

State of Arizona
House of Representatives
Fifty-third Legislature
Second Regular Session
2018

HOUSE BILL 2124

AN ACT

AMENDING SECTIONS 20-629, 20-681, 20-682, 20-683, 20-684, 20-685, 20-686, 20-688, 20-689, 20-690, 20-692 AND 20-1053, ARIZONA REVISED STATUTES; REPEALING SECTION 20-1056, ARIZONA REVISED STATUTES; AMENDING SECTIONS 20-1066 AND 20-1068, ARIZONA REVISED STATUTES; REPEALING SECTION 20-1069, ARIZONA REVISED STATUTES; AMENDING SECTION 20-1074, ARIZONA REVISED STATUTES; RELATING TO INSURANCE INSOLVENCIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 20-629, Arizona Revised Statutes, is amended to
3 read:

4 20-629. Priority of distribution; definition

5 A. In a delinquency proceeding against an insurer domiciled in this
6 state, the priority of distribution of claims from the general assets of
7 the insurer shall be determined pursuant to this section. Every claim in
8 each class shall be paid in full or adequate funds shall be reserved for
9 the payment before the members of the next class may receive any payment.
10 Subclasses may not be established within any class. The order of
11 distribution is as follows:

12 1. The costs and expenses of administration incurred in connection
13 with the delinquency proceedings ~~and, in a delinquency proceeding of a~~
14 ~~health care services organization domiciled in this state, claims of~~
15 ~~providers for covered services rendered pursuant to section 20-1069,~~
16 ~~subsection A, after the organization is declared insolvent to the extent~~
17 ~~those claims are not fully funded by the plan for the risk of insolvency.~~

18 2. Claims of the Arizona property and casualty insurance guaranty
19 fund established pursuant to section 20-662 and the life and disability
20 insurance guaranty fund established pursuant to section 20-683 or a
21 similar organization in another state to the extent the organization
22 provides substantially similar protection with respect to the same kinds
23 of insurance, including claims for unallocated loss adjustment expenses
24 and general administrative costs and expenses.

25 3. Claims under insurance policies and contracts and guaranteed
26 investment contracts except reinsurance, including claims under
27 nonassessable policies for unearned premiums, claims under annuity
28 contracts, ~~third party~~ THIRD-PARTY claims against insureds who are covered
29 under liability insurance policies and, in a delinquency proceeding of a
30 health care services organization that is domiciled in this state, claims
31 of enrollees and enrollees' beneficiaries ~~including~~ AND any claim ~~that an~~
32 ~~enrollee may have because the enrollee is liable to~~ OF a provider for
33 services that are provided pursuant to and covered by ~~the enrollee's~~ A
34 health care plan ~~with the health care services organization.~~

35 4. Claims of the federal government, except those claims under
36 paragraph 3 of this subsection and claims that are treated as secured
37 claims.

38 5. Claims for compensation actually owing to employees of the
39 insurer, other than its officers, for services rendered to the insurer.
40 This priority is in lieu of any other similar priority authorized by law
41 as to wages or compensation of employees.

42 6. Claims of any state or local government, except those claims
43 under paragraph 3 of this subsection and claims that are treated as
44 secured claims.

~~7. In a delinquency proceeding of a health care services organization that is domiciled in this state, claims of providers who are required by law or agreement to hold enrollees harmless from liability for services that are provided pursuant to and covered by a health care plan.~~

~~8.~~ 7. Claims of other general creditors that do not fall within any other priority under this section.

~~9.~~ 8. Claims that are filed after the date specified for filing proofs of claim pursuant to section 20-640.

~~10.~~ 9. Claims of surplus note or certificate of contribution holders or other similar obligations and for premium refunds on assessable policies.

~~11.~~ 10. Claims of shareholders, members or other owners in that capacity.

B. In a delinquency proceeding against an insurer domiciled in this state, the priority of claims against the general assets of the insurer shall be determined pursuant to this section regardless of where the claimant resides or where the assets are located.

C. In a delinquency proceeding against an insurer domiciled in a reciprocal state, claims owing to residents of this state shall be preferred if like claims are preferred by the laws of that state.

D. The owners of special deposit claims against an insurer for which a receiver is appointed in this or any other state shall be given priority against their several special deposits, including without limitation assets comprising the applicable separate account, in accordance with the provisions of the statutes governing the creation and maintenance of such deposits. If there is a deficiency in any such deposit so that the claims secured are not fully discharged, the claimants may share in the general assets, but such sharing shall be deferred until general creditors, all other persons who are entitled to priority under subsection A, paragraph 3 of this section, and also claimants against other special deposits who have received smaller percentages from their respective special deposits have been paid percentages of their claims equal to the percentage paid from the special deposit, subject to the applicable terms of any variable life contract, variable annuity contract or guaranteed investment contract that is supported by a separate account to the extent it is guaranteed by the general account. This subsection shall not be applied in a manner that would reduce the value of any general account guaranty.

E. The owner of a secured claim against an insurer for which a receiver has been appointed in this or any other state may surrender the owner's security and file the owner's claim as a general creditor, or the claim may be discharged by resort to the security, in which case the deficiency, if any, shall be treated as a claim against the general assets of the insurer on the same basis as claims of unsecured creditors. If the amount of the deficiency has been adjudicated in ancillary proceedings as

1 provided in this article or if it has been adjudicated by a court of
2 competent jurisdiction in proceedings in which the domiciliary receiver
3 has had notice and opportunity to be heard, such amounts shall be
4 conclusive. Otherwise the amount shall be determined in the delinquency
5 proceeding in the domiciliary state.

6 F. For the purposes of this section, "health care plan" has the
7 same meaning prescribed in section 20-1051.

8 Sec. 2. Section 20-681, Arizona Revised Statutes, is amended to
9 read:

10 20-681. Definitions

11 In this article, unless the context otherwise requires:

12 1. "Account" means any of the three accounts established pursuant
13 to section 20-683.

14 2. "Authorized" means, when used in the context of assessments
15 pursuant to this article, an assessment for a specified amount approved by
16 the board of directors to be called immediately or in the future from
17 member insurers.

18 3. "Called" means, when used in the context of assessments pursuant
19 to this article, an authorized assessment for which a notice has been
20 issued by the fund to member insurers requiring payment within the time
21 set forth in the notice.

22 4. "Contractual obligation" means an obligation under a covered
23 policy or contract for which coverage is provided pursuant to this
24 article.

25 5. "Covered **CONTRACT**" OR "**COVERED** policy" means a policy or
26 contract or part of a policy or contract for which coverage is provided
27 pursuant to this article.

28 6. "Fund" means the life and disability insurance guaranty fund.

29 7. "**HEALTH BENEFIT PLAN**":

30 (a) **MEANS A HOSPITAL OR MEDICAL EXPENSE POLICY OR CERTIFICATE, A**
31 **HEALTH CARE SERVICES ORGANIZATION SUBSCRIBER CONTRACT OR ANY OTHER SIMILAR**
32 **HEALTH CONTRACT.**

33 (b) **DOES NOT INCLUDE:**

34 (i) **ACCIDENT ONLY INSURANCE.**

35 (ii) **CREDIT INSURANCE.**

36 (iii) **DENTAL ONLY INSURANCE.**

37 (iv) **VISION ONLY INSURANCE.**

38 (v) **MEDICARE SUPPLEMENT INSURANCE.**

39 (vi) **BENEFITS FOR LONG-TERM CARE, HOME HEALTH CARE OR**
40 **COMMUNITY-BASED CARE, OR ANY COMBINATION THEREOF.**

41 (vii) **DISABILITY INCOME INSURANCE.**

42 (viii) **COVERAGE FOR ON-SITE MEDICAL CLINICS.**

43 (ix) **SPECIFIED DISEASE, HOSPITAL CONFINEMENT INDEMNITY OR LIMITED**
44 **BENEFIT HEALTH INSURANCE IF THE TYPES OF COVERAGE DO NOT PROVIDE**

1 COORDINATION OF BENEFITS AND ARE PROVIDED UNDER SEPARATE POLICIES OR
2 CERTIFICATES.

3 ~~7-~~ 8. "Impaired insurer" means a member insurer that is not an
4 insolvent insurer and that is placed under an order of rehabilitation or
5 conservation by a court of competent jurisdiction.

6 ~~8-~~ 9. "Insolvent insurer" means a member insurer that is placed
7 under an order of liquidation with a finding of insolvency by a court of
8 competent jurisdiction.

9 ~~9-~~ 10. "Member insurer" means an insurer OR HEALTH CARE SERVICES
10 ORGANIZATION that holds a certificate of authority to transact in this
11 state any kind of insurance OR HEALTH CARE SERVICES ORGANIZATION BUSINESS
12 to which this article applies and includes an insurer OR HEALTH CARE
13 SERVICES ORGANIZATION whose license or certificate of authority in this
14 state may have been suspended, revoked, not renewed or voluntarily
15 withdrawn. Member insurer does not include:

16 (a) A fraternal benefit society licensed under chapter 4, article 4
17 of this title.

18 (b) A hospital, medical, dental or optometric service corporation
19 licensed under chapter 4, article 3 of this title.

20 (c) A prepaid dental plan organization licensed under chapter 4,
21 article 7 of this title.

22 ~~(d) A health care services organization licensed under chapter 4,~~
23 ~~article 9 of this title.~~

24 ~~(e)~~ (d) A mandatory state pooling plan.

25 ~~(f)~~ (e) A mutual assessment company or other person that operates
26 on an assessment basis.

27 ~~(g)~~ (f) A reciprocal insurance exchange licensed under chapter 4,
28 article 2 of this title.

29 ~~(h)~~ (g) An entity that is similar to any of the entities described
30 in this paragraph.

31 ~~10-~~ 11. "Moody's corporate bond yield average" means the monthly
32 average corporate bond yield as published by Moody's investors service,
33 incorporated, or any successor entity.

34 ~~11-~~ 12. "Owner" ~~means~~ AND "POLICY HOLDER" MEAN, when used in
35 reference to a policy or contract, the person identified as the legal
36 owner under the terms of the policy or contract or otherwise vested with
37 legal title to the policy or contract through a valid assignment that is
38 completed in accordance with the terms of the policy or contract and that
39 is properly recorded as the owner on the MEMBER insurer's books. Owner
40 ~~does~~ AND POLICY HOLDER DO not include a person with a mere beneficial
41 interest in a policy or contract.

42 ~~12-~~ 13. "Premiums":

43 (a) Means amounts or considerations by whatever name called that
44 are received on covered policies or contracts less returned premiums,
45 considerations and deposits and less dividends and experience credits.

1 (b) Does not include:

2 (i) Amounts or consideration received for policies or contracts or
3 for parts of policies or contracts for which coverage is not provided
4 under section 20-682, subsection C, except that assessable premium shall
5 not be reduced under section 20-682, subsection D, paragraph 4, relating
6 to interest limitations, and section 20-682, subsection E, paragraph 2,
7 relating to limitations with respect to one individual, one participant
8 and one POLICY OR contract owner.

9 (ii) Amounts in excess of five million dollars with respect to
10 multiple nongroup policies of life insurance owned by one owner,
11 regardless of the number of policies or contracts held by the owner.

12 ~~13.~~ 14. "Resident" means a person to whom a contractual obligation
13 is owed and who resides in this state on the date of entry of a court
14 order that determines a member insurer to be an impaired insurer or an
15 insolvent insurer. A person may be a resident of only one state, which
16 for a person other than a natural person shall be its principal place of
17 business. A United States citizen who resides in a foreign country or a
18 United States territory, possession or protectorate that does not have a
19 fund similar to the fund established under this article shall be deemed to
20 be a resident of the state of domicile of the MEMBER insurer that issued
21 the policy or contract.

22 ~~14.~~ 15. "Structured settlement annuity" means an annuity purchased
23 in order to fund periodic payments for a plaintiff or other claimant in
24 payment for or with respect to personal injury suffered by the plaintiff
25 or other claimant.

26 ~~15.~~ 16. "Supplemental contract" means a written agreement that is
27 entered into for the distribution of proceeds under a life, disability,
28 disability income or annuity policy or contract.

29 ~~16.~~ 17. "Unallocated annuity contract" means an annuity contract
30 or group annuity certificate that is not issued to and owned by an
31 individual, except to the extent of any annuity benefits guaranteed to an
32 individual by an insurer under the contract or certificate.

33 Sec. 3. Section 20-682, Arizona Revised Statutes, is amended to
34 read:

35 20-682. Coverage; limitations

36 A. This article provides coverage for the policies and contracts
37 specified in subsection B of this section to:

38 1. A person who, regardless of the state where the person resides,
39 is a beneficiary, assignee or payee, INCLUDING HEALTH CARE PROVIDERS
40 RENDERING SERVICES COVERED UNDER THE HEALTH INSURANCE POLICIES OR
41 CERTIFICATES, of a person covered under paragraph 2 of this subsection,
42 except for a nonresident certificate holder under a group policy or
43 contract.

1 2. A person who is the owner OR ENROLLEE of, or a certificate
2 holder under, a policy or contract other than a structured settlement
3 annuity and who is either:

4 (a) A resident.

5 (b) Not a resident and all of the following apply:

6 (i) The MEMBER insurer that issued the policy or contract is
7 domiciled in this state.

8 (ii) The state in which the person resides has a fund similar to
9 the fund established under this article.

10 (iii) The person is not eligible for coverage by a fund in any
11 other state because the insurer OR HEALTH CARE SERVICES ORGANIZATION was
12 not licensed in that state at the time required by the applicable law.

13 3. Subject to any other limitations provided by this section, a
14 person who is a payee or a beneficiary of a deceased payee under a
15 structured settlement annuity specified in subsection B of this section if
16 the payee is either:

17 (a) A resident, regardless of where the contract owner resides.

18 (b) Not a resident and all of the following apply:

19 (i) The contract owner of the structured settlement annuity is a
20 resident, or the contract owner of the structured settlement annuity is
21 not a resident but the insurer that issued the structured settlement
22 annuity is domiciled in this state, and the state in which the contract
23 owner resides has a fund similar to the fund established by this article.

24 (ii) The payee, the beneficiary and the contract owner are not
25 eligible for coverage by the fund of the state in which they reside.

26 B. This article provides coverage to the persons specified in
27 subsection A of this section for POLICIES OR CONTRACTS OF direct nongroup
28 ~~life, disability or annuity policies or contracts~~ INSURANCE, DISABILITY
29 INSURANCE, WHICH FOR THE PURPOSES OF THIS ARTICLE INCLUDES HEALTH CARE
30 SERVICES ORGANIZATION SUBSCRIBER CONTRACTS AND CERTIFICATES, OR ANNUITIES,
31 and for certificates under direct group policies and contracts, and for
32 supplemental contracts to any of these, that are issued by member
33 insurers, except as limited by this article. Annuity contracts and
34 certificates under group annuity contracts include allocated funding
35 agreements, structured settlement annuities and any immediate or deferred
36 annuity contracts.

37 C. This article does not provide coverage to:

38 1. A person who is a payee or beneficiary of a contract owner who
39 is a resident of this state if the payee is afforded coverage by the fund
40 of another state.

41 2. A person who would otherwise receive coverage under this article
42 but who is provided coverage under the laws of any other state. This
43 article shall be construed to avoid duplicate coverage and to result in
44 coverage by only one state.

1 3. A PERSON WHO ACQUIRES RIGHTS TO RECEIVE PAYMENTS THROUGH A
2 STRUCTURED SETTLEMENT FACTORING TRANSACTION AS DEFINED IN 26 UNITED STATES
3 CODE SECTION 5891(c)(3)(A), REGARDLESS OF WHETHER THE TRANSACTION OCCURRED
4 BEFORE OR AFTER THAT SECTION BECAME EFFECTIVE.

5 D. EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH 14 OF THIS SUBSECTION,
6 this article does not provide coverage for:

7 1. Any policy or contract, or any part of any policy or contract,
8 not guaranteed by the MEMBER insurer or under which the risk is borne by
9 the policyholder or contract owner.

10 2. Any policy or contract, or any part of any policy or contract,
11 assumed by the impaired insurer or insolvent insurer under a contract of
12 reinsurance other than bulk reinsurance or reinsurance for which
13 assumption certificates have been issued.

14 3. Any policy or contract issued by mutual assessment companies or
15 other persons that operate on an assessment basis, fraternal benefit
16 societies, hospital, medical, dental and optometric service corporations
17 or plans, prepaid dental plan organizations, ~~health care services~~
18 ~~organizations~~, mandatory state pooling plans, a reciprocal insurance
19 exchange and any entity similar to any of THE entities described in this
20 paragraph.

21 4. A part of a policy or contract to the extent that the rate of
22 interest on which it is based, or the interest rate, crediting rate or
23 similar factor determined by use of an index or other external reference
24 stated in the policy or contract employed in calculating returns or
25 changes in value:

26 (a) Averaged over the period of four years before the date on which
27 the member insurer becomes an impaired insurer or insolvent insurer under
28 this article, whichever is earlier, exceeds the rate of interest
29 determined by subtracting two percentage points from Moody's corporate
30 bond yield average averaged for that same four-year period or for a lesser
31 period if the policy or contract was issued less than four years before
32 the member insurer becomes an impaired insurer or insolvent insurer under
33 this article, whichever is earlier.

34 (b) On and after the date on which the member insurer becomes an
35 impaired insurer or insolvent insurer under this article, whichever is
36 earlier, exceeds the rate of interest determined by subtracting three
37 percentage points from Moody's corporate bond yield average as most
38 recently available.

39 5. A part of a policy or contract issued to a plan or program of an
40 employer, association or other person to provide life, disability or
41 annuity benefits to its employees, members or others, to the extent that
42 the plan or program is self-funded or uninsured, including benefits
43 payable by an employer, association or other person under any of the
44 following:

1 (a) A multiple employer welfare arrangement as defined in section
2 3(40) of the employee retirement income security act of 1974.

3 (b) A minimum premium group insurance plan.

4 (c) A stop-loss group insurance plan.

5 (d) An administrative services only contract.

6 6. A part of a policy or contract to the extent that it provides
7 for dividend or experience rating credits, voting rights or payment of any
8 fees or allowances to any person, including the policy or contract owner,
9 in connection with the service or administration of the policy or
10 contract.

11 7. A policy or contract issued in this state by a member insurer at
12 a time when it did not have a certificate of authority to issue the policy
13 or contract in this state.

14 8. A part of a policy or contract to the extent that the
15 assessments required by section 20-686 with respect to the policy or
16 contract are preempted or prohibited by federal or state law.

17 9. An obligation that does not arise under the express written
18 terms of the policy or contract issued by the MEMBER insurer to the
19 ENROLLEE, CERTIFICATE HOLDER, contract owner or policy owner, including:

20 (a) Claims based on marketing materials.

21 (b) Claims based on side letters, riders or other documents that
22 were issued by the MEMBER insurer without meeting applicable policy OR
23 CONTRACT form filing or approval requirements.

24 (c) Misrepresentations of or regarding policy OR CONTRACT benefits.

25 (d) Extra-contractual claims, including claims relating to bad
26 faith in the payment of claims, punitive or exemplary damages or attorney
27 fees and costs.

28 (e) Claims for penalties or consequential or incidental damages.

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

34 11. An unallocated annuity contract.

35 12. A part of a policy or contract to the extent it provides for
36 interest or other changes in value to be determined by the use of an index
37 or other external reference stated in the policy or contract, but which
38 have not been credited to the policy or contract, or as to which the
39 policy or contract owner's rights are subject to forfeiture, as of the
40 date the member insurer becomes an impaired insurer or insolvent insurer
41 under this article, whichever is earlier. If a policy's or contract's
42 interest or changes in value are credited less frequently than annually,
43 for purposes of determining the values that have been credited and are not
44 subject to forfeiture under this subsection, the interest or change in
45 value determined by using the procedures defined in the policy or contract

1 will be credited as if the contractual date of crediting interest or
2 changing values was the date of impairment or insolvency, whichever is
3 earlier, and will not be subject to forfeiture.

4 13. A policy or contract providing any hospital, medical,
5 prescription drug or other health care benefits pursuant to 42 United
6 States Code chapter 7, subchapter XVIII, part C or part D OR 42 UNITED
7 STATES CODE CHAPTER 7, SUBCHAPTER XIX, or any applicable regulations.

8 14. STRUCTURED SETTLEMENT ANNUITY BENEFITS TO WHICH A PAYEE OR
9 BENEFICIARY HAS TRANSFERRED THE PAYEE'S OR BENEFICIARY'S RIGHTS IN A
10 STRUCTURED SETTLEMENT FACTORING TRANSACTION AS DEFINED IN 26 UNITED STATES
11 CODE SECTION 5891(c)(3)(A), REGARDLESS OF WHETHER THE TRANSACTION OCCURRED
12 BEFORE OR AFTER THAT SECTION BECAME EFFECTIVE.

13 15. THE EXCLUSION FROM COVERAGE REFERENCED IN PARAGRAPH 4 OF THIS
14 SUBSECTION DOES NOT APPLY TO ANY PORTION OF A POLICY OR CONTRACT,
15 INCLUDING A RIDER, THAT PROVIDES LONG-TERM CARE OR ANY OTHER HEALTH
16 INSURANCE BENEFITS.

17 E. The benefits that the fund becomes or may become obligated to
18 cover shall not exceed the lesser of:

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

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

24 (a) Three hundred thousand dollars in life insurance death
25 benefits, but not more than one hundred thousand dollars in net cash
26 surrender and net cash withdrawal values for life insurance.

27 (b) ~~in~~ FOR disability insurance benefits:

28 (i) One hundred thousand dollars for coverages not defined as
29 disability income insurance or ~~basic hospital, medical and surgical~~
30 ~~insurance or major medical insurance~~ HEALTH BENEFIT PLANS or long-term
31 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~~ HEALTH BENEFIT PLANS.

36 (c) Two hundred fifty thousand dollars in the present value of
37 annuity benefits, including net cash surrender and net cash withdrawal
38 values.

39 3. With respect to each payee of a structured settlement annuity,
40 or the beneficiary of a deceased payee, an aggregate of two hundred fifty
41 thousand dollars in present value annuity benefits, including net cash
42 surrender and net cash withdrawal values, if any.

43 F. Notwithstanding subsection E of this section, the fund is not
44 obligated to cover more than either:

1 1. An aggregate of three hundred thousand dollars in benefits with
2 respect to any one individual under subsection E of this section except
3 with respect to benefits for ~~basic hospital, medical and surgical~~
4 ~~insurance and major medical insurance~~ HEALTH BENEFIT PLANS under
5 subsection E, paragraph 2, subdivision (b) of this section, in which case
6 the aggregate liability of the fund shall not exceed five hundred thousand
7 dollars with respect to any one individual.

8 2. With respect to one owner of multiple nongroup policies of life
9 insurance, whether the policy OR CONTRACT owner is an individual, firm,
10 corporation or other person, and whether the persons insured are officers,
11 managers, employees or other persons, more than five million dollars in
12 benefits, regardless of the number of policies and contracts held by the
13 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
16 either its subrogation and assignment rights or the extent to which those
17 benefits could be provided out of the assets of the impaired insurer or
18 insolvent insurer attributable to covered policies. The costs of the
19 fund's obligations under this article may be met by the use of assets
20 attributable to covered policies or reimbursed to the fund pursuant to its
21 subrogation and assignment rights.

22 H. FOR THE PURPOSES OF THIS ARTICLE, BENEFITS PROVIDED BY A
23 LONG-TERM CARE RIDER TO A LIFE INSURANCE POLICY OR ANNUITY CONTRACT SHALL
24 BE CONSIDERED THE SAME TYPE OF BENEFITS AS THE BASE LIFE INSURANCE POLICY
25 OR ANNUITY CONTRACT TO WHICH IT RELATES.

26 Sec. 4. Section 20-683, Arizona Revised Statutes, is amended to
27 read:

28 20-683. Life and disability insurance guaranty fund

29 A. ~~There is established in the insurance department a~~ THE life and
30 disability insurance guaranty fund IS ESTABLISHED IN THE DEPARTMENT OF
31 INSURANCE. The fund shall be deposited in a depository designated by the
32 director. All member insurers shall be members of the fund as a condition
33 of their authority to transact insurance OR A HEALTH CARE SERVICES
34 ORGANIZATION BUSINESS in this state. For THE purposes of administration
35 and assessment, the fund shall maintain three accounts:

- 36 1. The disability ~~insurance~~ account.
- 37 2. The life insurance account.
- 38 3. The annuity account.

39 B. The fund ~~shall be~~ IS under the immediate supervision of the
40 director and ~~shall be~~ IS subject to the applicable provisions of the
41 insurance laws of this state.

42 C. All costs, expenses and liabilities of the fund shall be paid by
43 the fund and shall not be a general obligation of the state.

44 D. All monies placed in the accounts of the fund may be expended
45 for the purposes of this article.

1 Sec. 5. Section 20-684, Arizona Revised Statutes, is amended to
2 read:

3 20-684. Guaranty fund board; meetings; definition

4 A. Subject to the powers of the director, the life and disability
5 insurance guaranty fund shall be administered by a board of ~~nine~~ ELEVEN
6 members. Each member of the board shall serve for a term of three
7 years. Of the members first appointed, three shall serve for terms of one
8 year, three shall serve for terms of two years, ~~and~~ and three shall serve for
9 terms of three years.

10 B. The members of the board shall be appointed by the governor from
11 a list of persons submitted to the governor by the director of insurance.
12 In submitting selections for the board, the director shall consider
13 whether all member insurers are fairly represented.

14 C. Members of the board ~~shall~~ ARE NOT ENTITLED TO receive ~~no~~
15 compensation and ~~shall not be entitled to~~ travel expenses as authorized by
16 title 38, chapter 4, article 2 but ~~shall be~~ ARE entitled to be reimbursed
17 for expenses incurred by them as members of the board from the assets of
18 the fund.

19 Sec. 6. Section 20-685, Arizona Revised Statutes, is amended to
20 read:

21 20-685. Powers and duties of the fund

22 A. If a member insurer is an impaired insurer, the fund, subject to
23 any conditions imposed by the fund that do not impair the contractual
24 obligations of the impaired insurer, with the approval of the director,
25 may:

26 1. Guarantee, assume, REISSUE or reinsure, or cause to be
27 guaranteed, assumed, REISSUED or reinsured, any or all of the policies or
28 contracts of the impaired insurer.

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

33 B. If a member insurer is an insolvent insurer, the fund, with the
34 approval of the director, shall either:

35 1. Guarantee, assume, REISSUE or reinsure, or cause to be
36 guaranteed, assumed, REISSUED or reinsured, the policies or contracts of
37 the insolvent insurer or assure payment of the contractual obligations of
38 the insolvent insurer, and provide monies, pledges, loans, notes,
39 guarantees or other means reasonably necessary to discharge the fund's
40 obligations.

41 2. Provide benefits and coverage as follows:

42 (a) With respect to ~~life and disability insurance~~ policies and
43 ~~annuities~~ CONTRACTS, assure payment of benefits ~~for premiums identical to~~
44 ~~the premiums and benefits, other than conversion and renewability~~

1 ~~benefits,~~ that would have been payable under the policies or contracts of
2 the insolvent insurer, for claims incurred:

3 (i) With respect to group policies and contracts, not later than
4 the earlier of the next renewal date under those policies or contracts or
5 forty-five days, but not less than thirty days, after the date on which
6 the fund becomes obligated with respect to the policies and contracts.

7 (ii) With respect to nongroup policies, contracts and annuities,
8 not later than the earlier of the next renewal date, if any, under the
9 policies or contracts or one year, but not less than thirty days, from the
10 date on which the fund becomes obligated with respect to the policies or
11 contracts.

12 (b) Make diligent efforts to provide thirty days' notice of a
13 termination of benefits under subdivision (a) of this paragraph to all
14 known insureds, ENROLLEES or annuitants for nongroup policies and
15 contracts, and group policy OR CONTRACT owners with respect to group
16 policies and contracts.

17 (c) With respect to nongroup ~~life and disability insurance~~ policies
18 and ~~annuities~~ CONTRACTS covered by the fund, make available to each known
19 insured, ENROLLEE or annuitant, or owner if other than the insured or
20 annuitant, and with respect to an individual WHO WAS formerly AN insured,
21 ENROLLEE or ~~formerly an~~ annuitant under a group policy OR CONTRACT AND who
22 is not eligible for replacement group coverage, substitute coverage on an
23 individual basis in accordance with subdivision (d) of this paragraph, if
24 the insureds, ENROLLEES or annuitants had a right under law or the
25 terminated policy, CONTRACT or annuity to convert coverage to individual
26 coverage or to continue an individual policy, CONTRACT or annuity in force
27 until a specified age or for a specified time, during which the insurer OR
28 HEALTH CARE SERVICES ORGANIZATION had no right unilaterally to make
29 changes in any provision of the policy, CONTRACT or annuity or had a right
30 only to make changes in premium by class.

31 (d) In providing substitute coverage under subdivision (c) of this
32 paragraph:

33 (i) The fund may offer to reissue the terminated coverage or to
34 issue an alternative policy OR CONTRACT AT ACTUARIALLY JUSTIFIED RATES,
35 SUBJECT TO THE PRIOR APPROVAL OF THE DIRECTOR.

36 (ii) Any alternative or reissued policies OR CONTRACTS so offered
37 shall be offered without requiring evidence of insurability and without
38 any waiting period or exclusion that would not have applied under the
39 terminated policy OR CONTRACT.

40 (iii) The fund may reinsure any alternative or reissued policy OR
41 CONTRACT.

42 (e) Any alternative policy OR CONTRACT adopted by the fund is
43 subject to approval by the ~~domiciliary insurance commissioner and the~~
44 ~~court presiding over the delinquency proceeding~~ DIRECTOR. The fund may
45 adopt alternative policies OR CONTRACTS of various types for future

1 issuance without regard to any particular impairment or insolvency. Any
2 alternative policy OR CONTRACT shall:

3 (i) Contain at least the minimum statutory provisions required in
4 this state and provide benefits that are reasonable in relation to the
5 premium charged. The fund shall set the premium in accordance with a
6 table of rates that the fund shall adopt. The premium shall reflect the
7 amount of insurance to be provided and the age and class of risk of each
8 insured, but shall not reflect any changes in the health of the insured
9 after the original policy OR CONTRACT was last underwritten.

10 (ii) Provide coverage of a type similar to that of the policy OR
11 CONTRACT issued by the impaired insurer or insolvent insurer, as
12 determined by the fund.

13 (f) If the fund elects to reissue terminated coverage at a premium
14 rate different from that charged under the terminated policy OR CONTRACT,
15 the ~~fund~~ PREMIUM shall BE ACTUARIALLY JUSTIFIED AND SHALL BE set BY the
16 ~~premium~~ FUND in accordance with the amount of insurance OR COVERAGE
17 provided and the age and class of risk, subject to PRIOR approval of the
18 ~~domiciliary insurance commissioner and the court presiding over the~~
19 ~~delinquency proceeding~~ DIRECTOR.

20 (g) The fund's obligations with respect to coverage under any
21 policy OR CONTRACT of the impaired insurer or insolvent insurer or under
22 any reissued or alternative policy OR CONTRACT shall cease on the date the
23 coverage or policy OR CONTRACT is replaced by another similar policy OR
24 CONTRACT by the policy OR CONTRACT owner, the insured, THE ENROLLEE or the
25 fund.

26 (h) When proceeding under this paragraph with respect to a policy
27 or contract carrying guaranteed minimum interest rates, the fund shall
28 assure the payment or crediting of a rate of interest consistent with
29 subdivision (c) of this paragraph.

30 C. The fund is not liable pursuant to this section for any covered
31 policy of an impaired insurer or insolvent insurer whose domiciliary
32 jurisdiction or state of entry provides by statute or regulation for
33 residents of this state protection substantially similar to that provided
34 by this article for residents of other states.

35 D. The fund may render assistance and advice to the director, on
36 the director's request, concerning rehabilitation, payment of claims,
37 continuations of coverage or the performance of other contractual
38 obligations of any impaired insurer or insolvent insurer.

39 E. The fund shall have standing to appear or intervene before any
40 court with jurisdiction over an impaired insurer or insolvent insurer
41 concerning which the fund is or may become obligated, or over any person
42 or property against which the fund may have rights, pursuant to this
43 article. Such standing shall extend to all matters germane to the powers
44 and duties of the fund, including proposals for reinsuring, REISSUING,
45 modifying or guaranteeing the covered policies OR CONTRACTS of the

1 impaired insurer or insolvent insurer and the determination of the covered
2 policies or contracts and contractual obligations.

3 F. Any persons receiving benefits pursuant to this article shall be
4 deemed to have assigned their rights under, and any causes of action
5 against any person for losses arising under, resulting from or otherwise
6 relating to, the covered policy or contract to the fund to the extent of
7 the benefits received whether the benefits are payments of contractual
8 obligations, continuation of coverage or provision of substitute or
9 alternative **POLICIES, CONTRACTS OR** coverages. The fund may require an
10 assignment to the fund of such rights by any **ENROLLEE**, payee, policy or
11 contract owner, beneficiary, insured or annuitant as a condition precedent
12 to the receipt of any rights or benefits conferred on such person pursuant
13 to this article. The subrogation rights of the fund under this subsection
14 shall have the same priority against the assets of any impaired insurer or
15 insolvent insurer as that possessed by the person who is entitled to
16 receive the benefits under this article. The fund shall have all common
17 law rights of subrogation and any other equitable or legal remedy that
18 would have been available to the impaired insurer or insolvent insurer or
19 owner, beneficiary, **ENROLLEE** or payee of a policy or contract with respect
20 to the policy or contract. If the preceding provisions of this subsection
21 are ineffective with respect to any person or claim for any reason, the
22 amount payable by the fund with respect to the related covered obligations
23 shall be reduced by the amount attributable to the policies **OR CONTRACTS**,
24 or any part of the policies **OR CONTRACTS**, covered by the fund that is
25 realized by any other person with respect to the person or claim. If the
26 fund has provided benefits with respect to a covered obligation and a
27 person recovers amounts as to which the fund has rights under this
28 subsection, the person shall pay to the fund the part of the recovery
29 attributable to the policies **OR CONTRACTS**, or any part of the policies **OR**
30 **CONTRACTS**, covered by the fund.

31 G. Notwithstanding any other law, the fund is not obligated to pay
32 any amount that does not constitute a payment of a contractual obligation,
33 including taxable costs or attorney fees that could be awarded or any
34 additional liabilities or obligations as might otherwise exist or accrue
35 against the impaired insurer if the insurer had not become impaired.

36 H. The fund may:

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

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

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

1 4. Employ and retain such persons as are necessary to handle the
2 financial transactions of the fund and perform such other functions as
3 become necessary or proper.

4 5. Negotiate and contract with any liquidator, rehabilitator,
5 conservator or ancillary receiver to carry out the powers and duties of
6 the fund.

7 6. Join an organization comprised of one or more other similar
8 state funds in order to further the administration of the fund's powers
9 and duties under this article.

10 7. Take such legal action as may be necessary to avoid payment of
11 improper claims.

12 8. Exercise, for the purposes of this article and to the extent
13 approved by the director, the powers of a domestic life ~~and~~ INSURER,
14 disability insurer OR HEALTH CARE SERVICES ORGANIZATION. In no case may
15 the fund issue ~~insurance~~ policies or ~~annuity~~ contracts other than those
16 issued to perform the contractual obligations of the impaired insurer or
17 insolvent insurer.

18 9. UNLESS PROHIBITED BY LAW, IN ACCORDANCE WITH THE TERMS AND
19 CONDITIONS OF THE POLICY OR CONTRACT, FILE FOR ACTUARIALLY JUSTIFIED RATE
20 OR PREMIUM INCREASES FOR ANY POLICY OR CONTRACT FOR WHICH THE FUND
21 PROVIDES COVERAGE UNDER THIS ARTICLE.

22 I. At any time within one hundred eighty days after the date of the
23 order of liquidation, the fund, by written notice to the affected
24 reinsurers, may elect to assume the rights and obligations of a ceding
25 member insurer that relate to policies or annuities covered in whole or in
26 part by the fund under any one or more reinsurance contracts entered into
27 by the insolvent insurer, subject to the following:

28 1. The assumption shall be effective as of the date of the order of
29 liquidation.

30 2. The receiver and each reinsurer of the ceding member insurer
31 shall make available on request to the fund after commencement of formal
32 delinquency proceedings:

33 (a) Copies of in-force reinsurance contracts and all related
34 records relevant to the determination whether to assume such contracts.

35 (b) Notices of any defaults under the reinsurance contracts or any
36 known event or condition that may presently or subsequently constitute a
37 default under the reinsurance contracts.

38 3. With respect to reinsurance contracts assumed by the fund under
39 this subsection:

40 (a) The fund shall be responsible for all unpaid premiums due under
41 the reinsurance contracts for periods both before and after the date of
42 the order of liquidation, and for performance of all other obligations
43 after the date of the order of liquidation that relate to policies,
44 CONTRACTS or annuities covered in whole or in part by the fund. The fund
45 may charge policies, CONTRACTS or annuities covered in part by the fund,

1 through reasonable allocation methods, for the costs for reinsurance in
2 excess of the fund's obligations and shall provide notice and an
3 accounting of these charges to the receiver.

4 (b) The fund shall be entitled to any amounts payable by the
5 reinsurer under the reinsurance contracts with respect to losses or events
6 that occur after the date of the order of liquidation and that relate to
7 policies, **CONTRACTS** or annuities covered in whole or in part by the fund,
8 provided that on receipt of any such amounts, the fund shall pay to the
9 beneficiary under the policy, **CONTRACT** or annuity an amount equal to the
10 lesser of:

11 (i) The amount received by the fund.

12 (ii) The excess of the amount received by the fund over the amount
13 equal to the benefits paid by the fund on account of the policy, **CONTRACT**
14 or annuity less the retention of the impaired insurer or insolvent insurer
15 applicable to the loss or event.

16 (c) Within thirty days after the fund's election, the fund and each
17 reinsurer under contracts assumed by the fund shall calculate the net
18 balance due to or from the fund under each reinsurance contract as of the
19 date of the fund's election with respect to policies, **CONTRACTS** or
20 annuities covered in whole or in part by the fund, giving full credit to
21 all items paid by the member insurer or its receiver or the reinsurer
22 before the date of the fund's election. The reinsurer shall pay the
23 receiver any amounts due for losses or events before the date of the order
24 of liquidation, subject to any setoff for premiums unpaid for periods
25 before the date of the order of liquidation, and the fund or reinsurer
26 shall pay any remaining balance due the other within five days after the
27 completion of the calculation. Any disputes over the amounts due shall be
28 resolved in accordance with the reinsurance contract. If the receiver has
29 received any amounts due to the fund pursuant to subdivision (b) of this
30 paragraph, the receiver shall promptly remit the amount to the fund.

31 (d) If the fund or receiver, within sixty days after the election,
32 pays the unpaid premiums due for periods both before and after the
33 election date that relate to policies, **CONTRACTS** and annuities covered in
34 whole or in part by the fund, the reinsurer shall not be entitled to
35 terminate the reinsurance contracts for failure to pay premium to the
36 extent the reinsurance contracts ~~relate~~ **RELATED** to policies, **CONTRACTS** or
37 annuities covered in whole or in part by the fund, and shall not be
38 entitled to set off any unpaid amounts due under other contracts or due
39 from parties other than the fund, against amounts payable to the fund.

40 4. Provided that the parties rights and obligations shall be
41 governed by paragraph 3 of this subsection, if the fund elects to assume a
42 reinsurance contract, during the period from the date of the order of
43 liquidation until the earlier of the election date or one hundred eighty
44 days after the date of the order of liquidation:

1 (a) The fund and the reinsurer shall not have any rights or
2 obligations under reinsurance contracts that the fund has the right to
3 assume under paragraph 3 of this subsection, whether for periods before or
4 after the date of the order of liquidation.

5 (b) The reinsurer, receiver and fund shall provide each other data
6 and records reasonably requested, to the extent practicable.

7 5. If the fund does not elect to assume a reinsurance contract by
8 the election date pursuant to paragraph 3 of this subsection, the fund
9 shall have no rights or obligations with respect to the reinsurance
10 contract for periods before and after the date of the order of
11 liquidation.

12 6. If the fund transfers policies, **CONTRACTS** or annuities, or
13 covered obligations with respect to policies, **CONTRACTS** or annuities, to
14 an assuming insurer, reinsurance on the transferred policies, **CONTRACTS** or
15 annuities may also be transferred by the fund, in the case of contracts
16 assumed under paragraph 3 of this subsection, subject to the following:

17 (a) Unless the reinsurer and the assuming insurer agree otherwise,
18 the reinsurance contract transferred shall not cover any policies,
19 **CONTRACTS** or annuities other than those transferred.

20 (b) The obligations described in paragraph 3 of this subsection do
21 not apply with respect to matters arising after the date of the transfer.

22 (c) The transferring party shall provide written notice to the
23 affected reinsurer not less than thirty days before the effective date of
24 the transfer.

25 J. Subsection I of this section supersedes any provision of state
26 law or of any affected reinsurance contract that provides for or requires
27 any payment of reinsurance proceeds, on account of losses or events that
28 occur in periods after the date of the order of liquidation, to the
29 receiver of the insolvent insurer or any other person. The receiver shall
30 remain entitled to any amounts payable by the reinsurer under the
31 reinsurance contracts with respect to losses or events that occur in
32 periods before the date of the order of liquidation, subject to any
33 applicable setoff provisions.

34 K. Except as otherwise provided in subsection I of this section,
35 this section does not:

36 1. Alter or modify the terms and conditions of any reinsurance
37 contract.

38 2. Limit any rights of any reinsurer to claim that it is entitled
39 to rescind a reinsurance contract.

40 3. Provide a policy owner, **CONTRACT OWNER, ENROLLEE, CERTIFICATE**
41 **HOLDER** or beneficiary an independent cause of action against a reinsurer
42 that is not otherwise set forth in the reinsurance contract.

43 4. Limit or affect the fund's rights as a creditor of the estate.

44 5. Apply to reinsurance contracts covering property or casualty
45 risks.

1 L. In carrying out its duties in connection with guaranteeing,
2 assuming, **REISSUING** or reinsuring policies or contracts under subsection A
3 or B of this section, the fund, ~~subject to approval of the court presiding~~
4 ~~over the delinquency proceeding,~~ may issue substitute coverage for a
5 policy or contract that provides an interest rate, crediting rate or
6 similar factor determined by use of an index or other external reference
7 stated in the policy or contract employed in calculating returns or
8 changes in value by issuing an alternative policy or contract in
9 accordance with the following provisions:

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

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

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

20 M. If the fund offers to provide the benefits of this article to a
21 covered person under a plan or arrangement that fulfills the fund's
22 obligations under this article, the person shall not be entitled to
23 benefits from the fund in addition or as an alternative to those offered
24 under the plan or arrangement.

25 N. Venue in a suit against the fund arising under this article
26 shall be in the superior court of Maricopa county. The fund shall not be
27 required to give a bond in an appeal that relates to a cause of action
28 arising under this article.

29 Sec. 7. Section 20-686, Arizona Revised Statutes, is amended to
30 read:

31 **20-686. Assessments**

32 A. For the purpose of providing the funds necessary to carry out
33 the powers and duties of the fund, the fund shall assess the member
34 insurers, separately for each account, at such times and for such amounts
35 as the fund finds necessary. The member insurers shall be required to pay
36 the assessments within the time prescribed in a written notice of the
37 assessment to the member insurers but no less than thirty days after the
38 date of the written notice.

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

40 1. Class A assessments shall be authorized and called for the
41 purpose of meeting administrative costs and other general expenses not
42 related to a particular impaired insurer or insolvent insurer.

43 2. Class B assessments shall be authorized and called to the extent
44 necessary to carry out the powers and duties of the fund pursuant to
45 section 20-685 with regard to an impaired insurer or insolvent insurer.

1 C. The amount of assessment for each account shall be determined as
2 follows:

3 1. The amount of any class A assessment for each account shall be
4 determined by the fund.

5 2. The amount of any class B assessment, ~~EXCEPT FOR ASSESSMENTS~~
6 ~~RELATED TO LONG-TERM CARE INSURANCE~~, shall be ~~divided among~~ ~~ALLOCATED~~
7 ~~BETWEEN~~ the accounts in the proportion that the premiums received by the
8 impaired insurer or insolvent insurer on the policies ~~OR CONTRACTS~~ covered
9 by each account bear to the premiums received by such insurer on all ~~SUCH~~
10 policies ~~OR CONTRACTS~~. ~~THE AMOUNT OF THE CLASS B ASSESSMENT FOR LONG-TERM~~
11 ~~CARE INSURANCE WRITTEN BY THE IMPAIRED OR INSOLVENT INSURER SHALL BE~~
12 ~~ALLOCATED ACCORDING TO A METHODOLOGY INCLUDED IN THE PLAN OF OPERATION AND~~
13 ~~APPROVED BY THE DIRECTOR. THE METHODOLOGY SHALL PROVIDE FOR FIFTY PERCENT~~
14 ~~OF THE ASSESSMENT TO BE ALLOCATED TO ACCIDENT AND DISABILITY MEMBER~~
15 ~~INSURERS AND FIFTY PERCENT TO BE ALLOCATED TO LIFE AND ANNUITY MEMBER~~
16 ~~INSURERS.~~

17 ~~2.~~ 3. Class A and class B assessments against member insurers for
18 each account shall be in the proportion that the premiums received on
19 business in this state by each assessed member insurer on policies covered
20 by each account bear to such premiums received on business in this state
21 by all assessed member insurers.

22 ~~3.~~ 4. Assessments for funds to meet the requirements of the fund
23 with respect to an impaired insurer or insolvent insurer shall not be made
24 until necessary to implement the purposes of this article. Classification
25 of assessments as prescribed pursuant to subsection B of this section and
26 computation of assessments pursuant to this subsection shall be made with
27 a reasonable degree of accuracy, recognizing that exact determinations may
28 not always be possible.

29 ~~4.~~ 5. The total of all assessments on a member insurer for each
30 account shall not in any one calendar year exceed two ~~per-cent~~ ~~PERCENT~~ of
31 that member insurer's average annual premiums received in this state on
32 the policies and contracts covered by the account during the three
33 calendar years preceding the year in which the ~~MEMBER~~ insurer became an
34 impaired insurer or insolvent insurer. If two or more assessments are
35 authorized in one calendar year with respect to ~~MEMBER~~ insurers that
36 become impaired or insolvent in different calendar years, the average
37 annual premiums for purposes of the aggregate assessment percentage
38 limitation shall be limited to the greater of the three year average
39 annual premiums for the applicable account as calculated pursuant to this
40 subsection.

41 D. The fund may abate or defer, in whole or in part, the assessment
42 of a member insurer if, in the opinion of the fund, payment of the
43 assessment would endanger the ability of the member insurer to fulfill its
44 contractual obligations.

1 E. If an assessment against a member insurer is abated or deferred,
2 in whole or in part, because of the limitations set forth in subsection D
3 of this section, the amount by which such assessment is abated or deferred
4 may be assessed against the other member insurers in a manner consistent
5 with the basis for assessments set forth in this section. If the maximum
6 assessment, together with the other assets of the fund in either account,
7 does not provide in any one year in either account an amount sufficient to
8 carry out the responsibilities of the fund, the necessary additional
9 monies shall be assessed as soon thereafter as permitted by this article.

10 F. The fund, by an equitable method as established in the plan of
11 operation, may refund to member insurers, in proportion to the
12 contribution of each MEMBER insurer to that account, the amount the fund
13 finds is not necessary to carry out during the coming year the obligations
14 of the fund with regard to such amount, including assets accruing from net
15 realized gains and income from investments. A reasonable amount may be
16 retained in any account to provide funds for the continuing expenses of
17 the fund and for future losses.

18 G. Any member insurer, in determining its premium rates and
19 policyowner dividends as to any kind of insurance OR HEALTH CARE SERVICES
20 ORGANIZATION BUSINESS within the scope of this article, may consider the
21 amount reasonably necessary to meet its assessment obligations.

22 H. The fund shall issue to each MEMBER insurer paying an assessment
23 a certificate of contribution, in a form prescribed by the director, for
24 the amount paid. All outstanding certificates shall be of equal priority
25 without reference to amounts or dates of issue. A certificate of
26 contribution may be shown by the MEMBER insurer in its financial statement
27 as an asset in such form and for such amount and period of time as the
28 director may approve.

29 Sec. 8. Section 20-688, Arizona Revised Statutes, is amended to
30 read:

31 20-688. Duties and powers of the director

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

34 1. Notify the board of directors of the existence of an impaired
35 insurer or insolvent insurer not later than three days after a
36 determination of impairment or insolvency or the director receives notice
37 of impairment or insolvency.

38 2. On request of the board of directors, provide the board with a
39 statement of the premiums in the appropriate states for each member
40 insurer.

41 3. When an impairment is declared and the amount of the impairment
42 is determined, serve a demand on the impaired insurer to make good the
43 impairment within a reasonable time. Notice to the impaired insurer shall
44 constitute notice to its shareholders. The failure of the IMPAIRED

1 insurer to promptly comply with such demand shall not excuse the board
2 from the performance of its duties pursuant to this article.

3 B. The director may suspend or revoke, after notice and a hearing
4 pursuant to title 41, chapter 6, article 10, the certificate of authority
5 to transact ~~insurance~~ BUSINESS in this state of any member insurer that
6 fails to pay an assessment when due or fails to comply with the plan of
7 operation. As an alternative the director may levy a forfeiture on any
8 member insurer that fails to pay an assessment when due. Such forfeiture
9 shall not exceed five ~~per cent~~ PERCENT of the unpaid assessment per month,
10 but no forfeiture may be less than one hundred dollars per month.

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

16 D. The liquidator, rehabilitator or conservator of any impaired
17 insurer or insolvent insurer may notify all interested persons of the
18 effect of this article.

19 Sec. 9. Section 20-689, Arizona Revised Statutes, is amended to
20 read:

21 20-689. Prevention of impairments

22 To aid in the detection and prevention of MEMBER insurer impairments
23 and insolvencies:

24 1. The board of directors, on majority vote, shall notify the
25 director of any information indicating that any member insurer may be
26 unable or potentially unable to fulfill its contractual obligations.

27 2. The board of directors, on majority vote, may request that the
28 director order an examination of any member insurer which the board in
29 good faith believes may be unable or potentially unable to fulfill its
30 contractual obligations. The director may conduct such examination. The
31 examination may be conducted as a national association of insurance
32 commissioners examination or may be conducted by such persons as the
33 director designates. The cost of such examination shall be paid by the
34 fund and the examination report shall be treated as are other examination
35 reports. The examination report shall not be released to the board of
36 directors of the fund before its release to the public, but this shall not
37 excuse the director from the obligation to comply with paragraph 3. The
38 director shall notify the board of directors when the examination is
39 completed. The request for an examination shall be kept on file by the
40 director but it shall not be open to the public and shall be released only
41 if the examination discloses that the examined insurer is unable or
42 potentially unable to meet its contractual obligations.

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

5 4. The board of directors, on majority vote, may make reports and
6 recommendations to the director on any matter germane to the solvency,
7 liquidation, rehabilitation or conservation of any member insurer. Such
8 reports and recommendations shall not be considered public documents.

9 5. The board of directors, on majority vote, may make
10 recommendations to the director for the detection and prevention of MEMBER
11 insurer impairments and insolvencies.

12 6. The board of directors, at the conclusion of any insurer
13 impairment or insolvency in which the fund carried out its duties, shall
14 prepare a report on the history and causes of such impairment or
15 insolvency based on the information available to the fund and submit such
16 report to the director.

17 Sec. 10. Section 20-690, Arizona Revised Statutes, is amended to
18 read:

19 20-690. Financial provisions

20 A. Nothing in this article shall be construed to reduce the
21 liability for unpaid assessments of the insureds of an impaired insurer or
22 insolvent insurer operating under a plan with assessment liability.

23 B. Records shall be kept of all negotiations and meetings in which
24 the fund or its representatives are involved to discuss the activities of
25 the fund in carrying out its powers and duties. Records of such
26 negotiations or meetings shall be made public only on the termination of a
27 liquidation, rehabilitation or conservation proceeding involving the
28 impaired insurer or insolvent insurer, on the termination of the
29 impairment or insolvency of the insurer or on the order of a court of
30 competent jurisdiction.

31 C. For the purpose of carrying out its obligations pursuant to this
32 article, the board shall be deemed to be a creditor of the impaired
33 insurer or insolvent insurer to the extent of assets attributable to
34 policies reduced by any amounts to which the board is entitled as
35 subrogee. All assets of the impaired insurer or insolvent insurer
36 attributable to policies shall be used to continue all policies and pay
37 all contractual obligations of the impaired insurer or insolvent
38 insurer. As used in this subsection, "assets attributable to policies"
39 means that proportion of the assets which the reserves that should have
40 been established for such policies OR CONTRACTS bear to the reserve that
41 should have been established for all policies of insurance OR HEALTH
42 BENEFIT PLANS written by the impaired insurer or insolvent insurer.

43 D. Before the termination of any liquidation, rehabilitation or
44 conservation proceeding, the court may take into consideration the
45 contributions of the respective parties including the board, the

shareholders, **CONTRACT OWNERS, CERTIFICATE HOLDERS, ENROLLEES** and policyowners of the impaired insurer or insolvent insurer and any other party with a bona fide interest in making an equitable distribution of the ownership rights of such impaired insurer or insolvent insurer. In such a determination, consideration shall be given to the welfare of the policyholders, **CONTRACT OWNERS, CERTIFICATE HOLDERS AND ENROLLEES** of the continuing or successor **MEMBER** insurer. No distribution to stockholders of the assets of an impaired insurer or insolvent insurer may be made until and unless the total amount of valid claims of the fund with interest thereon for monies expended in carrying out its powers and duties under section 20-685 with respect to such insurer is fully recovered by the fund.

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

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

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

3. The maximum amount recoverable pursuant to this subsection shall be the amount needed in excess of all other available assets of the impaired insurer or insolvent insurer to pay the contractual obligations of the impaired insurer or insolvent insurer.

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

F. The receiver, conservator, liquidator or statutory successor of an impaired insurer or insolvent insurer is bound by a settlement of covered claims by the fund or a similar organization in another state.

1 Sec. 11. Section 20-692, Arizona Revised Statutes, is amended to
2 read:

3 20-692. Premium tax offset

4 A. The board shall issue to each MEMBER insurer paying an
5 assessment pursuant to this article a certificate of contribution, in a
6 form prescribed by the director for the amount paid. All outstanding
7 certificates shall be of equal dignity and priority without reference to
8 amounts or dates of issue.

9 B. A certificate of contribution issued to a member insurer shall
10 be offset against its premium tax liability to this state in the amount of
11 twenty ~~per cent~~ PERCENT of the assessment for the year of assessment and
12 twenty ~~per cent~~ PERCENT of the assessment per year for each of the
13 succeeding four years.

14 C. Notwithstanding subsection B of this section, the total amount a
15 member insurer, ~~as defined in section 20-681,~~ may offset against its
16 premium tax liability pursuant to a certificate of contribution that is
17 issued from 1987 through 1994 shall not exceed the following percentage
18 amounts for each certificate of contribution, except that in no event may
19 the total amount of the offset exceed one hundred ~~per cent~~ PERCENT of each
20 assessment:

21 1. For 1991, seven ~~per cent~~ PERCENT.

22 2. For 1992, nine ~~per cent~~ PERCENT.

23 3. For 1993, eleven ~~per cent~~ PERCENT.

24 4. For 1994, thirteen ~~per cent~~ PERCENT.

25 D. ~~No~~ A MEMBER insurer may NOT offset its premium tax liability by
26 any amount unless the assessment for which the first year credit is
27 claimed was collected by the guaranty fund in the calendar year for which
28 the insurer seeks to offset its taxes.

29 E. Beginning in 1995, the total amount that a member insurer may
30 offset against its premium tax liability pursuant to a certificate of
31 contribution shall be as provided in subsection B of this section, except
32 that in no event shall the total amount of the offset exceed one hundred
33 ~~per cent~~ PERCENT of the assessment.

34 Sec. 12. Section 20-1053, Arizona Revised Statutes, is amended to
35 read:

36 20-1053. Application for certificate of authority

37 A. An application for a certificate of authority to operate as a
38 health care services organization shall be filed with the director in a
39 form prescribed by the director, shall be verified by an officer or
40 authorized representative of the applicant and shall set forth, or be
41 accompanied by, the following:

42 1. A copy of the articles of incorporation and all amendments to
43 the articles.

1 2. A copy of the bylaws, rules and regulations, or similar
2 document, if any, regulating the conduct of the internal affairs of the
3 applicant.

4 3. A list of the names, addresses and official positions of the
5 persons who are to be responsible for the conduct of the affairs of the
6 applicant, including all members of the board of directors, board of
7 trustees, executive committee, or other governing board or committee, the
8 principal officers in the case of a corporation, and the partners or
9 members in the case of a partnership or association.

10 4. A copy of any contract made or to be made between any providers
11 or persons listed in paragraph 3 and the applicant.

12 5. A statement generally describing the health care services
13 organization and its health care plan or plans, facilities and personnel,
14 as approved by the director.

15 6. A copy of the form of evidence of coverage to be issued to the
16 enrollees.

17 7. A copy of the form of the group contract, if any, that is to be
18 issued to employers, unions, trustees or other organizations.

19 8. Financial statements showing the applicant's assets, liabilities
20 and sources of financial support. If the applicant's financial affairs
21 are audited by independent certified public accountants, a copy of the
22 applicant's most recent regular certified financial statement shall be
23 deemed to satisfy this requirement unless the director determines that
24 additional or more recent financial information is required for the proper
25 administration of this article.

26 9. A description of the proposed method of marketing the plan, a
27 financial plan that includes a three-year projection of the initial
28 operating results anticipated, and a statement as to the sources of
29 working capital as well as any other sources of funding.

30 10. A power of attorney duly executed by the applicant, if not
31 domiciled in this state, appointing the director and the director's
32 successors in office, and duly authorized deputies, as the true and lawful
33 attorney of the applicant in and for this state, ~~upon~~ ON whom all lawful
34 process in any legal action or proceeding against the health care services
35 organization on a cause of action arising in this state may be served.

36 11. A statement reasonably describing the geographic area or areas
37 to be served, as approved by the director.

38 12. The fee prescribed by section 20-167.

39 ~~13. A plan for the risk of insolvency as prescribed in section~~
40 ~~20-1069.~~

41 ~~14.~~ 13. Such other information as the director may require.

42 B. Within ten days following any significant modification of
43 information previously furnished pursuant to subsection A of this section,
44 a health care services organization shall file a notice of the
45 modification with the director.

1 C. Unless preempted under federal law or unless federal law imposes
2 greater requirements than this section, this section applies to a provider
3 sponsored health care services organization.

4 Sec. 13. Repeal

5 Section 20-1056, Arizona Revised Statutes, is repealed.

6 Sec. 14. Section 20-1066, Arizona Revised Statutes, is amended to
7 read:

8 20-1066. Rehabilitation, liquidation or conservation of
9 health maintenance organization

10 A. Any rehabilitation, liquidation, or conservation of a health
11 care services organization shall be deemed to be the rehabilitation,
12 liquidation, or conservation of an insurer and shall be conducted as
13 provided in chapter 3, article 4 of this title. ~~In addition to the~~
14 ~~grounds set forth in chapter 3, article 4 of this title, failure to comply~~
15 ~~with section 20-1069 constitutes a ground for the rehabilitation,~~
16 ~~liquidation or conservation of a health care services organization.~~

17 B. Unless preempted under federal law or unless federal law imposes
18 greater requirements than this section, this section applies to a provider
19 sponsored health care services organization.

20 Sec. 15. Section 20-1068, Arizona Revised Statutes, is amended to
21 read:

22 20-1068. Statutory construction and relationship to other
23 laws

24 A. Except as they relate to an insurer or a hospital or medical
25 service corporation, the provisions of this title are applicable to health
26 care services organizations only as provided in this article, chapter 1 of
27 this title, chapter 2, article 12 of this title, chapter 3, articles 1,
28 ~~and~~ 2 AND 7 of this title, sections 20-223, 20-233, 20-234, 20-261,
29 20-261.01, 20-261.02, 20-261.03, 20-261.04, 20-1133, 20-1135, 20-1379 and
30 20-1380, section 20-1408, subsections C through K, chapter 6, article 16
31 of this title and chapters 11, 15, 17, 20 and 21 of this title.

32 B. Unless preempted under federal law or unless federal law imposes
33 greater requirements than this section, this section applies to a provider
34 sponsored health care services organization.

35 Sec. 16. Repeal

36 Section 20-1069, Arizona Revised Statutes, is repealed.

37 Sec. 17. Section 20-1074, Arizona Revised Statutes, is amended to
38 read:

39 20-1074. Contract termination; duty to report; provision for
40 continued services during insolvency; definitions

41 A. Each month a health care services organization shall submit to
42 the director a list of all written provider contracts that have been
43 terminated during the prior month. The list shall be in writing and shall
44 include the name and address of each provider whose contract has been
45 terminated but shall not include the reasons for termination.

1 B. A health care services organization shall include in its
2 contracts with providers a statement that requires the provider to provide
3 services to enrollees at the same rates and subject to the same terms and
4 conditions established in the contract for the duration of the period
5 after the health care services organization is declared insolvent, until
6 the earliest of the following:

7 ~~1. The expiration of the period during which the health care~~
8 ~~services organization is required to continue benefits as described in~~
9 ~~section 20-1069, subsection A.~~

10 ~~2. 1. A notification from the receiver pursuant to section~~
11 ~~20-1069, subsection F or~~ A determination by the court that the
12 organization cannot provide adequate assurance it will be able to pay
13 contract providers' claims for covered services that were rendered after
14 the health care services organization is declared insolvent.

15 ~~3. 2.~~ A determination by the court that the insolvent organization
16 is unable to pay contract providers' claims for covered services that were
17 rendered after the health care services organization is declared
18 insolvent.

19 ~~4. 3.~~ A determination by the court that continuation of the
20 contract would constitute undue hardship to the provider.

21 ~~5. 4.~~ A determination by the court that the health care services
22 organization has satisfied its obligations to all enrollees under its
23 health care plans.

24 C. Unless preempted under federal law or unless federal law imposes
25 greater requirements than this section, this section applies to a provider
26 sponsored health care services organization.

27 D. For the purposes of this section:

28 1. "Court" has the same meaning prescribed in section 20-611.

29 2. "Delinquency proceeding" has the same meaning prescribed in
30 section 20-611.

31 Sec. 18. Effective date

32 This act is effective from and after December 31, 2018.