause, including in the case where a  
827 member insurer director becomes an impaired or insolvent insurer; and

828 10. Require the board of directors to establish a policy and procedures for addressing conflicts of  
829 interests.

830 D. Except as provided by subdivision 3 of subsection A of § 38.2-1704 and § 38.2-1705, the The  
831 plan of operation may provide that any or all powers and duties of the Association may be , except  
832 those under subdivision L 3 of § 38.2-1704 and § 38.2-1705 are delegated to the a corporation,  
833 association, or other organization which that performs or will perform functions similar to those of this  
834 Association, or its equivalent, in two or more states. The Such a corporation, association, or organization  
835 shall be reimbursed for any payments made on behalf of the Association and shall be paid for its  
836 performance of any function of the Association. A delegation under this subsection shall take effect only  
837 with the approval of both the board of directors and the Commission, and may be made only to a  
838 corporation, association, or organization that extends protection not substantially less favorable and  
839 effective than that provided by this chapter.

840 § 38.2-1707. Duties and powers of the Commission.

841 A. In addition to the duties and powers enumerated elsewhere in this chapter, the Commission shall:

842 1. Upon request of the board of directors, provide the Association with a statement of the premiums  
843 in the appropriate states for each member insurer-;

844 2. When an impairment is declared and the amount of the impairment is determined, serve a demand  
845 upon the impaired insurer to make good the impairment within a reasonable time. Notice to the impaired  
846 insurer shall constitute notice to its shareholders, if any. The failure of the insurer to promptly comply  
847 with this demand shall not excuse the Association from the performance of its powers and duties under  
848 this chapter-; and

849 3. Be appointed as the liquidator or rehabilitator in any liquidation or rehabilitation proceeding  
850 involving a domestic insurer. If a foreign or alien member insurer is subject to a liquidation proceeding  
851 in its domiciliary jurisdiction or state of entry, the Commission shall be appointed conservator.

852 B. The Commission may suspend or revoke, after notice and hearing, the license to transact the  
853 business of insurance in this Commonwealth of any member insurer that fails to pay an assessment  
854 when due or fails to comply with the plan of operation. As an alternative the Commission may levy a  
855 forfeiture on any member insurer that fails to pay an assessment when due. The forfeiture shall not  
856 exceed five percent of the unpaid assessment per month, but no forfeiture shall be less than \$100 per  
857 month.

858 C. Any action of the board of directors or the Association may be appealed to the Commission by  
859 any member insurer if the appeal is taken within thirty 30 days of the action being appealed. Any final

860 action or order of the Commission shall be subject to judicial review in accordance with the provisions  
861 of §§ 12.1-39 through 12.1-41.

862 D. The liquidator, rehabilitator, or conservator of any impaired *or insolvent* insurer may notify all  
863 interested persons of the effect of this chapter.

864 § 38.2-1708. Detection and prevention of insolvencies.

865 A. To aid in the detection and prevention of insurer insolvencies, the Commission shall have the  
866 duty to:

867 1. Notify the insurance departments of all of the other states within ~~thirty~~ 30 days of ~~taking~~ following  
868 the action taken or the date the action occurs, when the Commission takes any of the following actions  
869 against a member insurer:

870 a. Revocation of license;

871 b. Suspension of license; or

872 c. ~~Making any~~ Enters a formal order that requires the insurer to (i) the company restrict its premium  
873 writing, (ii) obtain additional contributions to surplus, (iii) withdraw from the Commonwealth, (iv)  
874 reinsure all or any part of its business, or (v) increase its capital, surplus, or any other account for the  
875 security of policyholders policy owners or creditors;.

876 2. Report to the board of directors when (i) the Commission has taken any of the actions set forth in  
877 subdivision 1 of this subsection have been taken or (ii) has received a report has been received from  
878 any other insurance department indicating that an any such action has been taken in another state. The  
879 report to the board of directors shall contain (i) all significant details of the action taken or (ii) the  
880 report received from the other another insurance department;.

881 3. Report to the board of directors when ~~it~~ the Commission has reasonable cause to believe from an  
882 examination, whether completed or in process, of any member insurer that an the insurer may be an  
883 impaired or insolvent or in a financial condition hazardous to the policyholders or the public. The report  
884 may be based on a member insurer's financial examination, whether completed or in progress. insurer;  
885 and

886 4. Furnish to the board of directors the National Association of Insurance Commissioners (NAIC)  
887 Insurance Regulatory Information System (IRIS) ratios and listings of companies not included in the  
888 ratios developed by the NAIC, and the board may use the information contained therein in carrying out  
889 its duties and responsibilities under this section. The report and the information contained therein shall  
890 be kept confidential by the board of directors until such time as made public by the Commission or  
891 other lawful authority.

892 B. The Commission may seek the advice and recommendations of the board of directors concerning  
893 any matter affecting its duties and responsibilities regarding the financial condition of member insurers  
894 and insurers seeking admission to transact the business of insurance in this the Commonwealth.

895 C. The board of directors may, upon majority vote, make reports and recommendations to the  
896 Commission upon any matter germane to the solvency, liquidation, rehabilitation or conservation of any  
897 member insurer or germane to the solvency of any insurer seeking to transact the business of insurance  
898 in this Commonwealth. These reports and recommendations shall not be considered public documents.

899 D. The board of directors shall have the duty, upon majority vote, to may notify the Commission of  
900 any information indicating that a member insurer may be an impaired or insolvent or in a financial  
901 condition hazardous to the policyholders or the public insurer.

902 E. The board of directors, upon majority vote, may request that the Commission order an  
903 examination of any member insurer that the board, in good faith, believes may be in a financial  
904 condition hazardous to the policyholders or the public. Within thirty days of the receipt of the request,  
905 the Commission shall begin the examination. The examination may be conducted as the National  
906 Association of Insurance Commissioners examination or may be conducted by persons the Commission  
907 designates. The cost of the examination shall be paid by the Association, and the examination report  
908 shall be treated like other examination reports. In no event shall the examination report be released to  
909 the board of directors prior to its release to the public, but this shall not preclude the Commission from  
910 complying with subsection A of this section. The Commission shall notify the board of directors when  
911 the examination is completed. The request for an examination shall be kept on file by the Commission  
912 but it shall not be open to public inspection prior to the release of the examination report to the public  
913 make recommendations to the Commission for the detection and prevention of insurer insolvencies.

914 F. The board of directors may, upon majority vote, make recommendations to the Commission for  
915 the detection and prevention of insurer insolvencies.

916 G. The board of directors shall, at the conclusion of any insurer insolvency in which the Association  
917 was obligated to pay covered claims, prepare a report to the Commission containing all information it  
918 has in its possession relating to the history and causes of the insolvency.

919 H. The board shall cooperate with the board of directors of guaranty associations in other states in  
920 preparing a report on the history and causes for a member's insolvency, and may adopt by reference any



921 report prepared by other associations.

922 § 38.2-1709. Tax write-offs of certificates of contributions.

923 A. A member insurer shall have at its option the right to show a certificate of contribution as an  
924 asset in the form approved by the Commission pursuant to subsection H of § 38.2-1705 at the original  
925 face amount for the calendar year of issuance. Such amount ~~may~~ *shall* be amortized as follows:

926 1. Certificates of contribution issued prior to January 1, 1998, shall be amortized in each succeeding  
927 calendar year through December 31, 1997, at an amount not to exceed 0.05 of one percent of the  
928 member's direct gross premium income for the classes of insurance in the account for which the member  
929 insurer is assessed. As used herein, the definition of direct gross premium income shall be the same as  
930 that specified in § 58.1-2500. If the amount of the certificate has not been fully amortized by the  
931 contributing insurer by December 31, 1997, the unamortized balance of the certificate amount shall be  
932 amortized, at the option of the contributing insurer, either (i) in the same manner as the certificate was  
933 amortized prior to January 1, 1998; however, if not amortized in full prior to calendar year 2010, the  
934 unamortized balance of the certificate shall be amortized in full during calendar year 2010, or (ii) over  
935 the ten successive calendar years commencing January 1, 1998, in amounts each equal to ten percent of  
936 such unamortized balance. A contributing insurer whose certificate has not been fully amortized by  
937 December 31, 1997, shall notify the Commission in writing of the amortization schedule option it has  
938 selected on or before March 1, 1998; however, if a contributing insurer fails to notify the Commission  
939 by such date, the insurer shall be deemed to have selected the option described in clause (i) of the  
940 preceding sentence.

941 2. Certificates of contribution issued on or after January 1, 1998, shall be amortized over the ten  
942 calendar years following the year the contribution was paid in amounts each equal to ~~ten~~ *10* percent of  
943 the amount of the contribution.

944 B. The insurer may offset the amount of the certificate amortized in a calendar year as provided in  
945 subsection A. This amount shall be deducted from the premium tax liability incurred on business  
946 transacted in this Commonwealth for that year. However, the Association shall diligently pursue all  
947 rights available to it to recover its expenditures made in the fulfillment of its responsibilities under this  
948 chapter. ~~In the event~~ *If* the Commission determines after a hearing that the Association is not diligently  
949 pursuing available measures of recovery, ~~participating contributing~~ insurers will not be able to offset  
950 amounts amortized during the period that the Commission determines that the Association has not been  
951 diligently pursuing available measures of recovery.

952 C. Any sums ~~for which a certificate of contribution has been issued~~ that have been (i) amortized by  
953 contributing insurers and offset against premium taxes as provided in subsection B and (ii) subsequently  
954 refunded pursuant to subsection F of § 38.2-1705 shall be paid to the Commission and deposited with  
955 the State Treasurer for credit to the general fund of this Commonwealth.

956 D. The amount of any credit against premium taxes provided for in this section for an insurer shall  
957 be reduced by the amount of reduction in federal income taxes for any deduction claimed by the insurer  
958 for an assessment paid pursuant to this chapter.

959 § 38.2-1710. Miscellaneous provisions.

960 A. Nothing in this chapter shall be construed to reduce the liability for unpaid assessments of the  
961 insureds on an impaired or insolvent insurer operating under a plan with assessment liability.

962 B. Records shall be kept of all ~~negotiations and meetings in which of the board of directors to~~  
963 ~~discuss the activities of the Association or its representatives are involved~~ in carrying out its powers and  
964 duties under § 38.2-1704. ~~Records~~ *The records of these negotiations or meetings the Association with*  
965 *respect to an impaired or insolvent insurer shall not be made public only upon* (i) *disclosed* prior to the  
966 termination of a liquidation, rehabilitation, or conservation proceeding involving the impaired or  
967 insolvent insurer, (ii) *except* (i) *upon* the termination of the impairment or insolvency of the insurer, or  
968 (iii) *upon* the order of a court of competent jurisdiction. Nothing in this subsection shall limit the duty  
969 of the Association to render a report of its activities under § 38.2-1711.

970 C. For the purpose of carrying out its obligations under this chapter, the Association shall be deemed  
971 to be a creditor of the impaired or insolvent insurer to the extent of assets attributable to covered  
972 policies *and contracts* reduced by any amounts to which the Association is entitled as subrogee pursuant  
973 to subsection H *K* of § 38.2-1704. ~~All assets~~ *Assets* of the impaired or insolvent insurer attributable to  
974 covered policies *and contracts* shall be used to continue all covered policies *and contracts* and pay all  
975 contractual obligations of the impaired or insolvent insurer as required by this chapter. ~~For the purpose~~  
976 ~~of this subsection, assets~~ *"Assets attributable to covered policies is and contracts" means* that proportion  
977 of the assets which the reserves, that should have been established for these policies, *and contracts* bear  
978 to the reserves that should have been established for all insurance policies *and contracts* written by the  
979 impaired or insolvent insurer.

980 D. *As a creditor of the impaired or insolvent insurer as established in subsection C and consistent*  
981 *with subsection B of § 38.2-1509, the Association and other similar associations shall be entitled to*  
982 *receive a disbursement of assets out of the marshaled assets, from time to time as the assets become*

available to reimburse it, as a credit against contractual obligations under this chapter. If the liquidator has not, within 120 days of a final determination of insolvency of an insurer by the receivership court, made an application to the court for the approval of a proposal to disburse assets out of marshaled assets to guaranty associations having obligations because of the insolvency, then the Association shall be entitled to make application to the receivership court for approval of its own proposal to disburse these assets.

E. 1. Prior to the termination of any liquidation, rehabilitation, or conservation proceeding, the court, in making an equitable distribution of the ownership rights of the insolvent insurer, may take into consideration the contributions of the respective parties, including the Association, the shareholders, and policyowners policy and contract owners of the insolvent insurer, and any other party with a legitimate interest. In this determination, consideration shall be given to the welfare of the policyholders policy and contract owners of the continuing or successor insurer.

2. No distribution to any stockholders, if any, of an impaired or insolvent insurer shall be made until and unless the total amount of valid claims have been fully recovered by of the Association with interest thereon for funds expended in carrying out its powers and duties under § 38.2-1704 with respect to the insurer have been fully recovered by the Association.

EF. 1. If an order for liquidation or rehabilitation of an insurer domiciled in this Commonwealth has been entered, the receiver appointed under that order shall have a right to recover on behalf of the insurer, from any controlling affiliate on behalf of the insurer that controlled it, the amount of distributions, other than stock dividends paid by the insurer on its capital stock, made at any time during the five years preceding the petition for liquidation or rehabilitation. This shall be, subject to the limitations of subdivisions 2 through 4 of this subsection.

2. No dividend such distribution shall be recoverable if the insurer shows that when paid the distribution was lawful and reasonable at the time of payment, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

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

4. The maximum amount recoverable under this subsection shall be the amount in excess of all other available assets of the insolvent insurer needed to pay (i) the contractual obligations of the insolvent insurer and (ii) the reasonable expenses of the Association incurred in connection with the performance of its duties for the insolvent insurer.

5. If any person liable under subdivision 3 of this subsection is insolvent, all its affiliates that controlled it at the time the dividend distribution was paid shall be jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate.

§ 38.2-1711. Examination of the Association; annual report.

The Association shall be subject to examination and regulation by the Commission. The board of directors shall submit to the Commission, not later than each May 1, a financial report for the preceding calendar year in a form approved by the Commission and a report of its activities during the preceding calendar year. Upon the request of a member insurer, the Association shall provide the member insurer with a copy of the report.

§ 38.2-1712. Tax exemptions.

The Association shall be exempt from the payment of all fees and all taxes levied by this the Commonwealth or any of its subdivisions, except taxes levied on real and personal property.

§ 38.2-1713. Immunity.

There shall be no liability on the part of, and no cause of action of any nature shall arise against, any member insurer or its agents or employees, the Association or its agents or employees, members of the board of directors, or the Commission or its representatives, for any action taken by them in the performance of their powers and duties under this chapter. This immunity shall extend to the participation in any organization of one or more other state associations of similar purposes and to any such organization and its agents or employees.

§ 38.2-1714. Stay of proceedings; reopening default judgments.

All proceedings in which the insolvent insurer is a party in any court in this Commonwealth shall be stayed sixty 180 days from the date an order of liquidation, rehabilitation, or conservation is final. This will allow time for to permit proper legal action by the Association on all matters germane to its powers and duties. The Association may apply to have the judgment under any decision, order, verdict, or finding based on default set aside by the same court that made the judgment and shall be permitted to defend against the suit on the merits.

1044 § 38.2-1715. Prohibited advertisement of Association coverage in insurance sales; notice to policy  
1045 owners.

1046 A. No person, including an insurer, agent, or affiliate of an insurer shall make, publish, disseminate,  
1047 circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated,  
1048 circulated or placed before the public, in any newspaper, magazine or other publication, or in the form  
1049 of a notice, circular, pamphlet, letter or poster, or over any radio station or television station, or in any  
1050 other way, any advertisement, announcement or statement ~~which~~, *written or oral, that* uses the existence  
1051 of the Association of this Commonwealth for the purpose of sales, solicitation, or inducement to  
1052 purchase any form of insurance covered by this chapter. *This subsection shall not apply to the*  
1053 *Association or any other entity that does not sell or solicit insurance.*

1054 B. *By January 1, 2011, the Association shall prepare a summary document describing the general*  
1055 *purposes and current limitations of this chapter and that complies with subsection C. This document*  
1056 *shall be submitted to the Commission for approval. At the expiration of the sixtieth day after the date on*  
1057 *which the Commission approves the document, an insurer may not deliver a policy or contract to a*  
1058 *policy or contract owner unless the summary document is delivered to the policy or contract owner at*  
1059 *the time of delivery of the policy or contract. The document shall also be available upon request by a*  
1060 *policy or contract owner. The distribution, delivery, or contents or interpretation of this document does*  
1061 *not guarantee that either the policy or the contract or the owner of the policy or contract is covered in*  
1062 *the event of the impairment or insolvency of a member insurer. The summary document shall be revised*  
1063 *by the Association as amendments to the chapter may require. Failure to receive this document does not*  
1064 *give the policy owner, contract owner, certificate owner, certificate holder, or insured any greater rights*  
1065 *than those stated in this chapter.*

1066 C. *The document prepared under subsection B shall contain a clear and conspicuous disclaimer on*  
1067 *its face. The Commission shall establish the form and content of the disclaimer. The disclaimer shall:*

1068 1. *State the name and address of the Association and the Bureau of Insurance;*

1069 2. *Prominently warn the policy or contract owner that the Association may not cover the policy or*  
1070 *contract or, if coverage is available, it will be subject to substantial limitations and exclusions and*  
1071 *conditioned on continued residence in the Commonwealth;*

1072 3. *State the types of policies for which guaranty funds will provide coverage;*

1073 4. *State that the insurer and its agents are prohibited by law from using the existence of the*  
1074 *Association for the purpose of sales, solicitation, or inducement to purchase any form of insurance;*

1075 5. *State that the policy or contract owner should not rely on coverage under the Association when*  
1076 *selecting an insurer;*

1077 6. *Explain rights available and procedures for filing a complaint to allege a violation of any*  
1078 *provisions of this chapter; and*

1079 7. *Provide other information as directed by the Commission including but not limited to, sources for*  
1080 *information about the financial condition of insurers provided that the information is not proprietary*  
1081 *and is subject to disclosure under the Freedom of Information Act (§ 2.2-3700 et seq.).*

1082 D. *A member insurer shall retain evidence of compliance with subsection B for so long as the policy*  
1083 *or contract for which the notice is given remains in effect.*

1084 2. **That any member insurer, as defined in § 38.2-1701 of the Code of Virginia, that has been**  
1085 **placed by a court of competent jurisdiction under an order of liquidation, rehabilitation, or**  
1086 **conservation pursuant to Chapter 15 (§ 38.2-1500 et seq.) of Title 38.2 of the Code of Virginia or**  
1087 **equivalent statutes of the state in which the member insurer is domicicated, prior to July 1, 2010,**  
1088 **shall be subject to the provisions of Chapter 17 (§ 38.2-1700 et seq.) of Title 38.2 of the Code of**  
1089 **Virginia as that chapter existed prior to July 1, 2010.**