

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

**CHAPTER 214**  
**HOUSE BILL 2546**

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

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

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

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

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

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

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

26 12. "PREMIUMS":

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

30 (b) DOES NOT INCLUDE:

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

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

41 13. "RESIDENT" MEANS A PERSON TO WHOM A CONTRACTUAL OBLIGATION IS OWED  
42 AND WHO RESIDES IN THIS STATE ON THE DATE OF ENTRY OF A COURT ORDER THAT  
43 DETERMINES A MEMBER INSURER TO BE AN IMPAIRED INSURER OR AN INSOLVENT  
44 INSURER. A PERSON MAY BE A RESIDENT OF ONLY ONE STATE, WHICH FOR A PERSON  
45 OTHER THAN A NATURAL PERSON SHALL BE ITS PRINCIPAL PLACE OF BUSINESS. A  
46 UNITED STATES CITIZEN WHO RESIDES IN A FOREIGN COUNTRY OR A UNITED STATES

1 TERRITORY, POSSESSION OR PROTECTORATE THAT DOES NOT HAVE A FUND SIMILAR TO  
2 THE FUND ESTABLISHED UNDER THIS ARTICLE SHALL BE DEEMED TO BE A RESIDENT OF  
3 THE STATE OF DOMICILE OF THE INSURER THAT ISSUED THE POLICY OR CONTRACT.

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

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

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

14 Sec. 2. Repeal

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

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

18 20-682. Coverage; limitations

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

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

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

28 (a) A RESIDENT.

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

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

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

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

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

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

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

43 (i) THE CONTRACT OWNER OF THE STRUCTURED SETTLEMENT ANNUITY IS A  
44 RESIDENT, OR THE CONTRACT OWNER OF THE STRUCTURED SETTLEMENT ANNUITY IS NOT A  
45 RESIDENT BUT THE INSURER THAT ISSUED THE STRUCTURED SETTLEMENT ANNUITY IS

1 DOMICILED IN THIS STATE, AND THE STATE IN WHICH THE CONTRACT OWNER RESIDES  
2 HAS A FUND SIMILAR TO THE FUND ESTABLISHED BY THIS ARTICLE.

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

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

13 C. THIS ARTICLE DOES NOT PROVIDE COVERAGE TO:

14 1. A PERSON WHO IS A PAYEE OR BENEFICIARY OF A CONTRACT OWNER WHO IS A  
15 RESIDENT OF THIS STATE IF THE PAYEE IS AFFORDED COVERAGE BY THE FUND OF  
16 ANOTHER STATE.

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

21 D. THIS ARTICLE DOES NOT PROVIDE COVERAGE FOR:

22 1. ANY POLICY OR CONTRACT, OR ANY PART OF ANY POLICY OR CONTRACT, NOT  
23 GUARANTEED BY THE INSURER OR UNDER WHICH THE RISK IS BORNE BY THE  
24 POLICYHOLDER OR CONTRACT OWNER.

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

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

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

40 (a) AVERAGED OVER THE PERIOD OF FOUR YEARS BEFORE THE DATE ON WHICH  
41 THE MEMBER INSURER BECOMES AN IMPAIRED INSURER OR INSOLVENT INSURER UNDER  
42 THIS ARTICLE, WHICHEVER IS EARLIER, EXCEEDS THE RATE OF INTEREST DETERMINED  
43 BY SUBTRACTING TWO PERCENTAGE POINTS FROM MOODY'S CORPORATE BOND YIELD  
44 AVERAGE AVERAGED FOR THAT SAME FOUR-YEAR PERIOD OR FOR A LESSER PERIOD IF THE  
45 POLICY OR CONTRACT WAS ISSUED LESS THAN FOUR YEARS BEFORE THE MEMBER INSURER

1 BECOMES AN IMPAIRED INSURER OR INSOLVENT INSURER UNDER THIS ARTICLE,  
2 WHICHEVER IS EARLIER.

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

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

13 (a) A MULTIPLE EMPLOYER WELFARE ARRANGEMENT AS DEFINED IN SECTION  
14 3(40) OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

15 (b) A MINIMUM PREMIUM GROUP INSURANCE PLAN.

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

17 (d) AN ADMINISTRATIVE SERVICES ONLY CONTRACT.

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

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

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

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

31 (a) CLAIMS BASED ON MARKETING MATERIALS.

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

35 (c) MISREPRESENTATIONS OF OR REGARDING POLICY BENEFITS.

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

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

40 10. A CONTRACTUAL AGREEMENT THAT ESTABLISHES THE MEMBER INSURER'S  
41 OBLIGATIONS TO PROVIDE A BOOK VALUE ACCOUNTING GUARANTY FOR DEFINED  
42 CONTRIBUTION BENEFIT PLAN PARTICIPANTS BY REFERENCE TO A PORTFOLIO OF ASSETS  
43 THAT IS OWNED BY THE BENEFIT PLAN OR ITS TRUSTEE, WHICH IN EACH CASE IS NOT  
44 AN AFFILIATE OF THE MEMBER INSURER.

45 11. AN UNALLOCATED ANNUITY CONTRACT.

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

15           13. A POLICY OR CONTRACT PROVIDING ANY HOSPITAL, MEDICAL, PRESCRIPTION  
16 DRUG OR OTHER HEALTH CARE BENEFITS PURSUANT TO 42 UNITED STATES CODE CHAPTER  
17 7, SUBCHAPTER XVIII, PART C OR PART D OR ANY APPLICABLE REGULATIONS.

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

20           1. THE CONTRACTUAL OBLIGATIONS FOR WHICH THE IMPAIRED INSURER OR  
21 INSOLVENT INSURER IS LIABLE OR WOULD HAVE BEEN LIABLE IF IT WERE NOT AN  
22 IMPAIRED INSURER OR INSOLVENT INSURER.

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

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

28           (b) IN DISABILITY INSURANCE BENEFITS:

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

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

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

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

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

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

44           1. AN AGGREGATE OF THREE HUNDRED THOUSAND DOLLARS IN BENEFITS WITH  
45 RESPECT TO ANY ONE INDIVIDUAL UNDER SUBSECTION E OF THIS SECTION EXCEPT WITH  
46 RESPECT TO BENEFITS FOR BASIC HOSPITAL, MEDICAL AND SURGICAL INSURANCE AND

1 MAJOR MEDICAL INSURANCE UNDER SUBSECTION E, PARAGRAPH 2, SUBDIVISION (b) OF  
2 THIS SECTION, IN WHICH CASE THE AGGREGATE LIABILITY OF THE FUND SHALL NOT  
3 EXCEED FIVE HUNDRED THOUSAND DOLLARS WITH RESPECT TO ANY ONE INDIVIDUAL.

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

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

17 Sec. 4. Section 20-685, Arizona Revised Statutes, is amended to read:  
18 20-685. Powers and duties of the fund

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

24 1. Guarantee, assume or reinsure, or cause to be guaranteed, assumed  
25 or reinsured, ANY OR all OF the policies OR CONTRACTS of the impaired  
26 insurer.

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

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

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

38 1. Guarantee, assume or reinsure, or cause to be guaranteed, assumed  
39 or reinsured, the ~~impaired insurer's covered~~ policies OR CONTRACTS OF THE  
40 INSOLVENT INSURER OR ASSURE PAYMENT OF THE CONTRACTUAL OBLIGATIONS OF THE  
41 INSOLVENT INSURER, AND ~~of residents.~~

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

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

2. PROVIDE BENEFITS AND COVERAGE AS FOLLOWS:

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

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

(ii) 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 NOT LESS THAN THIRTY DAYS, FROM THE DATE ON WHICH THE FUND BECOMES OBLIGATED WITH RESPECT TO THE POLICIES OR CONTRACTS.

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

(c) WITH RESPECT TO NONGROUP LIFE AND DISABILITY INSURANCE POLICIES AND ANNUITIES COVERED BY THE FUND, 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, SUBSTITUTE COVERAGE ON AN INDIVIDUAL BASIS IN ACCORDANCE WITH SUBDIVISION (d) OF THIS PARAGRAPH, 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 SUBSTITUTE COVERAGE UNDER SUBDIVISION (c) OF THIS PARAGRAPH:

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

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

(iii) THE FUND MAY REINSURE ANY ALTERNATIVE OR REISSUED POLICY.

(e) ANY ALTERNATIVE POLICY ADOPTED BY THE FUND IS SUBJECT TO APPROVAL BY THE DOMICILIARY INSURANCE COMMISSIONER AND THE COURT PRESIDING OVER THE DELINQUENCY PROCEEDING. THE FUND MAY ADOPT ALTERNATIVE POLICIES OF VARIOUS TYPES FOR FUTURE ISSUANCE WITHOUT REGARD TO ANY PARTICULAR IMPAIRMENT OR INSOLVENCY. ANY ALTERNATIVE POLICY SHALL:

(i) CONTAIN AT LEAST THE MINIMUM STATUTORY PROVISIONS REQUIRED IN THIS STATE AND PROVIDE BENEFITS THAT ARE REASONABLE IN RELATION TO THE PREMIUM

1 CHARGED. THE FUND SHALL SET THE PREMIUM IN ACCORDANCE WITH A TABLE OF RATES  
2 THAT THE FUND SHALL ADOPT. THE PREMIUM SHALL REFLECT THE AMOUNT OF INSURANCE  
3 TO BE PROVIDED AND THE AGE AND CLASS OF RISK OF EACH INSURED, BUT SHALL NOT  
4 REFLECT ANY CHANGES IN THE HEALTH OF THE INSURED AFTER THE ORIGINAL POLICY  
5 WAS LAST UNDERWRITTEN.

6 (ii) PROVIDE COVERAGE OF A TYPE SIMILAR TO THAT OF THE POLICY ISSUED  
7 BY THE IMPAIRED INSURER OR INSOLVENT INSURER, AS DETERMINED BY THE FUND.

8 (f) IF THE FUND ELECTS TO REISSUE TERMINATED COVERAGE AT A PREMIUM  
9 RATE DIFFERENT FROM THAT CHARGED UNDER THE TERMINATED POLICY, THE FUND SHALL  
10 SET THE PREMIUM IN ACCORDANCE WITH THE AMOUNT OF INSURANCE PROVIDED AND THE  
11 AGE AND CLASS OF RISK, SUBJECT TO APPROVAL OF THE DOMICILIARY INSURANCE  
12 COMMISSIONER AND THE COURT PRESIDING OVER THE DELINQUENCY PROCEEDING.

13 (g) THE FUND'S OBLIGATIONS WITH RESPECT TO COVERAGE UNDER ANY POLICY  
14 OF THE IMPAIRED INSURER OR INSOLVENT INSURER OR UNDER ANY REISSUED OR  
15 ALTERNATIVE POLICY SHALL CEASE ON THE DATE THE COVERAGE OR POLICY IS REPLACED  
16 BY ANOTHER SIMILAR POLICY BY THE POLICY OWNER, THE INSURED OR THE FUND.

17 (h) WHEN PROCEEDING UNDER THIS PARAGRAPH WITH RESPECT TO A POLICY OR  
18 CONTRACT CARRYING GUARANTEED MINIMUM INTEREST RATES, THE FUND SHALL ASSURE  
19 THE PAYMENT OR CREDITING OF A RATE OF INTEREST CONSISTENT WITH SUBDIVISION  
20 (c) OF THIS PARAGRAPH.

21 ~~C. If a domestic insurer is an impaired insurer under an order of~~  
22 ~~liquidation or rehabilitation, the board shall, subject to the approval of~~  
23 ~~the director:~~

24 ~~1. Guarantee, assume or reinsure, or cause to be guaranteed, assumed~~  
25 ~~or reinsured, the covered policies of the impaired insurer.~~

26 ~~2. Assure payment of the contractual obligations of the impaired~~  
27 ~~insurer.~~

28 ~~3. Provide such monies, pledges, notes, guarantees or other means as~~  
29 ~~are reasonably necessary to discharge such duties. If the board fails to act~~  
30 ~~within a reasonable period of time, the director shall have the powers and~~  
31 ~~duties of the board prescribed pursuant to this article with respect to such~~  
32 ~~domestic impaired insurer.~~

33 ~~D. If a foreign or alien insurer is an impaired insurer under an order~~  
34 ~~of liquidation, rehabilitation or conservation, the board shall, subject to~~  
35 ~~the approval of the director:~~

36 ~~1. Guarantee, assume or reinsure, or cause to be guaranteed, assumed~~  
37 ~~or reinsured, the covered policies of residents.~~

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

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

45 ~~E. In carrying out its duties under subsections C and D of this~~  
46 ~~section, the board may request that there be imposed policy or contract~~

1 ~~liens, moratoriums on payments or other similar means. Such liens,~~  
2 ~~moratoriums or similar means may be imposed if the director:~~

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

9 ~~2. Approves the specific policy liens, contract liens, moratoriums or~~  
10 ~~similar means to be used. Before being obligated pursuant to subsections C~~  
11 ~~and D of this section the board may request that there be imposed temporary~~  
12 ~~moratoriums or liens on payments of cash values and policy loans and such~~  
13 ~~temporary moratoriums and liens may be imposed if they are approved by the~~  
14 ~~director.~~

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

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

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

34 ~~I. F.~~ Any persons receiving benefits PURSUANT TO THIS ARTICLE shall  
35 be deemed to have assigned their rights under, AND ANY CAUSES OF ACTION  
36 AGAINST ANY PERSON FOR LOSSES ARISING UNDER, RESULTING FROM OR OTHERWISE  
37 RELATING TO, the COVERED policy OR CONTRACT to the ~~board~~ FUND to the extent  
38 of the benefits received whether the benefits are payments of contractual  
39 obligations, ~~or~~ continuation of coverage OR PROVISION OF SUBSTITUTE OR  
40 ALTERNATIVE COVERAGES. The ~~board~~ FUND may require an assignment to the ~~board~~  
41 FUND of such rights by any payee, policy or contract owner, beneficiary,  
42 insured or annuitant as a condition precedent to the receipt of any rights or  
43 benefits conferred ~~upon~~ ON such person PURSUANT TO THIS ARTICLE. The ~~board~~  
44 SUBROGATION RIGHTS OF THE FUND UNDER THIS SUBSECTION shall ~~be subrogated to~~  
45 ~~such rights~~ HAVE THE SAME PRIORITY against the assets of any impaired insurer  
46 OR INSOLVENT INSURER AS THAT POSSESSED BY THE PERSON WHO IS ENTITLED TO

1 RECEIVE THE BENEFITS UNDER THIS ARTICLE. THE FUND SHALL HAVE ALL COMMON LAW  
2 RIGHTS OF SUBROGATION AND ANY OTHER EQUITABLE OR LEGAL REMEDY THAT WOULD HAVE  
3 BEEN AVAILABLE TO THE IMPAIRED INSURER OR INSOLVENT INSURER OR OWNER,  
4 BENEFICIARY OR PAYEE OF A POLICY OR CONTRACT WITH RESPECT TO THE POLICY OR  
5 CONTRACT. IF THE PRECEDING PROVISIONS OF THIS SUBSECTION ARE INEFFECTIVE  
6 WITH RESPECT TO ANY PERSON OR CLAIM FOR ANY REASON, THE AMOUNT PAYABLE BY THE  
7 FUND WITH RESPECT TO THE RELATED COVERED OBLIGATIONS SHALL BE REDUCED BY THE  
8 AMOUNT ATTRIBUTABLE TO THE POLICIES, OR ANY PART OF THE POLICIES, COVERED BY  
9 THE FUND THAT IS REALIZED BY ANY OTHER PERSON WITH RESPECT TO THE PERSON OR  
10 CLAIM. IF THE FUND HAS PROVIDED BENEFITS WITH RESPECT TO A COVERED  
11 OBLIGATION AND A PERSON RECOVERS AMOUNTS AS TO WHICH THE FUND HAS RIGHTS  
12 UNDER THIS SUBSECTION, THE PERSON SHALL PAY TO THE FUND THE PART OF THE  
13 RECOVERY ATTRIBUTABLE TO THE POLICIES, OR ANY PART OF THE POLICIES, COVERED  
14 BY THE FUND.

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

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

30 1. Enter into such contracts as are necessary or proper to carry out  
31 the provisions and purposes of this article.

32 2. Sue and be sued, including taking any legal actions that are  
33 necessary and proper for recovery of any unpaid assessments pursuant to  
34 section 20-686.

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

39 4. Employ and retain such persons as are necessary to handle the  
40 financial transactions of the fund and perform such other functions as become  
41 necessary or proper.

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

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

4           ~~6-~~ 7. Take such legal action as may be necessary to avoid payment of  
5 improper claims.

6           ~~7-~~ 8. Exercise, for the purposes of this article and to the extent  
7 approved by the director, the powers of a domestic life and disability  
8 insurer. In no case may the ~~board~~ FUND issue insurance policies or annuity  
9 contracts other than those issued to perform the contractual obligations of  
10 the impaired insurer OR INSOLVENT INSURER.

11           I. AT ANY TIME WITHIN ONE HUNDRED EIGHTY DAYS AFTER THE DATE OF THE  
12 ORDER OF LIQUIDATION, THE FUND, BY WRITTEN NOTICE TO THE AFFECTED REINSURERS,  
13 MAY ELECT TO ASSUME THE RIGHTS AND OBLIGATIONS OF A CEDING MEMBER INSURER  
14 THAT RELATE TO POLICIES OR ANNUITIES COVERED IN WHOLE OR IN PART BY THE FUND  
15 UNDER ANY ONE OR MORE REINSURANCE CONTRACTS ENTERED INTO BY THE INSOLVENT  
16 INSURER, SUBJECT TO THE FOLLOWING:

17           1. THE ASSUMPTION SHALL BE EFFECTIVE AS OF THE DATE OF THE ORDER OF  
18 LIQUIDATION.

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

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

24           (b) NOTICES OF ANY DEFAULTS UNDER THE REINSURANCE CONTRACTS OR ANY  
25 KNOWN EVENT OR CONDITION THAT MAY PRESENTLY OR SUBSEQUENTLY CONSTITUTE A  
26 DEFAULT UNDER THE REINSURANCE CONTRACTS.

27           3. WITH RESPECT TO REINSURANCE CONTRACTS ASSUMED BY THE FUND UNDER  
28 THIS SUBSECTION:

29           (a) THE FUND SHALL BE RESPONSIBLE FOR ALL UNPAID PREMIUMS DUE UNDER  
30 THE REINSURANCE CONTRACTS FOR PERIODS BOTH BEFORE AND AFTER THE DATE OF THE  
31 ORDER OF LIQUIDATION, AND FOR PERFORMANCE OF ALL OTHER OBLIGATIONS AFTER THE  
32 DATE OF THE ORDER OF LIQUIDATION THAT RELATE TO POLICIES OR ANNUITIES COVERED  
33 IN WHOLE OR IN PART BY THE FUND. THE FUND MAY CHARGE POLICIES OR ANNUITIES  
34 COVERED IN PART BY THE FUND, THROUGH REASONABLE ALLOCATION METHODS, FOR THE  
35 COSTS FOR REINSURANCE IN EXCESS OF THE FUND'S OBLIGATIONS AND SHALL PROVIDE  
36 NOTICE AND AN ACCOUNTING OF THESE CHARGES TO THE RECEIVER.

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

43           (i) THE AMOUNT RECEIVED BY THE FUND.

44           (ii) THE EXCESS OF THE AMOUNT RECEIVED BY THE FUND OVER THE AMOUNT  
45 EQUAL TO THE BENEFITS PAID BY THE FUND ON ACCOUNT OF THE POLICY OR ANNUITY

1 LESS THE RETENTION OF THE IMPAIRED INSURER OR INSOLVENT INSURER APPLICABLE TO  
2 THE LOSS OR EVENT.

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

17 (d) IF THE FUND OR RECEIVER, WITHIN SIXTY DAYS AFTER THE ELECTION,  
18 PAYS THE UNPAID PREMIUMS DUE FOR PERIODS BOTH BEFORE AND AFTER THE ELECTION  
19 DATE THAT RELATE TO POLICIES AND ANNUITIES COVERED IN WHOLE OR IN PART BY THE  
20 FUND, THE REINSURER SHALL NOT BE ENTITLED TO TERMINATE THE REINSURANCE  
21 CONTRACTS FOR FAILURE TO PAY PREMIUM TO THE EXTENT THE REINSURANCE CONTRACTS  
22 RELATE TO POLICIES OR ANNUITIES COVERED IN WHOLE OR IN PART BY THE FUND, AND  
23 SHALL NOT BE ENTITLED TO SET OFF ANY UNPAID AMOUNTS DUE UNDER OTHER CONTRACTS  
24 OR DUE FROM PARTIES OTHER THAN THE FUND, AGAINST AMOUNTS PAYABLE TO THE FUND.

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

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

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

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

40 6. IF THE FUND TRANSFERS POLICIES OR ANNUITIES, OR COVERED OBLIGATIONS  
41 WITH RESPECT TO POLICIES OR ANNUITIES, TO AN ASSUMING INSURER, REINSURANCE ON  
42 THE TRANSFERRED POLICIES OR ANNUITIES MAY ALSO BE TRANSFERRED BY THE FUND, IN  
43 THE CASE OF CONTRACTS ASSUMED UNDER PARAGRAPH 3 OF THIS SUBSECTION, SUBJECT  
44 TO THE FOLLOWING:

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

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

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

9 J. SUBSECTION I OF THIS SECTION SUPERSEDES ANY PROVISION OF STATE LAW  
10 OR OF ANY AFFECTED REINSURANCE CONTRACT THAT PROVIDES FOR OR REQUIRES ANY  
11 PAYMENT OF REINSURANCE PROCEEDS, ON ACCOUNT OF LOSSES OR EVENTS THAT OCCUR IN  
12 PERIODS AFTER THE DATE OF THE ORDER OF LIQUIDATION, TO THE RECEIVER OF THE  
13 INSOLVENT INSURER OR ANY OTHER PERSON. THE RECEIVER SHALL REMAIN ENTITLED TO  
14 ANY AMOUNTS PAYABLE BY THE REINSURER UNDER THE REINSURANCE CONTRACTS WITH  
15 RESPECT TO LOSSES OR EVENTS THAT OCCUR IN PERIODS BEFORE THE DATE OF THE  
16 ORDER OF LIQUIDATION, SUBJECT TO ANY APPLICABLE SET-OFF PROVISIONS.

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

19 1. ALTER OR MODIFY THE TERMS AND CONDITIONS OF ANY REINSURANCE  
20 CONTRACT.

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

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

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

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

28 L. IN CARRYING OUT ITS DUTIES IN CONNECTION WITH GUARANTEEING,  
29 ASSUMING OR REINSURING POLICIES OR CONTRACTS UNDER SUBSECTION A OR B OF THIS  
30 SECTION, THE FUND, SUBJECT TO APPROVAL OF THE COURT PRESIDING OVER THE  
31 DELINQUENCY PROCEEDING, MAY ISSUE SUBSTITUTE COVERAGE FOR A POLICY OR  
32 CONTRACT THAT PROVIDES AN INTEREST RATE, CREDITING RATE OR SIMILAR FACTOR  
33 DETERMINED BY USE OF AN INDEX OR OTHER EXTERNAL REFERENCE STATED IN THE  
34 POLICY OR CONTRACT EMPLOYED IN CALCULATING RETURNS OR CHANGES IN VALUE BY  
35 ISSUING AN ALTERNATIVE POLICY OR CONTRACT IN ACCORDANCE WITH THE FOLLOWING  
36 PROVISIONS:

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

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

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

1 M. IF THE FUND OFFERS TO PROVIDE THE BENEFITS OF THIS ARTICLE TO A  
2 COVERED PERSON UNDER A PLAN OR ARRANGEMENT THAT FULFILLS THE FUND'S  
3 OBLIGATIONS UNDER THIS ARTICLE, THE PERSON SHALL NOT BE ENTITLED TO BENEFITS  
4 FROM THE FUND IN ADDITION OR AS AN ALTERNATIVE TO THOSE OFFERED UNDER THE  
5 PLAN OR ARRANGEMENT.

6 N. VENUE IN A SUIT AGAINST THE FUND ARISING UNDER THIS ARTICLE SHALL  
7 BE IN THE SUPERIOR COURT OF MARICOPA COUNTY. THE FUND SHALL NOT BE REQUIRED  
8 TO GIVE A BOND IN AN APPEAL THAT RELATES TO A CAUSE OF ACTION ARISING UNDER  
9 THIS ARTICLE.

10 Sec. 5. Section 20-686, Arizona Revised Statutes, is amended to read:  
11 20-686. Assessments

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

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

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

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

28 C. The amount of assessment for each account shall be determined as  
29 follows:

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

35 2. Class A and class B assessments against member insurers for each  
36 account shall be in the proportion that the premiums received on business in  
37 this state by each assessed member insurer on policies covered by each  
38 account bear to such premiums received on business in this state by all  
39 assessed member insurers. ~~, except that with respect to residents of other  
40 states covered by the fund, class B assessments for each account shall be  
41 made separately for each state in which the impaired domestic insurer was  
42 authorized to transact insurance at any time, in the proportion that the  
43 premiums received on business in that state by the impaired insurer on  
44 policies covered by the account bear to the premiums in all the states by the  
45 impaired insurer. The assessments against member insurers shall be in the  
46 proportion that the premiums received on business in each state by each~~

1 ~~assessed member insurer on policies covered by each account bear to the~~  
2 ~~premiums received on business in each state by all assessed member insurers.~~

3 3. Assessments for funds to meet the requirements of the ~~board~~ FUND  
4 with respect to an impaired insurer OR INSOLVENT INSURER shall not be made  
5 until necessary to implement the purposes of this article. Classification of  
6 assessments as prescribed pursuant to subsection B of this section and  
7 computation of assessments pursuant to this subsection shall be made with a  
8 reasonable degree of accuracy, recognizing that exact determinations may not  
9 always be possible.

10 4. THE TOTAL OF ALL ASSESSMENTS ON A MEMBER INSURER FOR EACH ACCOUNT  
11 SHALL NOT IN ANY ONE CALENDAR YEAR EXCEED TWO PER CENT OF THAT MEMBER  
12 INSURER'S AVERAGE ANNUAL PREMIUMS RECEIVED IN THIS STATE ON THE POLICIES AND  
13 CONTRACTS COVERED BY THE ACCOUNT DURING THE THREE CALENDAR YEARS PRECEDING  
14 THE YEAR IN WHICH THE INSURER BECAME AN IMPAIRED INSURER OR INSOLVENT  
15 INSURER. IF TWO OR MORE ASSESSMENTS ARE AUTHORIZED IN ONE CALENDAR YEAR WITH  
16 RESPECT TO INSURERS THAT BECOME IMPAIRED OR INSOLVENT IN DIFFERENT CALENDAR  
17 YEARS, THE AVERAGE ANNUAL PREMIUMS FOR PURPOSES OF THE AGGREGATE ASSESSMENT  
18 PERCENTAGE LIMITATION SHALL BE LIMITED TO THE GREATER OF THE THREE YEAR  
19 AVERAGE ANNUAL PREMIUMS FOR THE APPLICABLE ACCOUNT AS CALCULATED PURSUANT TO  
20 THIS SUBSECTION.

21 D. The ~~board~~ FUND may abate or defer, in whole or in part, the  
22 assessment of a member insurer if, in the opinion of the ~~board~~ FUND, payment  
23 of the assessment would endanger the ability of the member insurer to fulfill  
24 its contractual obligations. ~~The total of all assessments upon a member~~  
25 ~~insurer for each account shall not in any one calendar year exceed two per~~  
26 ~~cent of such insurer premiums in this state on the policies covered by the~~  
27 ~~account.~~

28 E. If an assessment against a member insurer is abated or deferred, in  
29 whole or in part, because of the limitations set forth in subsection D of  
30 this section, the amount by which such assessment is abated or deferred ~~shall~~  
31 MAY be assessed against the other member insurers in a manner consistent with  
32 the basis for assessments set forth in this section. If the maximum  
33 assessment, together with the other assets of the fund in either account,  
34 does not provide in any one year in either account an amount sufficient to  
35 carry out the responsibilities of the fund, the necessary additional monies  
36 shall be assessed as soon thereafter as permitted by this article.

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

45 G. Any member insurer may, in determining its premium rates and  
46 policyowner dividends as to any kind of insurance within the scope of this

1 article, MAY consider the amount reasonably necessary to meet its assessment  
2 obligations.

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

9 Sec. 6. Section 20-687, Arizona Revised Statutes, is amended to read:  
10 20-687. Plan of operation

11 A. The board shall submit to the director a plan of operation and any  
12 amendments necessary to assure the fair, reasonable and equitable  
13 administration of the fund. The plan of operation and any amendments shall  
14 become effective ~~upon~~ ON approval in writing by the director. If the board  
15 fails to submit a plan of operation or if at any time the board fails to  
16 submit suitable amendments to the plan, the director shall adopt any plan or  
17 amendment that is necessary or advisable to effectuate the provisions of this  
18 article and the plan or amendment shall continue in force until modified by  
19 the director or superseded by a plan submitted by the board and approved by  
20 the director.

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

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

24 1. Establish procedures for handling the assets of the fund and claims  
25 against the fund.

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

28 3. Establish regular places and times for meetings of the board of  
29 directors.

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

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

34 6. Establish any additional procedures for assessments required  
35 pursuant to section 20-686.

36 7. Contain additional provisions necessary for the execution of the  
37 powers and duties of the board.

38 D. The plan of operation may provide that any or all powers and duties  
39 of the board, except those in section 20-685, subsection ~~K~~ H, paragraph 3  
40 and section 20-686, are delegated to any corporation, association or other  
41 organization ~~which~~ THAT performs or will perform functions similar to those  
42 of this fund in two or more states. Such a corporation, association or  
43 organization shall be reimbursed for any payments made on behalf of the fund  
44 and shall be paid for its performance of any function of the fund. A  
45 delegation pursuant to this subsection shall take effect only with the  
46 approval of both the board of directors and the director and may be made only

1 to a corporation, association or organization ~~which~~ THAT extends protection  
2 not substantially less favorable and effective than that provided by this  
3 article.

4 Sec. 7. Section 20-688, Arizona Revised Statutes, is amended to read:  
5 20-688. Duties and powers of the director

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

8 1. Notify the board of directors of the existence of an impaired  
9 insurer **OR INSOLVENT INSURER** not later than three days after a determination  
10 of impairment or **INSOLVENCY OR** the director receives notice of impairment **OR**  
11 **INSOLVENCY**.

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

14 3. When an impairment is declared and the amount of the impairment is  
15 determined, serve a demand ~~upon~~ **ON** the impaired insurer to make good the  
16 impairment within a reasonable time. Notice to the impaired insurer shall  
17 constitute notice to its shareholders. The failure of the insurer to  
18 promptly comply with such demand shall not excuse the board from the  
19 performance of its duties pursuant to this article.

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

28 C. Any action of the board of directors may be appealed to the  
29 director by any member insurer within thirty days. Except as provided in  
30 section 41-1092.08, subsection H, any final action or order of the director  
31 is subject to judicial review pursuant to title 12, chapter 7, article 6.

32 D. The liquidator, rehabilitator or conservator of any impaired  
33 insurer **OR INSOLVENT INSURER** may notify all interested persons of the effect  
34 of this article.

35 Sec. 8. Section 20-689, Arizona Revised Statutes, is amended to read:  
36 20-689. Prevention of impairments

37 To aid in the detection and prevention of insurer impairments **AND**  
38 **INSOLVENCIES**:

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

42 2. The board of directors ~~may~~, ~~upon~~ **ON** majority vote, **MAY** request that  
43 the director order an examination of any member insurer which the board in  
44 good faith believes may be unable or potentially unable to fulfill its  
45 contractual obligations. The director may conduct such examination. The  
46 examination may be conducted as a national association of insurance

1 commissioners examination or may be conducted by such persons as the director  
2 designates. The cost of such examination shall be paid by the fund and the  
3 examination report shall be treated as are other examination reports. ~~In no~~  
4 ~~event shall such~~ THE examination report SHALL NOT be released to the board of  
5 directors of the fund ~~prior to~~ BEFORE its release to the public, but this  
6 shall not excuse the director from ~~his or her~~ THE obligation to comply with  
7 paragraph 3. The director shall notify the board of directors when the  
8 examination is completed. The request for an examination shall be kept on  
9 file by the director but it shall not be open to the public and shall be  
10 released only if the examination discloses that the examined insurer is  
11 unable or potentially unable to meet its contractual obligations.

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

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

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

23 6. The board of directors ~~shall~~, at the conclusion of any insurer  
24 impairment OR INSOLVENCY in which the fund carried out its duties, SHALL  
25 prepare a report on the history and causes of such impairment OR INSOLVENCY  
26 based on the information available to the fund and submit such report to the  
27 director.

28 Sec. 9. Section 20-690, Arizona Revised Statutes, is amended to read:  
29 20-690. Financial provisions

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

33 B. Records shall be kept of all negotiations and meetings in which the  
34 fund or its representatives are involved to discuss the activities of the  
35 fund in carrying out its powers and duties. Records of such negotiations or  
36 meetings shall be made public only ~~upon~~ ON the termination of a liquidation,  
37 rehabilitation or conservation proceeding involving the impaired insurer ~~upon~~  
38 OR INSOLVENT INSURER, ON the termination of the impairment OR INSOLVENCY of  
39 the insurer or ~~upon~~ ON the order of a court of competent jurisdiction.

40 C. For the purpose of carrying out its obligations pursuant to this  
41 article, the board shall be deemed to be a creditor of the impaired insurer  
42 OR INSOLVENT INSURER to the extent of assets attributable to policies reduced  
43 by any amounts to which the board is entitled as subrogee. All assets of the  
44 impaired insurer OR INSOLVENT INSURER attributable to policies shall be used  
45 to continue all policies and pay all contractual obligations of the impaired  
46 insurer OR INSOLVENT INSURER. As used in this subsection, "assets

1 attributable to policies" means that proportion of the assets which the  
2 reserves that should have been established for such policies bear to the  
3 reserve that should have been established for all policies of insurance  
4 written by the impaired insurer OR INSOLVENT INSURER.

5 D. ~~Prior to~~ BEFORE the termination of any liquidation, rehabilitation  
6 or conservation proceeding, the court may take into consideration the  
7 contributions of the respective parties including the board, the shareholders  
8 and policyowners of the impaired insurer OR INSOLVENT INSURER and any other  
9 party with a bona fide interest in making an equitable distribution of the  
10 ownership rights of such impaired insurer OR INSOLVENT INSURER. In such a  
11 determination, consideration shall be given to the welfare of the  
12 policyholders of the continuing or successor insurer. No distribution to  
13 stockholders of the assets of an impaired insurer OR INSOLVENT INSURER may be  
14 made until and unless the total amount of ~~assessment levied by the board~~  
15 VALID CLAIMS OF THE FUND WITH INTEREST THEREON FOR MONIES EXPENDED IN  
16 CARRYING OUT ITS POWERS AND DUTIES UNDER SECTION 20-685 with respect to such  
17 insurer is fully recovered by the fund.

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

25 1. No such dividend shall be recoverable if the insurer shows that  
26 when paid the distribution was lawful and reasonable and that the insurer did  
27 not know and could not reasonably have known that the distribution might  
28 adversely affect the ability of the insurer to fulfill its contractual  
29 obligations.

30 2. Any person who as an affiliate that controlled the insurer at the  
31 time the distributions were paid shall be liable up to the amount of  
32 distributions ~~he or she~~ THE PERSON received. Any person who was an affiliate  
33 that controlled the insurer at the time the distributions were declared shall  
34 be liable up to the amount of distributions ~~he or she~~ THE PERSON would have  
35 received if they had been paid immediately. If two persons are liable with  
36 respect to the same distributions, they are jointly and severally liable.

37 3. The maximum amount recoverable pursuant to this subsection shall be  
38 the amount needed in excess of all other available assets of the impaired  
39 insurer OR INSOLVENT INSURER to pay the contractual obligations of the  
40 impaired insurer OR INSOLVENT INSURER.

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

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

4 Sec. 10. Section 20-694, Arizona Revised Statutes, is amended to read:  
5 20-694. Stay of proceedings; reopening default judgments

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

APPROVED BY THE GOVERNOR JUNE 19, 2013.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JUNE 19, 2013.