

REFERENCE TITLE: **insurance; guaranty fund**

State of Arizona  
House of Representatives  
Fifty-first Legislature  
First Regular Session  
2013

## **HB 2546**

Introduced by  
Representatives Livingston: Allen, Lovas, McCune Davis, Mendez, Orr,  
Steele, Townsend

**AN ACT**

**AMENDING SECTION 20-681, ARIZONA REVISED STATUTES; REPEALING SECTION 20-682, ARIZONA REVISED STATUTES; AMENDING TITLE 20, CHAPTER 3, ARTICLE 7, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 20-682; AMENDING SECTIONS 20-685, 20-686, 20-687, 20-688, 20-689, 20-690 AND 20-694, ARIZONA REVISED STATUTES; RELATING TO THE LIFE AND DISABILITY INSURANCE GUARANTY FUND.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:  
2 Section 1. Section 20-681, Arizona Revised Statutes, is amended to  
3 read:  
4 20-681. Definitions  
5 In this article, unless the context otherwise requires:  
6 1. "Account" means any of the three accounts established pursuant to  
7 section 20-683.  
8 2. "AUTHORIZED" MEANS, WHEN USED IN THE CONTEXT OF ASSESSMENTS  
9 PURSUANT TO THIS ARTICLE, AN ASSESSMENT FOR A SPECIFIED AMOUNT APPROVED BY  
10 THE BOARD OF DIRECTORS TO BE CALLED IMMEDIATELY OR IN THE FUTURE FROM MEMBER  
11 INSURERS.  
12 3. "CALLED" MEANS, WHEN USED IN THE CONTEXT OF ASSESSMENTS PURSUANT TO  
13 THIS ARTICLE, AN AUTHORIZED ASSESSMENT FOR WHICH A NOTICE HAS BEEN ISSUED BY  
14 THE FUND TO MEMBER INSURERS REQUIRING PAYMENT WITHIN THE TIME SET FORTH IN  
15 THE NOTICE.  
16 4. "CONTRACTUAL OBLIGATION" MEANS AN OBLIGATION UNDER A COVERED POLICY  
17 OR CONTRACT FOR WHICH COVERAGE IS PROVIDED PURSUANT TO THIS ARTICLE.  
18 5. "COVERED POLICY" MEANS A POLICY OR CONTRACT OR PART OF A POLICY OR  
19 CONTRACT FOR WHICH COVERAGE IS PROVIDED PURSUANT TO THIS ARTICLE.  
20 ~~2-~~ 6. "Fund" means the life and disability insurance guaranty fund.  
21 ~~3-~~ 7. "Impaired insurer" means A MEMBER INSURER THAT IS NOT AN  
22 INSOLVENT INSURER AND ~~either:~~  
23 ~~(a) An insurer which becomes insolvent and~~ THAT is placed under  
24 ~~a final~~ AN order of ~~liquidation,~~ rehabilitation or conservation by a court of  
25 competent jurisdiction.  
26 ~~(b) An insurer deemed by the director to be unable or potentially~~  
27 ~~unable to fulfill its contractual obligations.~~  
28 8. "INSOLVENT INSURER" MEANS A MEMBER INSURER THAT IS PLACED UNDER AN  
29 ORDER OF LIQUIDATION WITH A FINDING OF INSOLVENCY BY A COURT OF COMPETENT  
30 JURISDICTION.  
31 ~~4-~~ 9. "Member insurer" means ~~a person authorized~~ AN INSURER THAT  
32 HOLDS A CERTIFICATE OF AUTHORITY to transact IN THIS STATE any kind of  
33 insurance to which this article applies AND INCLUDES AN INSURER WHOSE LICENSE  
34 OR CERTIFICATE OF AUTHORITY IN THIS STATE MAY HAVE BEEN SUSPENDED, REVOKED,  
35 NOT RENEWED OR VOLUNTARILY WITHDRAWN. MEMBER INSURER DOES NOT INCLUDE:  
36 (a) A FRATERNAL BENEFIT SOCIETY LICENSED UNDER CHAPTER 4, ARTICLE 4 OF  
37 THIS TITLE.  
38 (b) A HOSPITAL, MEDICAL, DENTAL OR OPTOMETRIC SERVICE CORPORATION  
39 LICENSED UNDER CHAPTER 4, ARTICLE 3 OF THIS TITLE.  
40 (c) A PREPAID DENTAL PLAN ORGANIZATION LICENSED UNDER CHAPTER 4,  
41 ARTICLE 7 OF THIS TITLE.  
42 (d) A HEALTH CARE SERVICES ORGANIZATION LICENSED UNDER CHAPTER 4,  
43 ARTICLE 9 OF THIS TITLE.  
44 (e) A MANDATORY STATE POOLING PLAN.

1 (f) A MUTUAL ASSESSMENT COMPANY OR OTHER PERSON THAT OPERATES ON AN  
2 ASSESSMENT BASIS.

3 (g) A RECIPROCAL INSURANCE EXCHANGE LICENSED UNDER CHAPTER 4, ARTICLE  
4 2 OF THIS TITLE.

5 (h) AN ENTITY THAT IS SIMILAR TO ANY OF THE ENTITIES DESCRIBED IN THIS  
6 PARAGRAPH.

7 ~~5. "Premiums" means direct gross insurance premiums and annuity  
8 considerations written on policies, less return premiums and considerations  
9 and dividends paid or credited to policyholders on such direct business,  
10 except dividends, refunds, savings coupons and other similar returns paid or  
11 credited to policyholders which are reapplied as premiums for new, additional  
12 or extended insurance. "Premiums" does not include premiums and  
13 considerations on contracts between insurers and reinsurers. As used in  
14 section 20-686 "premiums" are those for the calendar year preceding the  
15 determination of impairment.~~

16 ~~6. "Resident" means a person who resides in this state at the time  
17 impairment is determined and to whom contractual obligations are owed.~~

18 10. "MOODY'S CORPORATE BOND YIELD AVERAGE" MEANS THE MONTHLY AVERAGE  
19 CORPORATE BOND YIELD AS PUBLISHED BY MOODY'S INVESTORS SERVICE, INCORPORATED,  
20 OR ANY SUCCESSOR ENTITY.

21 11. "OWNER" MEANS, WHEN USED IN REFERENCE TO A POLICY OR CONTRACT, THE  
22 PERSON IDENTIFIED AS THE LEGAL OWNER UNDER THE TERMS OF THE POLICY OR  
23 CONTRACT OR OTHERWISE VESTED WITH LEGAL TITLE TO THE POLICY OR CONTRACT  
24 THROUGH A VALID ASSIGNMENT THAT IS COMPLETED IN ACCORDANCE WITH THE TERMS OF  
25 THE POLICY OR CONTRACT AND THAT IS PROPERLY RECORDED AS THE OWNER ON THE  
26 INSURER'S BOOKS. OWNER DOES NOT INCLUDE A PERSON WITH A MERE BENEFICIAL  
27 INTEREST IN A POLICY OR CONTRACT.

28 12. "PREMIUMS":

29 (a) MEANS AMOUNTS OR CONSIDERATIONS BY WHATEVER NAME CALLED THAT ARE  
30 RECEIVED ON COVERED POLICIES OR CONTRACTS LESS RETURNED PREMIUMS,  
31 CONSIDERATIONS AND DEPOSITS AND LESS DIVIDENDS AND EXPERIENCE CREDITS.

32 (b) DOES NOT INCLUDE:

33 (i) AMOUNTS OR CONSIDERATION RECEIVED FOR POLICIES OR CONTRACTS OR FOR  
34 PARTS OF POLICIES OR CONTRACTS FOR WHICH COVERAGE IS NOT PROVIDED UNDER  
35 SECTION 20-682, SUBSECTION C, EXCEPT THAT ASSESSABLE PREMIUM SHALL NOT BE  
36 REDUCED UNDER SECTION 20-682, SUBSECTION D, PARAGRAPH 4, RELATING TO INTEREST  
37 LIMITATIONS, AND SECTION 20-682, SUBSECTION E, PARAGRAPH 2, RELATING TO  
38 LIMITATIONS WITH RESPECT TO ONE INDIVIDUAL, ONE PARTICIPANT AND ONE CONTRACT  
39 OWNER.

40 (ii) AMOUNTS IN EXCESS OF FIVE MILLION DOLLARS WITH RESPECT TO  
41 MULTIPLE NONGROUP POLICIES OF LIFE INSURANCE OWNED BY ONE OWNER, REGARDLESS  
42 OF THE NUMBER OF POLICIES OR CONTRACTS HELD BY THE OWNER.

43 13. "RESIDENT" MEANS A PERSON TO WHOM A CONTRACTUAL OBLIGATION IS OWED  
44 AND WHO RESIDES IN THIS STATE ON THE DATE OF ENTRY OF A COURT ORDER THAT  
45 DETERMINES A MEMBER INSURER TO BE AN IMPAIRED INSURER OR AN INSOLVENT

1 INSURER. A PERSON MAY BE A RESIDENT OF ONLY ONE STATE, WHICH FOR A PERSON  
2 OTHER THAN A NATURAL PERSON SHALL BE ITS PRINCIPAL PLACE OF BUSINESS. A  
3 UNITED STATES CITIZEN WHO RESIDES IN A FOREIGN COUNTRY OR A UNITED STATES  
4 TERRITORY, POSSESSION OR PROTECTORATE THAT DOES NOT HAVE A FUND SIMILAR TO  
5 THE FUND ESTABLISHED UNDER THIS ARTICLE SHALL BE DEEMED TO BE A RESIDENT OF  
6 THE STATE OF DOMICILE OF THE INSURER THAT ISSUED THE POLICY OR CONTRACT.

7 14. "STRUCTURED SETTLEMENT ANNUITY" MEANS AN ANNUITY PURCHASED IN ORDER  
8 TO FUND PERIODIC PAYMENTS FOR A PLAINTIFF OR OTHER CLAIMANT IN PAYMENT FOR OR  
9 WITH RESPECT TO PERSONAL INJURY SUFFERED BY THE PLAINTIFF OR OTHER CLAIMANT.

10 15. "SUPPLEMENTAL CONTRACT" MEANS A WRITTEN AGREEMENT THAT IS ENTERED  
11 INTO FOR THE DISTRIBUTION OF PROCEEDS UNDER A LIFE, DISABILITY, DISABILITY  
12 INCOME OR ANNUITY POLICY OR CONTRACT.

13 16. "UNALLOCATED ANNUITY CONTRACT" MEANS AN ANNUITY CONTRACT OR GROUP  
14 ANNUITY CERTIFICATE THAT IS NOT ISSUED TO AND OWNED BY AN INDIVIDUAL, EXCEPT  
15 TO THE EXTENT OF ANY ANNUITY BENEFITS GUARANTEED TO AN INDIVIDUAL BY AN  
16 INSURER UNDER THE CONTRACT OR CERTIFICATE.

17 Sec. 2. Repeal

18 Section 20-682, Arizona Revised Statutes, is repealed.

19 Sec. 3. Title 20, chapter 3, article 7, Arizona Revised Statutes, is  
20 amended by adding a new section 20-682, to read:

21 20-682. Coverage; limitations

22 A. THIS ARTICLE PROVIDES COVERAGE FOR THE POLICIES AND CONTRACTS  
23 SPECIFIED IN SUBSECTION B OF THIS SECTION TO:

24 1. A PERSON WHO, REGARDLESS OF THE STATE WHERE THE PERSON RESIDES, IS  
25 A BENEFICIARY, ASSIGNEE OR PAYEE OF A PERSON COVERED UNDER PARAGRAPH 2 OF  
26 THIS SUBSECTION, EXCEPT FOR A NONRESIDENT CERTIFICATE HOLDER UNDER A GROUP  
27 POLICY OR CONTRACT.

28 2. A PERSON WHO IS THE OWNER OF, OR A CERTIFICATE HOLDER UNDER, A  
29 POLICY OR CONTRACT OTHER THAN A STRUCTURED SETTLEMENT ANNUITY AND WHO IS  
30 EITHER:

31 (a) A RESIDENT.

32 (b) NOT A RESIDENT AND ALL OF THE FOLLOWING APPLY:

33 (i) THE INSURER THAT ISSUED THE POLICY OR CONTRACT IS DOMICILED IN  
34 THIS STATE.

35 (ii) THE STATE IN WHICH THE PERSON RESIDES HAS A FUND SIMILAR TO THE  
36 FUND ESTABLISHED UNDER THIS ARTICLE.

37 (iii) THE PERSON IS NOT ELIGIBLE FOR COVERAGE BY A FUND IN ANY OTHER  
38 STATE BECAUSE THE INSURER WAS NOT LICENSED IN THAT STATE AT THE TIME REQUIRED  
39 BY THE APPLICABLE LAW.

40 3. SUBJECT TO ANY OTHER LIMITATIONS PROVIDED BY THIS SECTION, A PERSON  
41 WHO IS A PAYEE OR A BENEFICIARY OF A DECEASED PAYEE UNDER A STRUCTURED  
42 SETTLEMENT ANNUITY SPECIFIED IN SUBSECTION B OF THIS SECTION IF THE PAYEE IS  
43 EITHER:

44 (a) A RESIDENT, REGARDLESS OF WHERE THE CONTRACT OWNER RESIDES.

45 (b) NOT A RESIDENT AND ALL OF THE FOLLOWING APPLY:

1 (i) THE CONTRACT OWNER OF THE STRUCTURED SETTLEMENT ANNUITY IS A  
2 RESIDENT, OR THE CONTRACT OWNER OF THE STRUCTURED SETTLEMENT ANNUITY IS NOT A  
3 RESIDENT BUT THE INSURER THAT ISSUED THE STRUCTURED SETTLEMENT ANNUITY IS  
4 DOMICILED IN THIS STATE, AND THE STATE IN WHICH THE CONTRACT OWNER RESIDES  
5 HAS A FUND SIMILAR TO THE FUND ESTABLISHED BY THIS ARTICLE.

6 (ii) THE PAYEE, THE BENEFICIARY AND THE CONTRACT OWNER ARE NOT  
7 ELIGIBLE FOR COVERAGE BY THE FUND OF THE STATE IN WHICH THEY RESIDE.

8 B. THIS ARTICLE PROVIDES COVERAGE TO THE PERSONS SPECIFIED IN  
9 SUBSECTION A OF THIS SECTION FOR DIRECT NONGROUP LIFE, DISABILITY OR ANNUITY  
10 POLICIES OR CONTRACTS, AND FOR CERTIFICATES UNDER DIRECT GROUP POLICIES AND  
11 CONTRACTS, AND FOR SUPPLEMENTAL CONTRACTS TO ANY OF THESE, THAT ARE ISSUED BY  
12 MEMBER INSURERS, EXCEPT AS LIMITED BY THIS ARTICLE. ANNUITY CONTRACTS AND  
13 CERTIFICATES UNDER GROUP ANNUITY CONTRACTS INCLUDE ALLOCATED FUNDING  
14 AGREEMENTS, STRUCTURED SETTLEMENT ANNUITIES AND ANY IMMEDIATE OR DEFERRED  
15 ANNUITY CONTRACTS.

16 C. THIS ARTICLE DOES NOT PROVIDE COVERAGE TO:

17 1. A PERSON WHO IS A PAYEE OR BENEFICIARY OF A CONTRACT OWNER WHO IS A  
18 RESIDENT OF THIS STATE IF THE PAYEE IS AFFORDED COVERAGE BY THE FUND OF  
19 ANOTHER STATE.

20 2. A PERSON WHO WOULD OTHERWISE RECEIVE COVERAGE UNDER THIS ARTICLE  
21 BUT WHO IS PROVIDED COVERAGE UNDER THE LAWS OF ANY OTHER STATE. THIS ARTICLE  
22 SHALL BE CONSTRUED TO AVOID DUPLICATE COVERAGE AND TO RESULT IN COVERAGE BY  
23 ONLY ONE STATE.

24 D. THIS ARTICLE DOES NOT PROVIDE COVERAGE FOR:

25 1. ANY POLICY OR CONTRACT, OR ANY PART OF ANY POLICY OR CONTRACT, NOT  
26 GUARANTEED BY THE INSURER OR UNDER WHICH THE RISK IS BORNE BY THE  
27 POLICYHOLDER OR CONTRACT OWNER.

28 2. ANY POLICY OR CONTRACT, OR ANY PART OF ANY POLICY OR CONTRACT,  
29 ASSUMED BY THE IMPAIRED INSURER OR INSOLVENT INSURER UNDER A CONTRACT OF  
30 REINSURANCE OTHER THAN BULK REINSURANCE OR REINSURANCE FOR WHICH ASSUMPTION  
31 CERTIFICATES HAVE BEEN ISSUED.

32 3. ANY POLICY OR CONTRACT ISSUED BY MUTUAL ASSESSMENT COMPANIES OR  
33 OTHER PERSONS THAT OPERATE ON AN ASSESSMENT BASIS, FRATERNAL BENEFIT  
34 SOCIETIES, HOSPITAL, MEDICAL, DENTAL AND OPTOMETRIC SERVICE CORPORATIONS OR  
35 PLANS, PREPAID DENTAL PLAN ORGANIZATIONS, HEALTH CARE SERVICES ORGANIZATIONS,  
36 MANDATORY STATE POOLING PLANS, A RECIPROCAL INSURANCE EXCHANGE AND ANY ENTITY  
37 SIMILAR TO ANY OF ENTITIES DESCRIBED IN THIS PARAGRAPH.

38 4. A PART OF A POLICY OR CONTRACT TO THE EXTENT THAT THE RATE OF  
39 INTEREST ON WHICH IT IS BASED, OR THE INTEREST RATE, CREDITING RATE OR  
40 SIMILAR FACTOR DETERMINED BY USE OF AN INDEX OR OTHER EXTERNAL REFERENCE  
41 STATED IN THE POLICY OR CONTRACT EMPLOYED IN CALCULATING RETURNS OR CHANGES  
42 IN VALUE:

43 (a) AVERAGED OVER THE PERIOD OF FOUR YEARS BEFORE THE DATE ON WHICH  
44 THE MEMBER INSURER BECOMES AN IMPAIRED INSURER OR INSOLVENT INSURER UNDER  
45 THIS ARTICLE, WHICHEVER IS EARLIER, EXCEEDS THE RATE OF INTEREST DETERMINED

1 BY SUBTRACTING TWO PERCENTAGE POINTS FROM MOODY'S CORPORATE BOND YIELD  
2 AVERAGE AVERAGED FOR THAT SAME FOUR-YEAR PERIOD OR FOR A LESSER PERIOD IF THE  
3 POLICY OR CONTRACT WAS ISSUED LESS THAN FOUR YEARS BEFORE THE MEMBER INSURER  
4 BECOMES AN IMPAIRED INSURER OR INSOLVENT INSURER UNDER THIS ARTICLE,  
5 WHICHEVER IS EARLIER.

6 (b) ON AND AFTER THE DATE ON WHICH THE MEMBER INSURER BECOMES AN  
7 IMPAIRED INSURER OR INSOLVENT INSURER UNDER THIS ARTICLE, WHICHEVER IS  
8 EARLIER, EXCEEDS THE RATE OF INTEREST DETERMINED BY SUBTRACTING THREE  
9 PERCENTAGE POINTS FROM MOODY'S CORPORATE BOND YIELD AVERAGE AS MOST RECENTLY  
10 AVAILABLE.

11 5. A PART OF A POLICY OR CONTRACT ISSUED TO A PLAN OR PROGRAM OF AN  
12 EMPLOYER, ASSOCIATION OR OTHER PERSON TO PROVIDE LIFE, DISABILITY OR ANNUITY  
13 BENEFITS TO ITS EMPLOYEES, MEMBERS OR OTHERS, TO THE EXTENT THAT THE PLAN OR  
14 PROGRAM IS SELF-FUNDED OR UNINSURED, INCLUDING BENEFITS PAYABLE BY AN  
15 EMPLOYER, ASSOCIATION OR OTHER PERSON UNDER ANY OF THE FOLLOWING:

16 (a) A MULTIPLE EMPLOYER WELFARE ARRANGEMENT AS DEFINED IN SECTION  
17 3(40) OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

18 (b) A MINIMUM PREMIUM GROUP INSURANCE PLAN.

19 (c) A STOP-LOSS GROUP INSURANCE PLAN.

20 (d) AN ADMINISTRATIVE SERVICES ONLY CONTRACT.

21 6. A PART OF A POLICY OR CONTRACT TO THE EXTENT THAT IT PROVIDES FOR  
22 DIVIDEND OR EXPERIENCE RATING CREDITS, VOTING RIGHTS OR PAYMENT OF ANY FEES  
23 OR ALLOWANCES TO ANY PERSON, INCLUDING THE POLICY OR CONTRACT OWNER, IN  
24 CONNECTION WITH THE SERVICE OR ADMINISTRATION OF THE POLICY OR CONTRACT.

25 7. A POLICY OR CONTRACT ISSUED IN THIS STATE BY A MEMBER INSURER AT A  
26 TIME WHEN IT DID NOT HAVE A CERTIFICATE OF AUTHORITY TO ISSUE THE POLICY OR  
27 CONTRACT IN THIS STATE.

28 8. A PART OF A POLICY OR CONTRACT TO THE EXTENT THAT THE ASSESSMENTS  
29 REQUIRED BY SECTION 20-686 WITH RESPECT TO THE POLICY OR CONTRACT ARE  
30 PREEMPTED OR PROHIBITED BY FEDERAL OR STATE LAW.

31 9. AN OBLIGATION THAT DOES NOT ARISE UNDER THE EXPRESS WRITTEN TERMS  
32 OF THE POLICY OR CONTRACT ISSUED BY THE INSURER TO THE CONTRACT OWNER OR  
33 POLICY OWNER, INCLUDING:

34 (a) CLAIMS BASED ON MARKETING MATERIALS.

35 (b) CLAIMS BASED ON SIDE LETTERS, RIDERS OR OTHER DOCUMENTS THAT WERE  
36 ISSUED BY THE INSURER WITHOUT MEETING APPLICABLE POLICY FORM FILING OR  
37 APPROVAL REQUIREMENTS.

38 (c) MISREPRESENTATIONS OF OR REGARDING POLICY BENEFITS.

39 (d) EXTRA-CONTRACTUAL CLAIMS, INCLUDING CLAIMS RELATING TO BAD FAITH  
40 IN THE PAYMENT OF CLAIMS, PUNITIVE OR EXEMPLARY DAMAGES OR ATTORNEY FEES AND  
41 COSTS.

42 (e) CLAIMS FOR PENALTIES OR CONSEQUENTIAL OR INCIDENTAL DAMAGES.

43 10. A CONTRACTUAL AGREEMENT THAT ESTABLISHES THE MEMBER INSURER'S  
44 OBLIGATIONS TO PROVIDE A BOOK VALUE ACCOUNTING GUARANTY FOR DEFINED  
45 CONTRIBUTION BENEFIT PLAN PARTICIPANTS BY REFERENCE TO A PORTFOLIO OF ASSETS

1 THAT IS OWNED BY THE BENEFIT PLAN OR ITS TRUSTEE, WHICH IN EACH CASE IS NOT  
2 AN AFFILIATE OF THE MEMBER INSURER.

3 11. AN UNALLOCATED ANNUITY CONTRACT.

4 12. A PART OF A POLICY OR CONTRACT TO THE EXTENT IT PROVIDES FOR  
5 INTEREST OR OTHER CHANGES IN VALUE TO BE DETERMINED BY THE USE OF AN INDEX OR  
6 OTHER EXTERNAL REFERENCE STATED IN THE POLICY OR CONTRACT, BUT WHICH HAVE NOT  
7 BEEN CREDITED TO THE POLICY OR CONTRACT, OR AS TO WHICH THE POLICY OR  
8 CONTRACT OWNER'S RIGHTS ARE SUBJECT TO FORFEITURE, AS OF THE DATE THE MEMBER  
9 INSURER BECOMES AN IMPAIRED INSURER OR INSOLVENT INSURER UNDER THIS ARTICLE,  
10 WHICHEVER IS EARLIER. IF A POLICY'S OR CONTRACT'S INTEREST OR CHANGES IN  
11 VALUE ARE CREDITED LESS FREQUENTLY THAN ANNUALLY, FOR PURPOSES OF DETERMINING  
12 THE VALUES THAT HAVE BEEN CREDITED AND ARE NOT SUBJECT TO FORFEITURE UNDER  
13 THIS SUBSECTION, THE INTEREST OR CHANGE IN VALUE DETERMINED BY USING THE  
14 PROCEDURES DEFINED IN THE POLICY OR CONTRACT WILL BE CREDITED AS IF THE  
15 CONTRACTUAL DATE OF CREDITING INTEREST OR CHANGING VALUES WAS THE DATE OF  
16 IMPAIRMENT OR INSOLVENCY, WHICHEVER IS EARLIER, AND WILL NOT BE SUBJECT TO  
17 FORFEITURE.

18 13. A POLICY OR CONTRACT PROVIDING ANY HOSPITAL, MEDICAL, PRESCRIPTION  
19 DRUG OR OTHER HEALTH CARE BENEFITS PURSUANT TO 42 UNITED STATES CODE CHAPTER  
20 7, SUBCHAPTER XVIII, PART C OR PART D OR ANY APPLICABLE REGULATIONS.

21 E. THE BENEFITS THAT THE FUND BECOMES OR MAY BECOME OBLIGATED TO COVER  
22 SHALL NOT EXCEED THE LESSER OF:

23 1. THE CONTRACTUAL OBLIGATIONS FOR WHICH THE IMPAIRED INSURER OR  
24 INSOLVENT INSURER IS LIABLE OR WOULD HAVE BEEN LIABLE IF IT WERE NOT AN  
25 IMPAIRED INSURER OR INSOLVENT INSURER.

26 2. WITH RESPECT TO ONE LIFE, REGARDLESS OF THE NUMBER OF POLICIES OR  
27 CONTRACTS:

28 (a) THREE HUNDRED THOUSAND DOLLARS IN LIFE INSURANCE DEATH BENEFITS,  
29 BUT NOT MORE THAN ONE HUNDRED THOUSAND DOLLARS IN NET CASH SURRENDER AND NET  
30 CASH WITHDRAWAL VALUES FOR LIFE INSURANCE.

31 (b) IN DISABILITY INSURANCE BENEFITS:

32 (i) ONE HUNDRED THOUSAND DOLLARS FOR COVERAGES NOT DEFINED AS  
33 DISABILITY INCOME INSURANCE OR BASIC HOSPITAL, MEDICAL AND SURGICAL INSURANCE  
34 OR MAJOR MEDICAL INSURANCE OR LONG-TERM CARE INSURANCE.

35 (ii) THREE HUNDRED THOUSAND DOLLARS FOR DISABILITY INCOME INSURANCE  
36 AND THREE HUNDRED THOUSAND DOLLARS FOR LONG-TERM CARE INSURANCE.

37 (iii) FIVE HUNDRED THOUSAND DOLLARS FOR BASIC HOSPITAL MEDICAL AND  
38 SURGICAL INSURANCE OR MAJOR MEDICAL INSURANCE.

39 (c) TWO HUNDRED FIFTY THOUSAND DOLLARS IN THE PRESENT VALUE OF ANNUITY  
40 BENEFITS, INCLUDING NET CASH SURRENDER AND NET CASH WITHDRAWAL VALUES.

41 3. WITH RESPECT TO EACH PAYEE OF A STRUCTURED SETTLEMENT ANNUITY, OR  
42 THE BENEFICIARY OF A DECEASED PAYEE, AN AGGREGATE OF TWO HUNDRED FIFTY  
43 THOUSAND DOLLARS IN PRESENT VALUE ANNUITY BENEFITS, INCLUDING NET CASH  
44 SURRENDER AND NET CASH WITHDRAWAL VALUES, IF ANY.

1 F. NOTWITHSTANDING SUBSECTION E OF THIS SECTION, THE FUND IS NOT  
2 OBLIGATED TO COVER MORE THAN EITHER:

3 1. AN AGGREGATE OF THREE HUNDRED THOUSAND DOLLARS IN BENEFITS WITH  
4 RESPECT TO ANY ONE INDIVIDUAL UNDER SUBSECTION E OF THIS SECTION EXCEPT WITH  
5 RESPECT TO BENEFITS FOR BASIC HOSPITAL, MEDICAL AND SURGICAL INSURANCE AND  
6 MAJOR MEDICAL INSURANCE UNDER SUBSECTION E, PARAGRAPH 2, SUBDIVISION (b) OF  
7 THIS SECTION, IN WHICH CASE THE AGGREGATE LIABILITY OF THE FUND SHALL NOT  
8 EXCEED FIVE HUNDRED THOUSAND DOLLARS WITH RESPECT TO ANY ONE INDIVIDUAL.

9 2. WITH RESPECT TO ONE OWNER OF MULTIPLE NONGROUP POLICIES OF LIFE  
10 INSURANCE, WHETHER THE POLICY OWNER IS AN INDIVIDUAL, FIRM, CORPORATION OR  
11 OTHER PERSON, AND WHETHER THE PERSONS INSURED ARE OFFICERS, MANAGERS,  
12 EMPLOYEES OR OTHER PERSONS, MORE THAN FIVE MILLION DOLLARS IN BENEFITS,  
13 REGARDLESS OF THE NUMBER OF POLICIES AND CONTRACTS HELD BY THE OWNER.

14 G. THE LIMITATIONS SET FORTH IN THIS SECTION ARE LIMITATIONS ON THE  
15 BENEFITS FOR WHICH THE FUND IS OBLIGATED, BEFORE TAKING INTO ACCOUNT EITHER  
16 ITS SUBROGATION AND ASSIGNMENT RIGHTS OR THE EXTENT TO WHICH THOSE BENEFITS  
17 COULD BE PROVIDED OUT OF THE ASSETS OF THE IMPAIRED INSURER OR INSOLVENT  
18 INSURER ATTRIBUTABLE TO COVERED POLICIES. THE COSTS OF THE FUND'S OBLIGATIONS  
19 UNDER THIS ARTICLE MAY BE MET BY THE USE OF ASSETS ATTRIBUTABLE TO COVERED  
20 POLICIES OR REIMBURSED TO THE FUND PURSUANT TO ITS SUBROGATION AND ASSIGNMENT  
21 RIGHTS.

22 Sec. 4. Section 20-685, Arizona Revised Statutes, is amended to read:  
23 20-685. Powers and duties of the fund

24 A. If a ~~domestic~~ MEMBER insurer is an impaired insurer, the fund ~~may,~~  
25 ~~prior to an order of liquidation or rehabilitation and~~ subject to any  
26 conditions imposed by the fund ~~other than those which~~ THAT DO NOT impair the  
27 contractual obligations of the impaired insurer, with the approval of the  
28 ~~impaired insurer and the~~ director, MAY:

29 1. Guarantee, assume or reinsure, or cause to be guaranteed, assumed  
30 or reinsured, ANY OR all OF the policies OR CONTRACTS of the impaired  
31 insurer.

32 2. Provide ~~such~~ monies, pledges, LOANS, notes, guarantees or other  
33 means as are proper to effectuate paragraph 1 of this subsection and assure  
34 payment of the contractual obligations of the impaired insurer pending action  
35 pursuant to paragraph 1 of this subsection.

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

37 B. If a ~~foreign or alien~~ MEMBER insurer is an ~~impaired~~ INSOLVENT  
38 insurer, the ~~board may, prior to any order of liquidation, rehabilitation or~~  
39 ~~conservation, with respect to the covered policies of residents and subject~~  
40 ~~to any conditions imposed by the board other than those which impair the~~  
41 ~~contractual obligations of the impaired insurer and~~ FUND, with the approval  
42 of the ~~impaired insurer and the~~ director, SHALL EITHER:

43 1. Guarantee, assume or reinsure, or cause to be guaranteed, assumed  
44 or reinsured, the ~~impaired insurer's covered~~ policies OR CONTRACTS OF THE

1 INSOLVENT INSURER OR ASSURE PAYMENT OF THE CONTRACTUAL OBLIGATIONS OF THE  
2 INSOLVENT INSURER, AND ~~of residents.~~

3 ~~2. provide such monies, pledges, LOANS, notes, guarantees or other~~  
4 ~~means as are proper to effectuate paragraph 1 of this subsection and assure~~  
5 ~~payment of the impaired insurer's contractual obligations to residents~~  
6 ~~pending action pursuant to paragraph 1 of this subsection~~ REASONABLY  
7 NECESSARY TO DISCHARGE THE FUND'S OBLIGATIONS.

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

9 2. PROVIDE BENEFITS AND COVERAGE AS FOLLOWS:

10 (a) WITH RESPECT TO LIFE AND DISABILITY INSURANCE POLICIES AND  
11 ANNUITIES, ASSURE PAYMENT OF BENEFITS FOR PREMIUMS IDENTICAL TO THE PREMIUMS  
12 AND BENEFITS, OTHER THAN CONVERSION AND RENEWABILITY BENEFITS, THAT WOULD  
13 HAVE BEEN PAYABLE UNDER THE POLICIES OR CONTRACTS OF THE INSOLVENT INSURER,  
14 FOR CLAIMS INCURRED:

15 (i) WITH RESPECT TO GROUP POLICIES AND CONTRACTS, NOT LATER THAN THE  
16 EARLIER OF THE NEXT RENEWAL DATE UNDER THOSE POLICIES OR CONTRACTS OR  
17 FORTY-FIVE DAYS, BUT NOT LESS THAN THIRTY DAYS, AFTER THE DATE ON WHICH THE  
18 FUND BECOMES OBLIGATED WITH RESPECT TO THE POLICIES AND CONTRACTS.

19 (ii) WITH RESPECT TO NONGROUP POLICIES, CONTRACTS AND ANNUITIES, NOT  
20 LATER THAN THE EARLIER OF THE NEXT RENEWAL DATE, IF ANY, UNDER THE POLICIES  
21 OR CONTRACTS OR ONE YEAR, BUT NOT LESS THAN THIRTY DAYS, FROM THE DATE ON  
22 WHICH THE FUND BECOMES OBLIGATED WITH RESPECT TO THE POLICIES OR CONTRACTS.

23 (b) MAKE DILIGENT EFFORTS TO PROVIDE THIRTY DAYS' NOTICE OF A  
24 TERMINATION OF BENEFITS UNDER SUBDIVISION (a) OF THIS PARAGRAPH TO ALL KNOWN  
25 INSURED OR ANNUITANTS FOR NONGROUP POLICIES AND CONTRACTS, AND GROUP POLICY  
26 OWNERS WITH RESPECT TO GROUP POLICIES AND CONTRACTS.

27 (c) WITH RESPECT TO NONGROUP LIFE AND DISABILITY INSURANCE POLICIES  
28 AND ANNUITIES COVERED BY THE FUND, MAKE AVAILABLE TO EACH KNOWN INSURED OR  
29 ANNUITANT, OR OWNER IF OTHER THAN THE INSURED OR ANNUITANT, AND WITH RESPECT  
30 TO AN INDIVIDUAL FORMERLY INSURED OR FORMERLY AN ANNUITANT UNDER A GROUP  
31 POLICY WHO IS NOT ELIGIBLE FOR REPLACEMENT GROUP COVERAGE, SUBSTITUTE  
32 COVERAGE ON AN INDIVIDUAL BASIS IN ACCORDANCE WITH SUBDIVISION (d) OF THIS  
33 PARAGRAPH, IF THE INSURED OR ANNUITANTS HAD A RIGHT UNDER LAW OR THE  
34 TERMINATED POLICY OR ANNUITY TO CONVERT COVERAGE TO INDIVIDUAL COVERAGE OR TO  
35 CONTINUE AN INDIVIDUAL POLICY OR ANNUITY IN FORCE UNTIL A SPECIFIED AGE OR  
36 FOR A SPECIFIED TIME, DURING WHICH THE INSURER HAD NO RIGHT UNILATERALLY TO  
37 MAKE CHANGES IN ANY PROVISION OF THE POLICY OR ANNUITY OR HAD A RIGHT ONLY TO  
38 MAKE CHANGES IN PREMIUM BY CLASS.

39 (d) IN PROVIDING SUBSTITUTE COVERAGE UNDER SUBDIVISION (c) OF THIS  
40 PARAGRAPH:

41 (i) THE FUND MAY OFFER TO REISSUE THE TERMINATED COVERAGE OR TO ISSUE  
42 AN ALTERNATIVE POLICY.

43 (ii) ANY ALTERNATIVE OR REISSUED POLICIES SO OFFERED SHALL BE OFFERED  
44 WITHOUT REQUIRING EVIDENCE OF INSURABILITY AND WITHOUT ANY WAITING PERIOD OR  
45 EXCLUSION THAT WOULD NOT HAVE APPLIED UNDER THE TERMINATED POLICY.

1 (iii) THE FUND MAY REINSURE ANY ALTERNATIVE OR REISSUED POLICY.  
2 (e) ANY ALTERNATIVE POLICY ADOPTED BY THE FUND IS SUBJECT TO APPROVAL  
3 BY THE DOMICILIARY INSURANCE COMMISSIONER AND THE COURT PRESIDING OVER THE  
4 DELINQUENCY PROCEEDING. THE FUND MAY ADOPT ALTERNATIVE POLICIES OF VARIOUS  
5 TYPES FOR FUTURE ISSUANCE WITHOUT REGARD TO ANY PARTICULAR IMPAIRMENT OR  
6 INSOLVENCY. ANY ALTERNATIVE POLICY SHALL:  
7 (i) CONTAIN AT LEAST THE MINIMUM STATUTORY PROVISIONS REQUIRED IN THIS  
8 STATE AND PROVIDE BENEFITS THAT ARE REASONABLE IN RELATION TO THE PREMIUM  
9 CHARGED. THE FUND SHALL SET THE PREMIUM IN ACCORDANCE WITH A TABLE OF RATES  
10 THAT THE FUND SHALL ADOPT. THE PREMIUM SHALL REFLECT THE AMOUNT OF INSURANCE  
11 TO BE PROVIDED AND THE AGE AND CLASS OF RISK OF EACH INSURED, BUT SHALL NOT  
12 REFLECT ANY CHANGES IN THE HEALTH OF THE INSURED AFTER THE ORIGINAL POLICY  
13 WAS LAST UNDERWRITTEN.  
14 (ii) PROVIDE COVERAGE OF A TYPE SIMILAR TO THAT OF THE POLICY ISSUED  
15 BY THE IMPAIRED INSURER OR INSOLVENT INSURER, AS DETERMINED BY THE FUND.  
16 (f) IF THE FUND ELECTS TO REISSUE TERMINATED COVERAGE AT A PREMIUM  
17 RATE DIFFERENT FROM THAT CHARGED UNDER THE TERMINATED POLICY, THE FUND SHALL  
18 SET THE PREMIUM IN ACCORDANCE WITH THE AMOUNT OF INSURANCE PROVIDED AND THE  
19 AGE AND CLASS OF RISK, SUBJECT TO APPROVAL OF THE DOMICILIARY INSURANCE  
20 COMMISSIONER AND THE COURT PRESIDING OVER THE DELINQUENCY PROCEEDING.  
21 (g) THE FUND'S OBLIGATIONS WITH RESPECT TO COVERAGE UNDER ANY POLICY  
22 OF THE IMPAIRED INSURER OR INSOLVENT INSURER OR UNDER ANY REISSUED OR  
23 ALTERNATIVE POLICY SHALL CEASE ON THE DATE THE COVERAGE OR POLICY IS REPLACED  
24 BY ANOTHER SIMILAR POLICY BY THE POLICY OWNER, THE INSURED OR THE FUND.  
25 (h) WHEN PROCEEDING UNDER THIS PARAGRAPH WITH RESPECT TO A POLICY OR  
26 CONTRACT CARRYING GUARANTEED MINIMUM INTEREST RATES, THE FUND SHALL ASSURE  
27 THE PAYMENT OR CREDITING OF A RATE OF INTEREST CONSISTENT WITH SUBDIVISION  
28 (c) OF THIS PARAGRAPH.  
29 ~~C. If a domestic insurer is an impaired insurer under an order of~~  
30 ~~liquidation or rehabilitation, the board shall, subject to the approval of~~  
31 ~~the director:~~  
32 ~~1. Guarantee, assume or reinsure, or cause to be guaranteed, assumed~~  
33 ~~or reinsured, the covered policies of the impaired insurer.~~  
34 ~~2. Assure payment of the contractual obligations of the impaired~~  
35 ~~insurer.~~  
36 ~~3. Provide such monies, pledges, notes, guarantees or other means as~~  
37 ~~are reasonably necessary to discharge such duties. If the board fails to act~~  
38 ~~within a reasonable period of time, the director shall have the powers and~~  
39 ~~duties of the board prescribed pursuant to this article with respect to such~~  
40 ~~domestic impaired insurer.~~  
41 ~~D. If a foreign or alien insurer is an impaired insurer under an order~~  
42 ~~of liquidation, rehabilitation or conservation, the board shall, subject to~~  
43 ~~the approval of the director:~~  
44 ~~1. Guarantee, assume or reinsure, or cause to be guaranteed, assumed~~  
45 ~~or reinsured, the covered policies of residents.~~

1           ~~2. Assure payment of the contractual obligations of the impaired~~  
2 ~~insurer to residents.~~

3           ~~3. Provide such monies, pledges, notes, guarantees or other means as~~  
4 ~~are reasonably necessary to discharge such duties. If the board fails to act~~  
5 ~~within a reasonable period of time, the director shall have the powers and~~  
6 ~~duties of the board pursuant to this article with respect to such foreign or~~  
7 ~~alien impaired insurer.~~

8           ~~E. In carrying out its duties under subsections C and D of this~~  
9 ~~section, the board may request that there be imposed policy or contract~~  
10 ~~liens, moratoriums on payments or other similar means. Such liens,~~  
11 ~~moratoriums or similar means may be imposed if the director:~~

12           ~~1. Finds that the amounts which can be assessed pursuant to this~~  
13 ~~article are less than the amounts needed to assure full and prompt~~  
14 ~~performance of the impaired insurer's contractual obligations or that the~~  
15 ~~economic or financial conditions as they affect member insurers are~~  
16 ~~sufficiently adverse to render the imposition of policy or contract liens,~~  
17 ~~moratoriums or similar means to be in the public interest.~~

18           ~~2. Approves the specific policy liens, contract liens, moratoriums or~~  
19 ~~similar means to be used. Before being obligated pursuant to subsections C~~  
20 ~~and D of this section the board may request that there be imposed temporary~~  
21 ~~moratoriums or liens on payments of cash values and policy loans and such~~  
22 ~~temporary moratoriums and liens may be imposed if they are approved by the~~  
23 ~~director.~~

24           ~~F. C.~~ The ~~board~~ FUND is not liable pursuant to this section for any  
25 covered policy of ~~a foreign or alien~~ AN IMPAIRED insurer OR INSOLVENT INSURER  
26 whose domiciliary jurisdiction or state of entry provides by statute or  
27 regulation for residents of this state protection substantially similar to  
28 that provided by this article for residents of other states.

29           ~~G. D.~~ The ~~board~~ FUND may render assistance and advice to the  
30 director, ~~upon his or her~~ ON THE DIRECTOR'S request, concerning  
31 rehabilitation, payment of claims, continuations of coverage or the  
32 performance of other contractual obligations of any impaired insurer OR  
33 INSOLVENT INSURER.

34           ~~H. E.~~ The ~~board~~ FUND shall have standing to appear OR INTERVENE  
35 before any court ~~in this state~~ with jurisdiction over an impaired insurer OR  
36 INSOLVENT INSURER concerning which the ~~board~~ FUND is or may become obligated,  
37 OR OVER ANY PERSON OR PROPERTY AGAINST WHICH THE FUND MAY HAVE RIGHTS,  
38 PURSUANT TO THIS ARTICLE. Such standing shall extend to all matters germane  
39 to the powers and duties of the ~~board~~ FUND, including proposals for  
40 reinsuring, MODIFYING or guaranteeing the covered policies of the impaired  
41 insurer OR INSOLVENT INSURER and the determination of the covered policies OR  
42 CONTRACTS and contractual obligations.

43           ~~I. F.~~ Any persons receiving benefits PURSUANT TO THIS ARTICLE shall  
44 be deemed to have assigned their rights under, AND ANY CAUSES OF ACTION  
45 AGAINST ANY PERSON FOR LOSSES ARISING UNDER, RESULTING FROM OR OTHERWISE

1 RELATING TO, the COVERED policy OR CONTRACT to the board FUND to the extent  
2 of the benefits received whether the benefits are payments of contractual  
3 obligations, ~~or~~ continuation of coverage OR PROVISION OF SUBSTITUTE OR  
4 ALTERNATIVE COVERAGES. The board FUND may require an assignment to the board  
5 FUND of such rights by any payee, policy or contract owner, beneficiary,  
6 insured or annuitant as a condition precedent to the receipt of any rights or  
7 benefits conferred ~~upon~~ ON such person PURSUANT TO THIS ARTICLE. The board  
8 SUBROGATION RIGHTS OF THE FUND UNDER THIS SUBSECTION shall ~~be subrogated to~~  
9 ~~such rights~~ HAVE THE SAME PRIORITY against the assets of any impaired insurer  
10 OR INSOLVENT INSURER AS THAT POSSESSED BY THE PERSON WHO IS ENTITLED TO  
11 RECEIVE THE BENEFITS UNDER THIS ARTICLE. THE FUND SHALL HAVE ALL COMMON LAW  
12 RIGHTS OF SUBROGATION AND ANY OTHER EQUITABLE OR LEGAL REMEDY THAT WOULD HAVE  
13 BEEN AVAILABLE TO THE IMPAIRED INSURER OR INSOLVENT INSURER OR OWNER,  
14 BENEFICIARY OR PAYEE OF A POLICY OR CONTRACT WITH RESPECT TO THE POLICY OR  
15 CONTRACT. IF THE PRECEDING PROVISIONS OF THIS SUBSECTION ARE INEFFECTIVE  
16 WITH RESPECT TO ANY PERSON OR CLAIM FOR ANY REASON, THE AMOUNT PAYABLE BY THE  
17 FUND WITH RESPECT TO THE RELATED COVERED OBLIGATIONS SHALL BE REDUCED BY THE  
18 AMOUNT ATTRIBUTABLE TO THE POLICIES, OR ANY PART OF THE POLICIES, COVERED BY  
19 THE FUND THAT IS REALIZED BY ANY OTHER PERSON WITH RESPECT TO THE PERSON OR  
20 CLAIM. IF THE FUND HAS PROVIDED BENEFITS WITH RESPECT TO A COVERED  
21 OBLIGATION AND A PERSON RECOVERS AMOUNTS AS TO WHICH THE FUND HAS RIGHTS  
22 UNDER THIS SUBSECTION, THE PERSON SHALL PAY TO THE FUND THE PART OF THE  
23 RECOVERY ATTRIBUTABLE TO THE POLICIES, OR ANY PART OF THE POLICIES, COVERED  
24 BY THE FUND.

25 ~~J. G. The contractual obligations of the impaired insurer for which~~  
26 ~~the board becomes or may become liable shall be as great as, but no greater~~  
27 ~~than, what the contractual obligations of the impaired insurer would have~~  
28 ~~been in the absence of an impairment, unless the obligations are reduced as~~  
29 ~~permitted by subsection E of this section. However, the aggregate liability~~  
30 ~~of the board shall not exceed one hundred thousand dollars with respect to~~  
31 ~~cash value or annuity claims or three hundred thousand dollars for all~~  
32 ~~benefits, including cash values and annuity claims, as well as death~~  
33 ~~benefits, with respect to any one life.~~ Notwithstanding any other law, the  
34 board FUND is not obligated to pay any amount that does not constitute a  
35 payment of a contractual obligation, including taxable costs or attorney fees  
36 that could be awarded or any additional liabilities or obligations as might  
37 otherwise exist or accrue against the impaired insurer if the insurer had not  
38 become impaired.

39 ~~K. H.~~ The board FUND may:

- 40 1. Enter into such contracts as are necessary or proper to carry out
- 41 the provisions and purposes of this article.
- 42 2. Sue and be sued, including taking any legal actions that are
- 43 necessary and proper for recovery of any unpaid assessments pursuant to
- 44 section 20-686.

1           3. Borrow money to effect the purposes of this article. Any notes or  
2 other evidence of indebtedness of the fund that are not in default shall be  
3 legal investments for domestic insurers and may be carried as admitted  
4 assets.

5           4. Employ and retain such persons as are necessary to handle the  
6 financial transactions of the fund and perform such other functions as become  
7 necessary or proper.

8           5. Negotiate and contract with any liquidator, rehabilitator,  
9 conservator or ancillary receiver to carry out the powers and duties of the  
10 ~~board~~ FUND.

11           6. JOIN AN ORGANIZATION COMPRISED OF ONE OR MORE OTHER SIMILAR STATE  
12 FUNDS IN ORDER TO FURTHER THE ADMINISTRATION OF THE FUND'S POWERS AND DUTIES  
13 UNDER THIS ARTICLE.

14           ~~6-~~ 7. Take such legal action as may be necessary to avoid payment of  
15 improper claims.

16           ~~7-~~ 8. Exercise, for the purposes of this article and to the extent  
17 approved by the director, the powers of a domestic life and disability  
18 insurer. In no case may the ~~board~~ FUND issue insurance policies or annuity  
19 contracts other than those issued to perform the contractual obligations of  
20 the impaired insurer OR INSOLVENT INSURER.

21           1. AT ANY TIME WITHIN ONE HUNDRED EIGHTY DAYS AFTER THE DATE OF THE  
22 ORDER OF LIQUIDATION, THE FUND, BY WRITTEN NOTICE TO THE AFFECTED REINSURERS,  
23 MAY ELECT TO ASSUME THE RIGHTS AND OBLIGATIONS OF A CEDING MEMBER INSURER  
24 THAT RELATE TO POLICIES OR ANNUITIES COVERED IN WHOLE OR IN PART BY THE FUND  
25 UNDER ANY ONE OR MORE REINSURANCE CONTRACTS ENTERED INTO BY THE INSOLVENT  
26 INSURER, SUBJECT TO THE FOLLOWING:

27           1. THE ASSUMPTION SHALL BE EFFECTIVE AS OF THE DATE OF THE ORDER OF  
28 LIQUIDATION.

29           2. THE RECEIVER AND EACH REINSURER OF THE CEDING MEMBER INSURER SHALL  
30 MAKE AVAILABLE ON REQUEST TO THE FUND AFTER COMMENCEMENT OF FORMAL  
31 DELINQUENCY PROCEEDINGS:

32           (a) COPIES OF IN-FORCE REINSURANCE CONTRACTS AND ALL RELATED RECORDS  
33 RELEVANT TO THE DETERMINATION WHETHER TO ASSUME SUCH CONTRACTS.

34           (b) NOTICES OF ANY DEFAULTS UNDER THE REINSURANCE CONTRACTS OR ANY  
35 KNOWN EVENT OR CONDITION THAT MAY PRESENTLY OR SUBSEQUENTLY CONSTITUTE A  
36 DEFAULT UNDER THE REINSURANCE CONTRACTS.

37           3. WITH RESPECT TO REINSURANCE CONTRACTS ASSUMED BY THE FUND UNDER  
38 THIS SUBSECTION:

39           (a) THE FUND SHALL BE RESPONSIBLE FOR ALL UNPAID PREMIUMS DUE UNDER  
40 THE REINSURANCE CONTRACTS FOR PERIODS BOTH BEFORE AND AFTER THE DATE OF THE  
41 ORDER OF LIQUIDATION, AND FOR PERFORMANCE OF ALL OTHER OBLIGATIONS AFTER THE  
42 DATE OF THE ORDER OF LIQUIDATION THAT RELATE TO POLICIES OR ANNUITIES COVERED  
43 IN WHOLE OR IN PART BY THE FUND. THE FUND MAY CHARGE POLICIES OR ANNUITIES  
44 COVERED IN PART BY THE FUND, THROUGH REASONABLE ALLOCATION METHODS, FOR THE

1 COSTS FOR REINSURANCE IN EXCESS OF THE FUND'S OBLIGATIONS AND SHALL PROVIDE  
2 NOTICE AND AN ACCOUNTING OF THESE CHARGES TO THE RECEIVER.

3 (b) THE FUND SHALL BE ENTITLED TO ANY AMOUNTS PAYABLE BY THE REINSURER  
4 UNDER THE REINSURANCE CONTRACTS WITH RESPECT TO LOSSES OR EVENTS THAT OCCUR  
5 AFTER THE DATE OF THE ORDER OF LIQUIDATION AND THAT RELATE TO POLICIES OR  
6 ANNUITIES COVERED IN WHOLE OR IN PART BY THE FUND, PROVIDED THAT ON RECEIPT  
7 OF ANY SUCH AMOUNTS, THE FUND SHALL PAY TO THE BENEFICIARY UNDER THE POLICY  
8 OR ANNUITY AN AMOUNT EQUAL TO THE LESSER OF:

9 (i) THE AMOUNT RECEIVED BY THE FUND.

10 (ii) THE EXCESS OF THE AMOUNT RECEIVED BY THE FUND OVER THE AMOUNT  
11 EQUAL TO THE BENEFITS PAID BY THE FUND ON ACCOUNT OF THE POLICY OR ANNUITY  
12 LESS THE RETENTION OF THE IMPAIRED INSURER OR INSOLVENT INSURER APPLICABLE TO  
13 THE LOSS OR EVENT.

14 (c) WITHIN THIRTY DAYS AFTER THE FUND'S ELECTION, THE FUND AND EACH  
15 REINSURER UNDER CONTRACTS ASSUMED BY THE FUND SHALL CALCULATE THE NET BALANCE  
16 DUE TO OR FROM THE FUND UNDER EACH REINSURANCE CONTRACT AS OF THE DATE OF THE  
17 FUND'S ELECTION WITH RESPECT TO POLICIES OR ANNUITIES COVERED IN WHOLE OR IN  
18 PART BY THE FUND, GIVING FULL CREDIT TO ALL ITEMS PAID BY THE MEMBER INSURER  
19 OR ITS RECEIVER OR THE REINSURER BEFORE THE DATE OF THE FUND'S ELECTION. THE  
20 REINSURER SHALL PAY THE RECEIVER ANY AMOUNTS DUE FOR LOSSES OR EVENTS BEFORE  
21 THE DATE OF THE ORDER OF LIQUIDATION, SUBJECT TO ANY SET-OFF FOR PREMIUMS  
22 UNPAID FOR PERIODS BEFORE THE DATE OF THE ORDER OF LIQUIDATION, AND THE FUND  
23 OR REINSURER SHALL PAY ANY REMAINING BALANCE DUE THE OTHER WITHIN FIVE DAYS  
24 AFTER THE COMPLETION OF THE CALCULATION. ANY DISPUTES OVER THE AMOUNTS DUE  
25 SHALL BE RESOLVED IN ACCORDANCE WITH THE REINSURANCE CONTRACT. IF THE  
26 RECEIVER HAS RECEIVED ANY AMOUNTS DUE TO THE FUND PURSUANT TO SUBDIVISION (b)  
27 OF THIS PARAGRAPH, THE RECEIVER SHALL PROMPTLY REMIT THE AMOUNT TO THE FUND.

28 (d) IF THE FUND OR RECEIVER, WITHIN SIXTY DAYS AFTER THE ELECTION,  
29 PAYS THE UNPAID PREMIUMS DUE FOR PERIODS BOTH BEFORE AND AFTER THE ELECTION  
30 DATE THAT RELATE TO POLICIES AND ANNUITIES COVERED IN WHOLE OR IN PART BY THE  
31 FUND, THE REINSURER SHALL NOT BE ENTITLED TO TERMINATE THE REINSURANCE  
32 CONTRACTS FOR FAILURE TO PAY PREMIUM TO THE EXTENT THE REINSURANCE CONTRACTS  
33 RELATE TO POLICIES OR ANNUITIES COVERED IN WHOLE OR IN PART BY THE FUND, AND  
34 SHALL NOT BE ENTITLED TO SET OFF ANY UNPAID AMOUNTS DUE UNDER OTHER CONTRACTS  
35 OR DUE FROM PARTIES OTHER THAN THE FUND, AGAINST AMOUNTS PAYABLE TO THE FUND.

36 4. PROVIDED THAT THE PARTIES RIGHTS AND OBLIGATIONS SHALL BE GOVERNED  
37 BY PARAGRAPH 3 OF THIS SUBSECTION, IF THE FUND ELECTS TO ASSUME A REINSURANCE  
38 CONTRACT, DURING THE PERIOD FROM THE DATE OF THE ORDER OF LIQUIDATION UNTIL  
39 THE EARLIER OF THE ELECTION DATE OR ONE HUNDRED EIGHTY DAYS AFTER THE DATE OF  
40 THE ORDER OF LIQUIDATION:

41 (a) THE FUND AND THE REINSURER SHALL NOT HAVE ANY RIGHTS OR  
42 OBLIGATIONS UNDER REINSURANCE CONTRACTS THAT THE FUND HAS THE RIGHT TO ASSUME  
43 UNDER PARAGRAPH 3 OF THIS SUBSECTION, WHETHER FOR PERIODS BEFORE OR AFTER THE  
44 DATE OF THE ORDER OF LIQUIDATION.

1 (b) THE REINSURER, RECEIVER AND FUND SHALL PROVIDE EACH OTHER DATA AND  
2 RECORDS REASONABLY REQUESTED, TO THE EXTENT PRACTICABLE.

3 5. IF THE FUND DOES NOT ELECT TO ASSUME A REINSURANCE CONTRACT BY THE  
4 ELECTION DATE PURSUANT TO PARAGRAPH 3 OF THIS SUBSECTION, THE FUND SHALL HAVE  
5 NO RIGHTS OR OBLIGATIONS WITH RESPECT TO THE REINSURANCE CONTRACT FOR PERIODS  
6 BEFORE AND AFTER THE DATE OF THE ORDER OF LIQUIDATION.

7 6. IF THE FUND TRANSFERS POLICIES OR ANNUITIES, OR COVERED OBLIGATIONS  
8 WITH RESPECT TO POLICIES OR ANNUITIES, TO AN ASSUMING INSURER, REINSURANCE ON  
9 THE TRANSFERRED POLICIES OR ANNUITIES MAY ALSO BE TRANSFERRED BY THE FUND, IN  
10 THE CASE OF CONTRACTS ASSUMED UNDER PARAGRAPH 3 OF THIS SUBSECTION, SUBJECT  
11 TO THE FOLLOWING:

12 (a) UNLESS THE REINSURER AND THE ASSUMING INSURER AGREE OTHERWISE, THE  
13 REINSURANCE CONTRACT TRANSFERRED SHALL NOT COVER ANY POLICIES OR ANNUITIES  
14 OTHER THAN THOSE TRANSFERRED.

15 (b) THE OBLIGATIONS DESCRIBED IN PARAGRAPH 3 OF THIS SUBSECTION DO NOT  
16 APPLY WITH RESPECT TO MATTERS ARISING AFTER THE DATE OF THE TRANSFER.

17 (c) THE TRANSFERRING PARTY SHALL PROVIDE WRITTEN NOTICE TO THE  
18 AFFECTED REINSURER NOT LESS THAN THIRTY DAYS BEFORE THE EFFECTIVE DATE OF THE  
19 TRANSFER.

20 J. SUBSECTION I OF THIS SECTION SUPERSEDES ANY PROVISION OF STATE LAW  
21 OR OF ANY AFFECTED REINSURANCE CONTRACT THAT PROVIDES FOR OR REQUIRES ANY  
22 PAYMENT OF REINSURANCE PROCEEDS, ON ACCOUNT OF LOSSES OR EVENTS THAT OCCUR IN  
23 PERIODS AFTER THE DATE OF THE ORDER OF LIQUIDATION, TO THE RECEIVER OF THE  
24 INSOLVENT INSURER OR ANY OTHER PERSON. THE RECEIVER SHALL REMAIN ENTITLED TO  
25 ANY AMOUNTS PAYABLE BY THE REINSURER UNDER THE REINSURANCE CONTRACTS WITH  
26 RESPECT TO LOSSES OR EVENTS THAT OCCUR IN PERIODS BEFORE THE DATE OF THE  
27 ORDER OF LIQUIDATION, SUBJECT TO ANY APPLICABLE SET-OFF PROVISIONS.

28 K. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION I OF THIS SECTION, THIS  
29 SECTION DOES NOT:

30 1. ALTER OR MODIFY THE TERMS AND CONDITIONS OF ANY REINSURANCE  
31 CONTRACT.

32 2. LIMIT ANY RIGHTS OF ANY REINSURER TO CLAIM THAT IT IS ENTITLED TO  
33 RESCIND A REINSURANCE CONTRACT.

34 3. PROVIDE A POLICY OWNER OR BENEFICIARY AN INDEPENDENT CAUSE OF  
35 ACTION AGAINST A REINSURER THAT IS NOT OTHERWISE SET FORTH IN THE REINSURANCE  
36 CONTRACT.

37 4. LIMIT OR AFFECT THE FUND'S RIGHTS AS A CREDITOR OF THE ESTATE.

38 5. APPLY TO REINSURANCE CONTRACTS COVERING PROPERTY OR CASUALTY RISKS.

39 L. IN CARRYING OUT ITS DUTIES IN CONNECTION WITH GUARANTEEING,  
40 ASSUMING OR REINSURING POLICIES OR CONTRACTS UNDER SUBSECTION A OR B OF THIS  
41 SECTION, THE FUND, SUBJECT TO APPROVAL OF THE COURT PRESIDING OVER THE  
42 DELINQUENCY PROCEEDING, MAY ISSUE SUBSTITUTE COVERAGE FOR A POLICY OR  
43 CONTRACT THAT PROVIDES AN INTEREST RATE, CREDITING RATE OR SIMILAR FACTOR  
44 DETERMINED BY USE OF AN INDEX OR OTHER EXTERNAL REFERENCE STATED IN THE  
45 POLICY OR CONTRACT EMPLOYED IN CALCULATING RETURNS OR CHANGES IN VALUE BY

1 ISSUING AN ALTERNATIVE POLICY OR CONTRACT IN ACCORDANCE WITH THE FOLLOWING  
2 PROVISIONS:

3 1. IN LIEU OF THE INDEX OR OTHER EXTERNAL REFERENCE PROVIDED FOR IN  
4 THE ORIGINAL POLICY OR CONTRACT, THE ALTERNATIVE POLICY OR CONTRACT PROVIDES  
5 FOR A FIXED INTEREST RATE, OR PAYMENT OF DIVIDENDS WITH MINIMUM GUARANTEES,  
6 OR A DIFFERENT METHOD FOR CALCULATING INTEREST OR CHANGES IN VALUE.

7 2. THERE IS NO REQUIREMENT FOR EVIDENCE OF INSURABILITY, WAITING  
8 PERIOD OR OTHER EXCLUSION THAT WOULD NOT HAVE APPLIED UNDER THE REPLACED  
9 POLICY OR CONTRACT.

10 3. THE ALTERNATIVE POLICY OR CONTRACT IS SUBSTANTIALLY SIMILAR TO THE  
11 REPLACED POLICY OR CONTRACT IN ALL OTHER MATERIAL TERMS.

12 M. IF THE FUND OFFERS TO PROVIDE THE BENEFITS OF THIS ARTICLE TO A  
13 COVERED PERSON UNDER A PLAN OR ARRANGEMENT THAT FULFILLS THE FUND'S  
14 OBLIGATIONS UNDER THIS ARTICLE, THE PERSON SHALL NOT BE ENTITLED TO BENEFITS  
15 FROM THE FUND IN ADDITION OR AS AN ALTERNATIVE TO THOSE OFFERED UNDER THE  
16 PLAN OR ARRANGEMENT.

17 N. VENUE IN A SUIT AGAINST THE FUND ARISING UNDER THIS ARTICLE SHALL  
18 BE IN THE SUPERIOR COURT OF MARICOPA COUNTY. THE FUND SHALL NOT BE REQUIRED  
19 TO GIVE A BOND IN AN APPEAL THAT RELATES TO A CAUSE OF ACTION ARISING UNDER  
20 THIS ARTICLE.

21 Sec. 5. Section 20-686, Arizona Revised Statutes, is amended to read:  
22 20-686. Assessments

23 A. For the purpose of providing the funds necessary to carry out the  
24 powers and duties of the fund, the ~~board of directors~~ FUND shall assess the  
25 member insurers, separately for each account, at such times and for such  
26 amounts as the ~~board~~ FUND finds necessary. The ~~board~~ MEMBER INSURERS shall  
27 ~~collect~~ BE REQUIRED TO PAY the assessments ~~after thirty days'~~ WITHIN THE TIME  
28 PRESCRIBED IN A written notice OF THE ASSESSMENT to the member insurers  
29 ~~before payment is due~~ BUT NO LESS THAN THIRTY DAYS AFTER THE DATE OF THE  
30 WRITTEN NOTICE.

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

32 1. Class A assessments shall be ~~made~~ AUTHORIZED AND CALLED for the  
33 purpose of meeting administrative costs and other general expenses not  
34 related to a particular impaired insurer OR INSOLVENT INSURER.

35 2. Class B assessments shall be ~~made~~ AUTHORIZED AND CALLED to the  
36 extent necessary to carry out the powers and duties of the fund pursuant to  
37 section 20-685 with regard to an impaired ~~domestic or foreign~~ insurer OR  
38 INSOLVENT INSURER.

39 C. The amount of assessment for each account shall be determined as  
40 follows:

41 1. The amount of any class A assessment for each account shall be  
42 determined by the ~~board~~ FUND. The amount of any class B assessment shall be  
43 divided among the accounts in the proportion that the premiums received by  
44 the impaired insurer OR INSOLVENT INSURER on the policies covered by each  
45 account bear to the premiums received by such insurer on all policies.

1           2. Class A and class B assessments against member insurers for each  
2 account shall be in the proportion that the premiums received on business in  
3 this state by each assessed member insurer on policies covered by each  
4 account bear to such premiums received on business in this state by all  
5 assessed member insurers. ~~, except that with respect to residents of other~~  
6 ~~states covered by the fund, class B assessments for each account shall be~~  
7 ~~made separately for each state in which the impaired domestic insurer was~~  
8 ~~authorized to transact insurance at any time, in the proportion that the~~  
9 ~~premiums received on business in that state by the impaired insurer on~~  
10 ~~policies covered by the account bear to the premiums in all the states by the~~  
11 ~~impaired insurer. The assessments against member insurers shall be in the~~  
12 ~~proportion that the premiums received on business in each state by each~~  
13 ~~assessed member insurer on policies covered by each account bear to the~~  
14 ~~premiums received on business in each state by all assessed member insurers.~~

15           3. Assessments for funds to meet the requirements of the ~~board~~ **FUND**  
16 with respect to an impaired insurer **OR INSOLVENT INSURER** shall not be made  
17 until necessary to implement the purposes of this article. Classification of  
18 assessments as prescribed pursuant to subsection B of this section and  
19 computation of assessments pursuant to this subsection shall be made with a  
20 reasonable degree of accuracy, recognizing that exact determinations may not  
21 always be possible.

22           4. **THE TOTAL OF ALL ASSESSMENTS ON A MEMBER INSURER FOR EACH ACCOUNT**  
23 **SHALL NOT IN ANY ONE CALENDAR YEAR EXCEED TWO PER CENT OF THAT MEMBER**  
24 **INSURER'S AVERAGE ANNUAL PREMIUMS RECEIVED IN THIS STATE ON THE POLICIES AND**  
25 **CONTRACTS COVERED BY THE ACCOUNT DURING THE THREE CALENDAR YEARS PRECEDING**  
26 **THE YEAR IN WHICH THE INSURER BECAME AN IMPAIRED INSURER OR INSOLVENT**  
27 **INSURER. IF TWO OR MORE ASSESSMENTS ARE AUTHORIZED IN ONE CALENDAR YEAR WITH**  
28 **RESPECT TO INSURERS THAT BECOME IMPAIRED OR INSOLVENT IN DIFFERENT CALENDAR**  
29 **YEARS, THE AVERAGE ANNUAL PREMIUMS FOR PURPOSES OF THE AGGREGATE ASSESSMENT**  
30 **PERCENTAGE LIMITATION SHALL BE LIMITED TO THE GREATER OF THE THREE YEAR**  
31 **AVERAGE ANNUAL PREMIUMS FOR THE APPLICABLE ACCOUNT AS CALCULATED PURSUANT TO**  
32 **THIS SUBSECTION.**

33           D. The ~~board~~ **FUND** may abate or defer, in whole or in part, the  
34 assessment of a member insurer if, in the opinion of the ~~board~~ **FUND**, payment  
35 of the assessment would endanger the ability of the member insurer to fulfill  
36 its contractual obligations. ~~The total of all assessments upon a member~~  
37 ~~insurer for each account shall not in any one calendar year exceed two per~~  
38 ~~cent of such insurer premiums in this state on the policies covered by the~~  
39 ~~account.~~

40           E. If an assessment against a member insurer is abated or deferred, in  
41 whole or in part, because of the limitations set forth in subsection D of  
42 this section, the amount by which such assessment is abated or deferred ~~shall~~  
43 **MAY** be assessed against the other member insurers in a manner consistent with  
44 the basis for assessments set forth in this section. If the maximum  
45 assessment, together with the other assets of the fund in either account,

1 does not provide in any one year in either account an amount sufficient to  
2 carry out the responsibilities of the fund, the necessary additional monies  
3 shall be assessed as soon thereafter as permitted by this article.

4 F. The ~~board may~~ FUND, by an equitable method as established in the  
5 plan of operation, MAY refund to member insurers, in proportion to the  
6 contribution of each insurer to that account, the amount the ~~board~~ FUND finds  
7 is not necessary to carry out during the coming year the obligations of the  
8 fund with regard to such amount, including assets accruing from net realized  
9 gains and income from investments. A reasonable amount may be retained in  
10 any account to provide funds for the continuing expenses of the fund and for  
11 future losses ~~if refunds are impractical~~.

12 G. Any member insurer ~~may~~, in determining its premium rates and  
13 policyowner dividends as to any kind of insurance within the scope of this  
14 article, MAY consider the amount reasonably necessary to meet its assessment  
15 obligations.

16 H. The fund shall issue to each insurer paying an assessment a  
17 certificate of contribution, in a form prescribed by the director, for the  
18 amount paid. All outstanding certificates shall be of equal priority without  
19 reference to amounts or dates of issue. A certificate of contribution may be  
20 shown by the insurer in its financial statement as an asset in such form and  
21 for such amount and period of time as the director may approve.

22 Sec. 6. Section 20-687, Arizona Revised Statutes, is amended to read:  
23 20-687. Plan of operation

24 A. The board shall submit to the director a plan of operation and any  
25 amendments necessary to assure the fair, reasonable and equitable  
26 administration of the fund. The plan of operation and any amendments shall  
27 become effective ~~upon~~ ON approval in writing by the director. If the board  
28 fails to submit a plan of operation or if at any time the board fails to  
29 submit suitable amendments to the plan, the director shall adopt any plan or  
30 amendment that is necessary or advisable to effectuate the provisions of this  
31 article and the plan or amendment shall continue in force until modified by  
32 the director or superseded by a plan submitted by the board and approved by  
33 the director.

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

35 C. The plan of operation ~~shall~~, in addition to all other requirements,  
36 SHALL:

37 1. Establish procedures for handling the assets of the fund and claims  
38 against the fund.

39 2. Establish the amount and method of reimbursing members of the board  
40 of directors pursuant to section 20-684.

41 3. Establish regular places and times for meetings of the board of  
42 directors.

43 4. Establish procedures for records to be kept of all financial  
44 transactions of the fund, its agents and the board of directors.

1           5. Establish the procedures for selecting the board of directors and  
2 submitting such selections to the director.

3           6. Establish any additional procedures for assessments required  
4 pursuant to section 20-686.

5           7. Contain additional provisions necessary for the execution of the  
6 powers and duties of the board.

7           D. The plan of operation may provide that any or all powers and duties  
8 of the board, except those in section 20-685, subsection ~~K~~ H, paragraph 3  
9 and section 20-686, are delegated to any corporation, association or other  
10 organization ~~which~~ THAT performs or will perform functions similar to those  
11 of this fund in two or more states. Such a corporation, association or  
12 organization shall be reimbursed for any payments made on behalf of the fund  
13 and shall be paid for its performance of any function of the fund. A  
14 delegation pursuant to this subsection shall take effect only with the  
15 approval of both the board of directors and the director and may be made only  
16 to a corporation, association or organization ~~which~~ THAT extends protection  
17 not substantially less favorable and effective than that provided by this  
18 article.

19           Sec. 7. Section 20-688, Arizona Revised Statutes, is amended to read:  
20           20-688. Duties and powers of the director

21           A. In addition to all other duties and powers enumerated in this  
22 article, the director shall:

23           1. Notify the board of directors of the existence of an impaired  
24 insurer ~~OR INSOLVENT INSURER~~ not later than three days after a determination  
25 of impairment or ~~INSOLVENCY OR~~ the director receives notice of impairment ~~OR~~  
26 ~~INSOLVENCY~~.

27           2. ~~Upon~~ ON request of the board of directors, provide the board with a  
28 statement of the premiums in the appropriate states for each member insurer.

29           3. When an impairment is declared and the amount of the impairment is  
30 determined, serve a demand ~~upon~~ ON the impaired insurer to make good the  
31 impairment within a reasonable time. Notice to the impaired insurer shall  
32 constitute notice to its shareholders. The failure of the insurer to  
33 promptly comply with such demand shall not excuse the board from the  
34 performance of its duties pursuant to this article.

35           B. The director may suspend or revoke, after notice and a hearing  
36 pursuant to title 41, chapter 6, article 10, the certificate of authority to  
37 transact insurance in this state of any member insurer ~~which~~ THAT fails to  
38 pay an assessment when due or fails to comply with the plan of operation. As  
39 an alternative the director may levy a forfeiture on any member insurer ~~which~~  
40 THAT fails to pay an assessment when due. Such forfeiture shall not exceed  
41 five per cent of the unpaid assessment per month, but no forfeiture may be  
42 less than one hundred dollars per month.

43           C. Any action of the board of directors may be appealed to the  
44 director by any member insurer within thirty days. Except as provided in

1 section 41-1092.08, subsection H, any final action or order of the director  
2 is subject to judicial review pursuant to title 12, chapter 7, article 6.

3 D. The liquidator, rehabilitator or conservator of any impaired  
4 insurer OR INSOLVENT INSURER may notify all interested persons of the effect  
5 of this article.

6 Sec. 8. Section 20-689, Arizona Revised Statutes, is amended to read:  
7 20-689. Prevention of impairments

8 To aid in the detection and prevention of insurer impairments AND  
9 INSOLVENCIES:

10 1. The board of directors ~~shall, upon~~ ON majority vote, SHALL notify  
11 the director of any information indicating that any member insurer may be  
12 unable or potentially unable to fulfill its contractual obligations.

13 2. The board of directors ~~may, upon~~ ON majority vote, MAY request that  
14 the director order an examination of any member insurer which the board in  
15 good faith believes may be unable or potentially unable to fulfill its  
16 contractual obligations. The director may conduct such examination. The  
17 examination may be conducted as a national association of insurance  
18 commissioners examination or may be conducted by such persons as the director  
19 designates. The cost of such examination shall be paid by the fund and the  
20 examination report shall be treated as are other examination reports. ~~In no~~  
21 ~~event shall such~~ THE examination report SHALL NOT be released to the board of  
22 directors of the fund ~~prior to~~ BEFORE its release to the public, but this  
23 shall not excuse the director from ~~his or her~~ THE obligation to comply with  
24 paragraph 3. The director shall notify the board of directors when the  
25 examination is completed. The request for an examination shall be kept on  
26 file by the director but it shall not be open to the public and shall be  
27 released only if the examination discloses that the examined insurer is  
28 unable or potentially unable to meet its contractual obligations.

29 3. The director shall report to the board of directors when the  
30 director has reasonable cause to believe that any member insurer examined at  
31 the request of the board of directors may be unable or potentially unable to  
32 fulfill its contractual obligations.

33 4. The board of directors ~~may, upon~~ ON majority vote, MAY make reports  
34 and recommendations to the director ~~upon~~ ON any matter germane to the  
35 solvency, liquidation, rehabilitation or conservation of any member insurer.  
36 Such reports and recommendations shall not be considered public documents.

37 5. The board of directors ~~may, upon~~ ON majority vote, MAY make  
38 recommendations to the director for the detection and prevention of insurer  
39 impairments AND INSOLVENCIES.

40 6. The board of directors ~~shall~~, at the conclusion of any insurer  
41 impairment OR INSOLVENCY in which the fund carried out its duties, SHALL  
42 prepare a report on the history and causes of such impairment OR INSOLVENCY  
43 based on the information available to the fund and submit such report to the  
44 director.

1           Sec. 9. Section 20-690, Arizona Revised Statutes, is amended to read:  
2           20-690. Financial provisions

3           A. Nothing in this article shall be construed to reduce the liability  
4 for unpaid assessments of the insureds of an impaired insurer ~~OR INSOLVENT~~  
5 ~~INSURER~~ operating under a plan with assessment liability.

6           B. Records shall be kept of all negotiations and meetings in which the  
7 fund or its representatives are involved to discuss the activities of the  
8 fund in carrying out its powers and duties. Records of such negotiations or  
9 meetings shall be made public only ~~upon~~ ~~ON~~ the termination of a liquidation,  
10 rehabilitation or conservation proceeding involving the impaired insurer ~~upon~~  
11 ~~OR INSOLVENT INSURER~~, ~~ON~~ the termination of the impairment ~~OR INSOLVENCY~~ of  
12 the insurer or ~~upon~~ ~~ON~~ the order of a court of competent jurisdiction.

13           C. For the purpose of carrying out its obligations pursuant to this  
14 article, the board shall be deemed to be a creditor of the impaired insurer  
15 ~~OR INSOLVENT INSURER~~ to the extent of assets attributable to policies reduced  
16 by any amounts to which the board is entitled as subrogee. All assets of the  
17 impaired insurer ~~OR INSOLVENT INSURER~~ attributable to policies shall be used  
18 to continue all policies and pay all contractual obligations of the impaired  
19 insurer ~~OR INSOLVENT INSURER~~. As used in this subsection, "assets  
20 attributable to policies" means that proportion of the assets which the  
21 reserves that should have been established for such policies bear to the  
22 reserve that should have been established for all policies of insurance  
23 written by the impaired insurer ~~OR INSOLVENT INSURER~~.

24           D. ~~Prior to~~ ~~BEFORE~~ the termination of any liquidation, rehabilitation  
25 or conservation proceeding, the court may take into consideration the  
26 contributions of the respective parties including the board, the shareholders  
27 and policyowners of the impaired insurer ~~OR INSOLVENT INSURER~~ and any other  
28 party with a bona fide interest in making an equitable distribution of the  
29 ownership rights of such impaired insurer ~~OR INSOLVENT INSURER~~. In such a  
30 determination, consideration shall be given to the welfare of the  
31 policyholders of the continuing or successor insurer. No distribution to  
32 stockholders of the assets of an impaired insurer ~~OR INSOLVENT INSURER~~ may be  
33 made until and unless the total amount of ~~assessment levied by the board~~  
34 ~~VALID CLAIMS OF THE FUND WITH INTEREST THEREON FOR MONIES EXPENDED IN~~  
35 ~~CARRYING OUT ITS POWERS AND DUTIES UNDER SECTION 20-685~~ with respect to such  
36 insurer is fully recovered by the fund.

37           E. If an order for liquidation or rehabilitation of an insurer  
38 domiciled in this state has been entered, the receiver appointed under such  
39 order may recover on behalf of the insurer, from any affiliate that  
40 controlled it, the amount of distributions, other than stock dividends paid  
41 by the insurer on its capital stock, made at any time during the five years  
42 preceding the petition for liquidation or rehabilitation subject to the  
43 following limitations:

44           1. No such dividend shall be recoverable if the insurer shows that  
45 when paid the distribution was lawful and reasonable and that the insurer did

1 not know and could not reasonably have known that the distribution might  
2 adversely affect the ability of the insurer to fulfill its contractual  
3 obligations.

4 2. Any person who as an affiliate that controlled the insurer at the  
5 time the distributions were paid shall be liable up to the amount of  
6 distributions ~~he or she~~ THE PERSON received. Any person who was an affiliate  
7 that controlled the insurer at the time the distributions were declared shall  
8 be liable up to the amount of distributions ~~he or she~~ THE PERSON would have  
9 received if they had been paid immediately. If two persons are liable with  
10 respect to the same distributions, they are jointly and severally liable.

11 3. The maximum amount recoverable pursuant to this subsection shall be  
12 the amount needed in excess of all other available assets of the impaired  
13 insurer OR INSOLVENT INSURER to pay the contractual obligations of the  
14 impaired insurer OR INSOLVENT INSURER.

15 4. If any person liable pursuant to paragraph 2 is insolvent, all its  
16 affiliates that controlled it at the time the dividend was paid are jointly  
17 and severally liable for any resulting deficiency in the amount recovered  
18 from the insolvent affiliate.

19 F. The receiver, conservator, liquidator or statutory successor of an  
20 impaired insurer OR INSOLVENT INSURER is bound by a settlement of covered  
21 claims by the ~~board~~ FUND or a similar organization in another state.

22 Sec. 10. Section 20-694, Arizona Revised Statutes, is amended to read:  
23 20-694. Stay of proceedings; reopening default judgments

24 All proceedings in which the impaired insurer OR INSOLVENT INSURER or  
25 the impaired insurer's OR INSOLVENT INSURER'S insured is a party in any court  
26 in this state shall be stayed sixty days from the date an order of  
27 liquidation, rehabilitation or conservation is final to permit proper legal  
28 action by the board on any matters germane to its powers or duties. At the  
29 request of the board and on a showing of good cause, the court may lengthen  
30 the stay prescribed in this section. As to a judgment under any decision,  
31 order, verdict or finding based on default, the board may apply to have such  
32 judgment set aside by the same court that made such judgment and shall be  
33 permitted to defend against such suit on the merits.