Senate Bill No. 252–Committee on Commerce and Labor

CHAPTER.....

AN ACT relating to insurance; revising the Nevada Life and Health Insurance Guaranty Association Act to incorporate changes made in the model act; prohibiting certain acts; providing a penalty; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 681A.230 is hereby amended to read as follows:

681A.230 1. Credit must be allowed as an asset or as a deduction from liability to any ceding insurer for reinsurance lawfully ceded to an assuming insurer qualified therefor pursuant to NRS 681A.110, 681A.150, 681A.160, 681A.170, 681A.180 or 681A.190, but no such credit may be allowed unless the contract for reinsurance provides in substance that, in the event of the insolvency of the ceding insurer, the reinsurance is payable pursuant to a contract reinsured by the assuming insurer on the basis of reported claims allowed in any liquidation proceedings, subject to court approval, without diminution because of the insolvency of the ceding insurer. ~~[Such]~~ ***Except as otherwise provided in section 14 of this act, those*** payments must be made directly to the ceding insurer or to its domiciliary liquidator unless:

(a) The contract of reinsurance or other written contract specifically designates another payee of the payments in the event of the insolvency of the ceding insurer; or

(b) The assuming insurer, with the consent of the persons directly insured, has assumed the obligations from the policies issued by the ceding insurer as direct obligations of the assuming insurer, and in substitution for the obligations of the ceding insurer, to the payees under those policies.

2. The domiciliary liquidator of an insolvent ceding insurer shall give written notice to the assuming insurer of the pendency of any claim against the ceding insurer on any contract reinsured within a reasonable time after such a claim is filed in the liquidation proceeding. During the pendency of the claim, the assuming insurer may investigate the claim and, at its own expense, interpose in the proceeding in which the claim is to be adjudicated any defense that the assuming insurer deems available to the ceding insurer or its liquidator.

Sec. 2. Chapter 686C of NRS is hereby amended by adding thereto the provisions set forth as sections 2.5 to 20, inclusive, of this act.

Sec. 2.5 ***"Annuity" includes an agreement for allocated funding, a structured settlement annuity and an immediate or deferred annuity.***

Sec. 3. ***"Authorized assessment" or "authorized" as used in the context of assessments means or describes an assessment authorized by a resolution of the board of directors of the association to be imposed immediately or later on member insurers in a specified amount.***

Sec. 4. ***"Benefit plan" means a benefit plan for a specific employee, union or association of natural persons.***

Sec. 5. ***"Called assessment" or "called" as used in the context of assessments means or describes an authorized assessment required by a notice mailed by the association to member insurers to be paid within the time set forth in the notice.***

Sec. 6. *"Extra-contractual claim" includes a claim relating to bad faith in the payment of claims and a claim for punitive or exemplary damages or for costs and attorney's fees.*

Sec. 7. *"Owner" of a policy or contract means the person who is identified as the legal owner under the terms of the policy or contract or who is otherwise vested with legal title to the policy or contract through a valid assignment completed in accordance with the terms of the policy or contract and properly recorded as the owner on the books of the issuer.*

Sec. 8. *"Person" includes a government, governmental agency or political subdivision of a government.*

Sec. 9. *1. "Principal place of business" of an organization means the single state in which the natural persons who establish policy for the direction, control and coordination of the operations of the organization as a whole primarily perform that function, determined by the association in its reasonable judgment by considering:*

(a) The state in which the primary executive and administrative headquarters of the organization is located;

(b) The state in which the principal office of the chief executive officer of the organization is located;

(c) The state in which the board of directors, or similar governing authority, of the organization conducts the majority of its meetings;

(d) The state in which the executive or managerial committee of the board of directors, or similar governing authority, of the organization conducts the majority of its meetings; and

(e) The state from which the management of the overall operations of the organization is directed.

2. "Principal place of business" of the sponsor of a benefit plan means the principal place of business of the association, committee, joint board of trustees or similar group of representatives of the parties who establish or maintain the plan or, if that cannot be ascertained, of the employer or the employee organization that has the largest investment in the plan, except that in either case if more than half of the participants of the plan are employed in one state, it means that state. In the case of a benefit plan sponsored by affiliated companies comprising a consolidated corporation, it means the state in which the holding company or controlling affiliate has its principal place of business as determined by using the factors set forth in subsection 1.

Sec. 10. *"State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.*

Sec. 11. *"Structured settlement annuity" means an annuity purchased to fund periodic payments to a plaintiff or other claimant in payment for or with respect to personal injury suffered by him.*

Sec. 12. *Premiums due for coverage after entry of an order of liquidation of an insolvent insurer belong to and are payable at the direction of the association, and the association is liable for unearned premiums due to owners of policies or contracts arising after the entry of such an order.*

Sec. 13. *A deposit in this state, held pursuant to law or required by the commissioner for the benefit of creditors, including owners of policies, not turned over to the domiciliary receiver upon the entry of a final order of liquidation or order approving a plan of rehabilitation of an insurer domiciled in this state or a reciprocal state pursuant to NRS 696B.290 or 696B.300 must be promptly paid to the association. The association is entitled to retain a portion of an amount so paid to it that is equal to the percentage determined by dividing the aggregate amount of policy owners' claims related to that insolvency for which the association has provided statutory benefits by the aggregate amount of all policy owners' claims in this state related to that insolvency, and shall remit the remainder to the domiciliary receiver. The amount so remitted is a distribution of the assets of the insurer for the purposes of chapter 696B of NRS.*

Sec. 14. *1. As used in this section, "coverage date" means the date on which the association becomes liable for the obligations of a member insurer.*

2. At any time after the coverage date, the association may elect to succeed to the rights and obligations of the member insurer which accrue on or after the coverage date and relate to contracts covered, in whole or in part, by the association under any one or more agreements for indemnity reinsurance entered into by the member insurer as ceding insurer and selected by the association. However, the association may not exercise its right of election with respect to an agreement for reinsurance if the receiver, rehabilitator or liquidator of the member insurer has previously expressly disaffirmed the agreement. The election must be effected by a notice to the receiver, rehabilitator or liquidator and the affected reinsurers. If the association makes such an election:

(a) The association is responsible for all unpaid premiums due under each agreement for periods both before and after the coverage date, and for the performance of all other obligations to be performed after the coverage date, in each case which relates to a contract covered in whole or in part by the association. The association may charge a contract covered in part by it, through reasonable methods of allocation, for the costs of reinsurance in excess of the obligations of the association.

(b) The association is entitled to any amount payable by the reinsurer under each agreement with respect to losses or events that occur in periods after the coverage date and relate to contracts covered in whole or in part by the association, but upon receipt of any such amount, the association is obligated to pay, to the beneficiary under the contract on account of which the amount was paid, that portion of the amount received by the association that exceeds the benefits paid by the association on account of the contract less the retention by the impaired or insolvent member insurer applicable to the loss or event.

(c) The association and each reinsurer shall, within 30 days after the election, calculate the net balance due to or from the association under each agreement as of the date of the election, giving full credit for all items paid by the member insurer or its receiver, rehabilitator or liquidator, or the reinsurer, between the coverage date and the date of the election. The association or the reinsurer shall pay the net balance

within 5 days after the completion of the calculation. If a receiver, rehabilitator or liquidator has received any amount due the association pursuant to paragraph (b), the recipient shall remit the amount to the association as promptly as practicable.

(d) The reinsurer may not terminate an agreement for reinsurance insofar as it relates to contracts covered by the association in whole or in part, or set off any unpaid premium due for a period before the coverage date against the amount due the association, if the association, within 60 days after the election, pays the premiums due for periods both before and after the coverage date which relate to such contracts.

3. If the association transfers its obligation to another insurer, and the association and the other insurer so agree, the other insurer succeeds to the rights and obligations of the association under subsection 2 effective as of the agreed date, whether or not the association has made the election described in subsection 2, except that:

(a) An agreement for indemnity reinsurance automatically terminates as to new reinsurance unless the reinsurer and the other insurer agree to the contrary;

(b) The obligation of the association to the beneficiary under paragraph (b) of subsection 2 ceases on the date of the transfer to the other insurer; and

(c) This subsection does not apply if the association has previously expressly determined in writing that it will not exercise its right of election under subsection 2.

4. The provisions of this section supersede an affected agreement for reinsurance which provides for or requires payment of proceeds of reinsurance, on account of a loss or event that occurs after the coverage date, to the receiver, rehabilitator or liquidator of the insolvent member insurer. The receiver, rehabilitator or liquidator remains entitled to any amounts payable by the reinsurer under the agreement with respect to losses or events that occur before the coverage date, subject to any applicable setoff.

5. Except as otherwise expressly provided, this section does not alter or modify the terms or conditions of any agreement of the insolvent insurer for reinsurance, abrogate or limit any right of a reinsurer to rescind an agreement for reinsurance, or give an owner or beneficiary of a policy an independent cause of action against a reinsurer under an agreement for indemnity reinsurance that is not otherwise set forth in the agreement.

Sec. 15. *1. The board of directors of the association may exercise reasonable business judgment to determine the means by which the association is to provide the benefits of this chapter in an economical and efficient manner.*

2. Where the association has arranged or offered to provide the benefits of this chapter to a covered person under a plan or arrangement that satisfies the obligations of the association under this chapter, the covered person is not entitled to benefits from the association in addition to or other than those provided under the plan or arrangement.

Sec. 16. *Venue in an action against the association arising under this chapter lies in Washoe County. No appeal bond may be required of the association in an appeal that relates to a cause of action arising under this chapter.*

Sec. 17. *In carrying out its duties in connection with guaranteeing, assuming or reinsuring a policy or contract under NRS 686C.150 and 686C.152, the association, subject to the approval of the court in the insolvent or impaired insurer's state which has jurisdiction over the conservation, rehabilitation or liquidation of the insurer, may issue substitute coverage for a policy or contract that provides an interest rate, crediting rate or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value by issuing an alternative policy or contract if:*

1. In lieu of the index or other external reference stated in the original policy or contract, the alternative policy or contract provides for a fixed interest rate, payment of dividends guaranteed as to minimum amount, or a different method of calculating interest or changes in value;

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

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

Sec. 18. *1. A member insurer that wishes to protest all or part of an assessment shall pay the full amount of the assessment when due, as set forth in the notice from the association. The payment may be used to meet obligations of the association during the pendency of the assessment and any subsequent appeal. Payment must be accompanied by a statement in writing that the payment is made under protest and setting forth briefly the grounds for the protest.*

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

3. Within 30 days after a final decision is made, the association shall notify the protesting member insurer in writing of the final decision. Within 60 days after receipt of that notice, the protesting member insurer may appeal the decision to the commissioner.

4. As an alternative to making a final decision with respect to a protest concerning the basis of assessment, the association may refer the protest to the commissioner for a final decision, with or without a recommendation from the association.

5. If a protest or appeal is upheld, the amount paid in error or excess must be returned to the member insurer. Interest must be paid on the refund at the rate actually earned by the association.

Sec. 19. *The association may request information from member insurers to aid in the exercise of its powers under this chapter, and each member shall promptly comply with such a request.*

Sec. 20. ***It is unlawful for an insurer, agent or affiliate of an insurer, or other person to make, publish, circulate or place before the public, or cause any other person to do so, in any publication, notice, circular, letter or poster, or over any radio or television station, any advertisement or statement, written or oral, which uses the existence of the association for the sale, solicitation or inducement to purchase any form of insurance covered by the association. This section does not apply to the association or any other person that does not sell or solicit insurance.***

Sec. 21. NRS 686C.020 is hereby amended to read as follows:

686C.020 The purpose of this chapter is to protect ***, within certain limits, the*** persons specified in ~~[subsection]~~ ***subsections*** 1 ***and 2*** of NRS 686C.030 against failure in the performance of contractual obligations under life and health insurance policies ~~[, annuities and contracts]~~ ***and contracts, and annuities,*** specified in subsection ~~[2]~~ ***4*** of NRS 686C.030 because of the impairment or insolvency of ~~[the]~~ ***a member*** insurer issuing such policies or contracts.

Sec. 22. NRS 686C.030 is hereby amended to read as follows:

686C.030 1. This chapter provides coverage for the policies or contracts described in subsection ~~[2]~~ ***4*** to persons who are:

(a) Owners of or certificate holders under such policies or contracts, ***other than structured settlement annuities,*** and who:

(1) Are residents of this state; or

(2) Are not residents, but only if:

(I) The ~~[insurers which]~~ ***insurer that*** issued the policies or contracts ~~[are]~~ ***is*** domiciled in this state;

(II) ~~[Those insurers did not hold at the time the policies or contracts were issued a license or certificate of authority in the states in which those persons reside;~~

~~(III)]~~ The states in which the ~~[nonresident]~~ persons reside have associations ~~[for protection against impaired or insolvent insurers]~~ similar to the association created by this chapter; and

~~[(IV) Those]~~

(III) The persons are not eligible for coverage by ~~[those]~~ ***an association in another state because the insurer was not authorized in the other state at the time specified in that state's law governing guaranty*** associations; and

(b) Beneficiaries, assignees or payees of the persons covered under paragraph (a), wherever they reside, except for nonresident certificate holders under group policies or contracts.

2. ***For structured settlement annuities, except as otherwise provided in subsection 3, this chapter provides coverage to a payee under the annuity, or beneficiary of a payee if the payee is deceased, if the payee or beneficiary:***

(a) Is a resident of this state, regardless of the residence of the owner of the annuity; or

(b) Is not a resident of this state, but:

(1) The owner of the annuity is a resident of this state, or the issuer of the annuity is domiciled in this state and the state in which the owner

resides has an association similar to the association created by this chapter; and

(2) Neither the payee or beneficiary nor the owner of the annuity is eligible for coverage by the association of the state in which the payee, beneficiary or owner resides.

3. This chapter does not provide coverage for a payee or beneficiary of a structured settlement annuity if the owner of the annuity is a resident of this state and the payee or beneficiary is afforded any coverage by the association of another state. In determining the application of the provisions of this chapter to a situation where a person could be covered by the association of more than one state, this chapter must be construed in conjunction with the laws of other states to result in coverage by only one association.

4. This chapter provides coverage to the persons described in ~~[subsection]~~ ***subsections*** 1 ***and 2*** for direct, nongroup life, health and supplemental policies or contracts, and annuities, and certificates under direct group policies and contracts, and annuities, ~~[issued by member insurers,]~~ except as limited by this chapter.

Sec. 23. NRS 686C.035 is hereby amended to read as follows:

686C.035 1. This chapter does not provide coverage for:

(a) ~~[Any]~~ ***A*** portion of a policy or contract not guaranteed by the insurer, or under which the risk is borne by the ~~[holder]~~ ***owner*** of the policy or contract.

(b) ~~[Any]~~ ***A*** policy or contract of reinsurance unless assumption certificates have been issued pursuant to that policy or contract.

(c) ~~[Any]~~ ***A*** portion of a policy or contract to the extent that the rate of interest on which it is based ~~[:]~~ ***, or the interest rate, crediting rate or similar factor determined by the use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value:***

(1) ~~[When averaged]~~ ***Averaged*** over the period of 4 years before the date on which the association becomes obligated with respect to the policy or contract, ~~[or averaged for the period since the policy or contract was issued if it was issued less than 4 years before the association became obligated,]~~ exceeds the rate of interest determined by subtracting 2 percentage points from Moody's Corporate Bond Yield Average averaged for the same period ~~[;]~~ ***, or for the period between the date of issuance of the policy or contract and the date the association became obligated, whichever period is less;*** and

(2) On or after the date on which the association becomes obligated with respect to the policy or contract, exceeds the rate of interest determined by subtracting 3 percentage points from ~~[the most recent]~~ Moody's Corporate Bond Yield Average ~~[.~~

~~(d) Any]~~ ***as most recently available.***

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

(1) A multiple employer welfare arrangement ~~[as defined]~~ ***described*** in 29 U.S.C. ~~[§ 1002;]~~ ***§ 1144;***

(2) A minimum-premium group insurance plan;

(3) A stop-loss group insurance plan; or

(4) A contract for administrative services only.

(e) ~~[Any]~~ ***A*** portion of a policy or contract to the extent that it provides for dividends, credits for experience, voting rights or the payment of any fee or allowance to any person, including the ~~[holder]~~ ***owner*** of a policy or contract, for services or administration connected with the policy or contract.

(f) ~~[Any]~~ ***A*** policy or contract issued in this state by a member insurer at a time when the member insurer was not authorized to issue the policy or contract in this state.

(g) A portion of a policy or contract to the extent that the assessments required by NRS 686C.230 ~~[for]~~ ***with respect to*** the policy or contract are preempted by federal law.

(h) An obligation that does not arise under the ***express*** written terms of ~~[a]~~ ***the*** policy or contract issued by the insurer ~~[.~~
~~(i)]~~ ***, including:***

(1) Claims based on marketing materials;

(2) Claims based on side letters or other documents that were issued by the insurer without satisfying applicable requirements for filing or approval of policy forms;

(3) Misrepresentations of or regarding policy benefits;

(4) Extra-contractual claims; or

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

(i) A contractual agreement that establishes the member insurer's obligation to provide a guarantee based on accounting at book value for participants in a defined-contribution benefit plan by reference to a portfolio of assets owned by the benefit plan or its trustee, which in each case is not an affiliate of the member insurer.

(j) A portion of a policy or contract to the extent that it provides for interest or other changes in value which are determined by the use of an index or other external reference stated in the policy or contract, but which have not been credited to the policy or contract, or as to which the rights of the owner of the policy or contract are subject to forfeiture, determined on the date the member insurer becomes an impaired or insolvent insurer, whichever occurs first. If the interest or changes in value of a policy or contract are credited less frequently than annually, for the purpose of determining the values that have been credited and are not subject to forfeiture, the interest or change in value determined by using procedures stated in the policy or contract must be credited as if the contractual date for crediting interest or changing values was the date of the impairment or insolvency of the insured member, whichever occurs first and is not subject to forfeiture.

(k) An unallocated annuity contract.

2. As used in this section, "Moody's Corporate Bond Yield Average" means the monthly average for corporate bonds published by Moody's Investors Service, Inc., or any successor average.

Sec. 24. NRS 686C.040 is hereby amended to read as follows:

686C.040 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 686C.045 to 686C.125, inclusive, ***and sections 2.5 to 11, inclusive, of this act*** have the meanings ascribed to them in those sections.

Sec. 25. NRS 686C.070 is hereby amended to read as follows:

686C.070 "Contractual obligation" means any obligation under a policy or contract or a certificate under a group policy or contract, or portion thereof, for which coverage is provided under NRS 686C.030 ***.*** ~~[, and includes unearned premiums.]~~

Sec. 26. NRS 686C.090 is hereby amended to read as follows:

686C.090 "Impaired insurer" means an insurer which is not an insolvent insurer and ~~[:~~

~~1. Is]~~ ***is*** placed under an order of rehabilitation or conservation by a court of competent jurisdiction ***.*** ~~[; or~~

~~2. Is determined by the commissioner to be unable or potentially unable to fulfill its contractual obligations.]~~

Sec. 27. NRS 686C.100 is hereby amended to read as follows:

686C.100 "Member insurer" means ~~[any]~~ ***an*** insurer which is licensed or holds a certificate of authority to transact in this state any kind of insurance for which coverage is provided in this chapter and includes ~~[any]~~ ***an*** insurer whose license or certificate of authority ~~[to transact such insurance]~~ ***in this state*** has been suspended, revoked, not renewed or voluntarily withdrawn. The term does not include:

1. A ~~[nonprofit]~~ hospital or medical organization ~~[,]~~ ***, whether or not for profit;***
2. A health maintenance organization;
3. A fraternal benefit society;
4. A mandatory state pooling plan;
5. A mutual assessment company or ~~[any entity]~~ ***other person*** that operates on the basis of assessments;
6. An insurance exchange; ~~[or~~

~~7. Any other similar entity.]~~

7. An organization that is authorized only to issue charitable gift annuities under NRS 688A.281 to 688A.285, inclusive; or

8. An organization similar to any of those listed in subsections 1 to 7, inclusive.

Sec. 27.5 NRS 686C.110 is hereby amended to read as follows:

686C.110 "Premiums" means amounts received in any calendar year on covered policies or contracts less premiums, considerations and deposits returned thereon, and less dividends and credits for experience thereon. The term does not include ~~[any]~~ ***:***

1. Any amounts received for policies or contracts or for the portions of policies or contracts for which coverage is not provided under NRS 686C.030 except that the assessable premium is not reduced on account of paragraph (c) of subsection 1 of NRS 686C.035 relating to limitations on interest and subsection 2 or paragraph (b) of subsection 1 of NRS 686C.210 relating to limitations with respect to any one life.

2. Premiums for an unallocated annuity contract.

3. Premiums that exceed $5,000,000 for several nongroup policies of life insurance owned by one owner, regardless of:

(a) Whether the owner is a natural person, firm, corporation or other person;

(b) Whether any person insured under the policies is an officer, manager, employee or other person; or

(c) The number of policies or contracts held by the owner.

Sec. 28. NRS 686C.120 is hereby amended to read as follows:

686C.120 "Resident" means any person ***to whom a contractual obligation is owed and*** who resides in this state ~~[at the time]~~ ***on the date of entry of a court order that determines*** a member insurer ~~[is determined]~~ to be impaired or insolvent ~~[and to whom contractual obligations are owed.]~~ ***, whichever determination is first made.*** A person may be a resident of but one state, which in the case of a person other than a natural person is its principal place of business. ***A citizen of the United States who is a resident of a foreign country or of a territory or insular possession subject to the jurisdiction of the United States which does not have an association similar to the association created by this chapter shall be deemed to be a resident of the state of domicile of the insurer that issued the policy or contract.***

Sec. 29. NRS 686C.125 is hereby amended to read as follows:

686C.125 "Supplemental contract" means ~~[an]~~ ***a written*** agreement for the distribution of proceeds from a ~~[contract or policy.]~~ ***life or health insurance policy or an annuity.***

Sec. 30. NRS 686C.128 is hereby amended to read as follows:

686C.128 1. The association shall prepare, and submit to the commissioner for approval, a summary document describing the general purposes ~~[, exclusions]~~ and ***current*** limitations of this chapter. ~~[No insurer may]~~ ***After the expiration of 60 days after the approval of the summary document by the commissioner, an insurer may not*** deliver a policy or contract ~~[described in NRS 686C.030 to an intended holder]~~ ***to the owner of the policy or contract*** unless the ***summary*** document is delivered to the ~~[intended holder before or]~~ ***owner*** at the time of delivery of the policy or contract. The document must also be available upon request by ~~[a policyholder.]~~ ***the owner of a policy.*** The distribution, delivery, contents or interpretation of this document ~~[do not mean]~~ ***does not guarantee*** that the policy or the contract or ~~[the holder thereof would be]~~ ***its owner is*** covered in the event of the impairment or insolvency of a member insurer. The descriptive document must be revised by the association as amendments to this chapter may require. Failure to receive this document does not give the ~~[holder]~~ ***owner*** of a policy or contract, or an insured, any greater rights than those stated in this chapter.

2. The document prepared pursuant to subsection 1 must contain a clear and conspicuous disclaimer on its face. ***The commissioner shall establish the form and content of the disclaimer.*** The disclaimer must:

(a) State the name and address of the association and of the division;

(b) Prominently warn the ***owner of the*** policy or contract ~~[holder]~~ that the association may not cover the policy or, if coverage is available, it will be subject to substantial limitations and exclusions and conditioned on continued residence in this state;

(c) State ***the types of policies for which guaranty funds will provide coverage;***

(d) State that the insurer and its agents are prohibited by law from using the existence of the association for the purpose of sales, solicitation or inducement to purchase any form of insurance;

~~[(d) Emphasize]~~

(e) State that the ~~[holder]~~ ***owner*** of a policy or contract should not rely on coverage under the association when selecting an insurer; ~~[and~~

~~(e)]~~ ***(f) Explain the rights and procedures for filing a complaint to allege a violation of any provision of this chapter; and***

(g) Provide other information as directed by the commissioner ~~[.]~~ ***, including sources of information about the financial condition of insurers, if the information is not proprietary and is subject to disclosure under the law of the state in which the insurer is domiciled.***

3. A member insurer shall retain evidence of compliance with subsection 1 while the policy or contract for which the notice is given remains in effect.

Sec. 31. NRS 686C.130 is hereby amended to read as follows:

686C.130 1. There is hereby created a nonprofit ~~[, unincorporated,]~~ legal entity to be known as the Nevada Life and Health Insurance Guaranty Association. All member insurers shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under the plan of operation established and approved pursuant to NRS 686C.290 and shall exercise its powers through a board of directors established pursuant to NRS 686C.140.

2. For purposes of administration and assessment, the association shall maintain two accounts:

(a) The account for health insurance; and

(b) The account for life insurance and annuities, which consists of:

(1) The subaccount for life insurance; and

(2) The subaccount for annuities ~~[.]~~ ***, including annuities owned by a governmental retirement plan, or its trustees, established under section 401, 403(b) or 457 of the Internal Revenue Code, 26 U.S.C. §§ 401, 403(b) and 457.***

3. The association is under the immediate supervision of the commissioner and is subject to the applicable provisions of the Nevada Insurance Code. ***Meetings or records of the association may be opened to the public by majority vote of the board of directors.***

Sec. 32. NRS 686C.140 is hereby amended to read as follows:

686C.140 1. The board of directors of the association ~~[shall consist]~~ ***consists*** of not less than five nor more than nine members, serving terms as established in the plan of operation. The members of the board ~~[shall]~~ ***who represent insurers must*** be selected by member insurers subject to the approval of the commissioner. ***Two public representatives must be appointed to the board by the commissioner. A public representative may not be an officer, director or employee of an insurer or engaged in the business of insurance.*** Vacancies on the board ~~[shall]~~ ***must*** be filled for the remaining period of the term ~~[in the manner described in the plan of operation.]~~ ***by majority vote of the members of the board, subject to the***

approval of the commissioner, for members who represent insurers, and by the commissioner for public representatives. To select the initial board of directors, and initially organize the association, the commissioner shall give notice to all member insurers of the time and place of the organizational meeting. In determining voting rights at the organizational meeting each member insurer ~~[shall be]~~ ***is*** entitled to one vote in person or by proxy. If the board of directors is not selected within 60 days after notice of the organizational meeting, the commissioner may appoint the initial members ~~[.]~~ ***to represent insurers in addition to the public representatives.***

2. In approving selections or in appointing members to the board, the commissioner shall consider, among other things, whether all member insurers are fairly represented.

3. Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors but members of the board ~~[shall]~~ ***may*** not otherwise be compensated by the association for their services.

Sec. 33. NRS 686C.150 is hereby amended to read as follows:

686C.150 If a ~~[domestic]~~ member insurer is an impaired insurer, the association may, subject to any conditions it may impose which do not impair the contractual obligations of the impaired insurer ~~[,]~~ ***and which*** are approved by the commissioner ***:*** ~~[, and, except in cases of court ordered conservation or rehabilitation, are approved by the impaired insurer:]~~

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

2. Provide such money, pledges, ***loans,*** notes, guarantees or other means as are proper to effectuate subsection 1, and assure payment of the contractual obligations of the impaired insurer pending action under subsection 1.

~~[3. Lend money to the impaired insurer.]~~

Sec. 34. NRS 686C.152 is hereby amended to read as follows:

686C.152 If a member insurer is an insolvent insurer, the association shall:

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

2. Ensure payment of the contractual obligations of the insolvent insurer and:

(a) Provide such money, pledges, ***loans, notes,*** guarantees or other means as are reasonably necessary to discharge ~~[such]~~ ***its*** duties; or

(b) ~~[With respect only to life and health insurance policies, provide]~~ ***Provide*** benefits and coverages in accordance with NRS 686C.153 and 686C.154.

Sec. 35. NRS 686C.153 is hereby amended to read as follows:

686C.153 When proceeding pursuant to paragraph (b) of subsection ~~[1 of NRS 686C.151 or paragraph (b) of subsection]~~ 2 of NRS 686C.152, the association shall ~~[, with]~~ ***:***

1. With respect to life and health insurance policies ~~[only:~~

~~1. Ensure]~~ ***and annuities, ensure*** payment of benefits for premiums identical to the premiums and benefits, except for terms of conversion and

renewability, which would have been payable under policies ***or contracts*** of the insolvent insurer, for claims incurred with respect to:

(a) A group policy ***or contract,*** not later than the earlier of the next renewal date under the policy or contract or 45 days, but in no event less than 30 days, after the date when the association becomes obligated with respect to that policy ~~[.~~

~~(b) An individual policy,]~~ ***or contract.***

(b) A nongroup policy, contract or annuity, not later than the earlier of the next renewal date, if any, under the policy ***, contract or annuity*** or 1 year, but in no event less than 30 days, after the date when the association becomes obligated with respect to that policy ~~[.]~~ ***, contract or annuity.***

2. Make diligent efforts to provide all known insureds or ~~[policyholders]~~ ***owners*** with respect to group policies ***or contracts, or annuitants with respect to annuities,*** 30 days' notice of termination of the benefits provided ~~[.~~

~~3. Make]~~ ***pursuant to subsection 1.***

3. With respect to nongroup life and health insurance policies and annuities, make available substitute coverage on an individual basis, in accordance with the provisions of subsection 4, to each known insured ~~[under an individual policy,]~~ ***or annuitant,*** or owner if other than the insured ~~[,]~~ ***or annuitant,*** and to each natural person formerly insured ***, or formerly an annuitant,*** under a group policy who is not eligible for replacement group coverage, if the insured ***or annuitant*** had a right under law ~~[to convert coverage under]~~ ***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 period, 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.

4. In providing the substitute coverage required under subsection 3, the association may offer to reissue the terminated coverage or to issue an alternative policy that must be offered without requiring evidence of insurability or a waiting period or exclusion that would not have applied under the terminated policy, and may reinsure any alternative or reinsured policy.

Sec. 36. NRS 686C.154 is hereby amended to read as follows:

686C.154 1. Alternative policies adopted by the association are subject to the approval of the commissioner ~~[.]~~ ***and the court in the insolvent or impaired insurer's state which has jurisdiction over the conservation, rehabilitation or liquidation of the insurer.*** The association may adopt alternative policies of various types for future issuance without regard to any particular impairment or insolvency.

2. An alternative policy must contain at least the minimum statutory provisions required in this state and provide benefits that are not unreasonable in relation to the premium charged. The association shall set the premium in accordance with a table of rates which it shall adopt. The premium must reflect the amount of insurance to be provided and the age and class of risk of each insured, but must not reflect any changes in the health of the insured after the original policy was last underwritten.

3. An alternative policy issued by the association must provide coverage of a type similar to that of the policy issued by the impaired or insolvent insurer, as determined by the association.

4. If the association elects to reissue terminated coverage at a rate of premium different from that charged under the terminated policy, the premium must be set by the association in accordance with the amount of insurance provided and the age and class of risk, subject to approval by the commissioner ~~[or by a court of competent jurisdiction.]~~ ***and the court described in subsection 1.***

Sec. 37. NRS 686C.155 is hereby amended to read as follows:

686C.155 When proceeding pursuant to paragraph (b) of subsection ~~[1 of NRS 686C.151 or paragraph (b) of subsection]~~ 2 of NRS 686C.152 with respect to any policy or contract carrying guaranteed minimum interest rates, the association shall ensure the payment or crediting of a rate of interest consistent with paragraph (c) of subsection 1 of NRS 686C.035.

Sec. 38. NRS 686C.160 is hereby amended to read as follows:

686C.160 In carrying out its responsibilities under NRS ~~[686C.151 and]~~ 686C.152, the association may, subject to approval by ~~[the court, or by the commissioner if there is no judicial proceeding:]~~ ***a court of this state:***

1. Impose permanent liens on policies and contracts in connection with any guarantee, assumption or reinsurance if the association finds that the amounts which can be assessed under this chapter are less than the amounts needed to ~~[assure]~~ ***ensure*** full and prompt performance of the association's duties or that the economic or financial conditions as they affect member insurers are sufficiently adverse that the imposition of such permanent liens is in the public interest.

2. Impose temporary moratoriums or liens on payments of cash values and policy loans or any right to withdraw money held in conjunction with policies or contracts, in addition to any contractual provisions for deferral of paying cash value or lending against the policy. ***In addition, in the event of a temporary moratorium or charge imposed by the court in the insolvent or impaired insurer's state which has jurisdiction over the conservation, rehabilitation or liquidation of the insurer on such payment or lending, or on any other right to withdraw money held in conjunction with policies or contracts, the association may defer such payment, lending or withdrawal for the period of the moratorium or charge, except for claims covered by the association to be paid in accordance with a procedure for cases of hardship established by the liquidator or rehabilitator and approved by the court.***

Sec. 39. NRS 686C.170 is hereby amended to read as follows:

686C.170 The association is not liable under NRS ~~[686C.151 or 686C.152 for any covered policy of a foreign or alien insurer]~~ ***686C.152*** where a guaranty is provided to residents of this state by the laws of the domiciliary state or jurisdiction of the impaired or insolvent insurer ~~[.]~~ ***other than this state.***

Sec. 40. NRS 686C.180 is hereby amended to read as follows:

686C.180 The association may render assistance and advice to the commissioner upon his request, concerning rehabilitation, payment of

claims, continuation of coverage or the performance of other contractual obligations of ~~[any impaired]~~ ***an impaired or insolvent*** insurer.

Sec. 41. NRS 686C.190 is hereby amended to read as follows:

686C.190 The association has standing:

1. To appear ***or intervene*** before ~~[any]~~ ***a*** court ***or agency*** in this state which has jurisdiction over an impaired or insolvent insurer concerning which the association is or may become obligated under this chapter ~~[.]~~ ***or over any person or property against whom or which the association may have rights through subrogation or otherwise.*** Its standing extends to all matters germane to the powers and duties of the association, including ~~[but not limited to]~~ proposals for reinsuring ***, modifying*** or guaranteeing the ~~[covered]~~ policies or contracts of the impaired or insolvent insurer and the determination of the ~~[covered]~~ policies or contracts and contractual obligations.

2. To appear or intervene before a court ***or agency*** in another state which has jurisdiction over an impaired or insolvent insurer for which the association is or may become obligated, or over ~~[a third party]~~ ***any person or property*** against whom ***or which*** the association may have rights through subrogation ~~[of the insurer's policyholders.]~~ ***or otherwise.***

Sec. 42. NRS 686C.200 is hereby amended to read as follows:

686C.200 1. ~~[Any]~~ ***A*** person receiving benefits under this chapter shall be deemed to have assigned his rights under, and any causes of action ***against any person for losses arising under, resulting from or otherwise*** relating to, the covered policy or contract to the association to the extent of the benefits received because of this chapter ***,*** whether the benefits are payments of or on account of contractual obligations, continuation of coverage or provision of substitute or alternative coverages. The association may require an assignment to it of those rights and causes of action by any payee, ***owner of a*** policy or contract ***,*** ~~[owner,]~~ beneficiary, insured or annuitant as a condition precedent to the receipt of any rights or benefits conferred by this chapter upon that person.

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

3. In addition to the rights provided under subsections 1 and 2, the association has all rights of subrogation at common law and any other equitable or legal remedy which would have been available to the impaired or insolvent insurer or the ~~[holder]~~ ***owner, beneficiary or payee*** of a policy or contract ~~[,]~~ with respect to the policy or contract ~~[.]~~ ***, including, in the case of a structured settlement annuity, any rights of the owner, beneficiary or payee of the annuity, to the extent of benefits received under this chapter, against a person originally or by succession responsible for the losses arising from the personal injury relating to the annuity or payment for it, except any such person responsible solely by reason of serving as an assignee under section 130 of the Internal Revenue Code, 26 U.S.C. § 130.***

4. If the provisions of subsections 1, 2 and 3 are invalid or ineffective with respect to any person or any claim for any reason, the amount payable to the association with respect to the related covered obligations

is reduced by the amount realized by any other person with respect to the person or claim which is attributable to the policies or portions thereof covered by the association.

5. If the association has provided benefits with respect to a covered obligation and a person recovers amounts as to which the association has rights under subsections 1 to 4, inclusive, he shall pay to the association the portion of the recovery attributable to the policies or portions thereof covered by the association.

Sec. 43. NRS 686C.210 is hereby amended to read as follows:

686C.210 1. ~~[Unless further limited by subsection 2, the liability of the association for benefits under this chapter is limited to]~~ ***The benefits that the association may become obligated to cover may not exceed*** the lesser of:

(a) The contractual obligations for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer; ~~[or]~~

(b) With respect to ~~[any]~~ one life, regardless of the number of policies or contracts:

(1) Three hundred thousand dollars in death benefits from life insurance, but not more than $100,000 in net cash for surrender and withdrawal for life insurance; ***or***

(2) ~~[One hundred thousand dollars in benefits from health insurance, including any net cash for surrender and withdrawal; and~~

~~(3)]~~ One hundred thousand dollars in the present value of ***benefits from*** annuities, including net cash for surrender and withdrawal ~~[.~~

~~2. The association is not liable to expend more than $300,000 in the aggregate with]~~ ***;***

(c) With respect to health insurance for any one natural person:

(1) One hundred thousand dollars for coverages other than disability insurance, basic hospital, medical and surgical insurance or major medical insurance, including any net cash for surrender or withdrawal;

(2) Three hundred thousand dollars for disability insurance; or

(3) Five hundred thousand dollars for basic hospital, medical and surgical insurance or major medical insurance; or

(d) With respect to each payee of a structured settlement annuity, or beneficiary or beneficiaries of the payee if deceased, $100,000 in present value of benefits from the annuity in the aggregate, including any net cash for surrender or withdrawal.

2. In no event is the association obligated to cover more than:

(a) With respect to any one life ***or person*** under ~~[subparagraphs (1), (2) and (3) of paragraph]~~ ***paragraphs*** (b) ***and (c)*** of subsection 1 ~~[.]~~ ***:***

(1) An aggregate of $300,000 in benefits, excluding benefits for basic hospital, medical and surgical insurance or major medical insurance; or

(2) An aggregate of $500,000 in benefits, including benefits for basic hospital, medical and surgical insurance or major medical insurance.

(b) With respect to one owner of several nongroup policies of life insurance, whether the owner is a natural person or an organization and whether the persons insured are officers, managers, employees or other

persons, more than $5,000,000 in benefits, regardless of the number of policies and contracts held by the owner.

3. The limitations set forth in this section are limitations on the benefits for which the association is obligated before taking into account its rights to subrogation or assignment or the extent to which those benefits could be provided out of the assets of the impaired or insolvent insurer attributable to covered policies. The cost of the association's obligations under this chapter may be met by the use of assets attributable to covered policies, or reimbursed to the association pursuant to its rights to subrogation or assignment.

4. In performing its obligation to provide coverage under NRS 686C.150 and 686C.152, the association need not guarantee, assume, reinsure or perform, or cause to be guaranteed, assumed, reinsured or performed, the contractual obligations of the impaired or insolvent insurer under a covered policy or contract which do not materially affect the economic value or economic benefits of the covered policy or contract.

Sec. 44. NRS 686C.220 is hereby amended to read as follows:

686C.220 The association may:

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

2. Sue or be sued, including the taking of any legal action necessary or proper for recovery of any unpaid assessments under NRS 686C.230 or to settle claims or potential claims against it.

3. Borrow money to effect the purposes of this chapter. Any notes or other evidence of indebtedness of the association not in default are legal investments for domestic insurers and may be carried as admitted assets.

4. Employ or retain such persons as are necessary ***or appropriate*** to handle the financial transactions of the association, and to perform such other functions as become necessary or proper under this chapter.

5. ~~[Negotiate and contract with any liquidator, rehabilitator, conservator or ancillary receiver to carry out the powers and duties of the association.~~

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

~~[7.]~~ ***6.*** Exercise, for the purposes of this chapter and to the extent approved by the commissioner, the powers of a domestic life or health insurer, but in no case may the association issue insurance policies or annuities other than those issued to perform ~~[the]~~ ***its*** contractual obligations ~~[of the impaired insurer]~~ under this chapter.

~~[8.]~~ ***7.*** Join an organization of one or more other state associations having similar purposes, to further the purposes and administer the powers and duties of the association.

8. Organize itself as a corporation or in other legal form permitted by the laws of this state.

9. Request information from a person seeking coverage from the association to aid the association in determining its obligations under this chapter with respect to him, and the person shall promptly comply with the request.

10. Take other necessary or appropriate action to perform its duties and discharge its obligations under this chapter or to exercise its power under this chapter.

Sec. 45. NRS 686C.230 is hereby amended to read as follows:

686C.230 1. To provide the money necessary to carry out the powers and duties of the association, the board ***of directors*** shall assess the member insurers, separately for each account, at such times and for such amounts as the board finds necessary. An assessment is due upon at least 30 days' written notice to the member insurer and accrues interest after it is due at the rate provided in NRS 99.040.

2. There are two classes of assessments, as follows:

(a) Assessments in Class A must be ~~[made]~~ ***authorized and called*** for the purpose of meeting administrative and legal costs and other expenses ***.*** ~~[, including those of examinations conducted pursuant to NRS 686C.310.]~~ An assessment in Class A need not be related to a particular impaired or insolvent insurer.

(b) Assessments in Class B must be ~~[made]~~ ***authorized and called*** to the extent necessary to carry out the powers and duties of the association under NRS 686C.150 to 686C.220, inclusive, with regard to an impaired or insolvent insurer.

Sec. 46. NRS 686C.240 is hereby amended to read as follows:

686C.240 1. The board ***of directors*** shall determine the amount of each assessment in Class A and may, but need not, prorate it. If an assessment is prorated, the board may provide that any surplus be credited against future assessments in Class B. An assessment which is not prorated must not exceed ~~[$300]~~ ***$150*** for each ***member*** insurer for any one calendar year.

2. The board may allocate any assessment in Class B among the accounts according to the premiums or reserves of the impaired or insolvent insurer or any other standard which it considers fair and reasonable under the circumstances.

3. Assessments in Class B against member insurers for each account and subaccount must be in the proportion that the premiums received on business in this state by each assessed member insurer on policies or contracts covered by each account or subaccount for the 3 most recent calendar years for which information is available preceding the year in which the insurer became impaired or insolvent bears to premiums received on business in this state for those calendar years by all assessed member insurers.

4. Assessments for money to meet the requirements of the association with respect to an impaired or insolvent insurer must not be ~~[made]~~ ***authorized or called*** until necessary to carry out the purposes of this chapter. Classification of assessments under subsection 2 of NRS 686C.230 and computation of assessments under this section must be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible. ***The association shall notify each member insurer of its anticipated prorated share of an assessment authorized but not yet called within 180 days after it is authorized.***

Sec. 47. NRS 686C.250 is hereby amended to read as follows:

686C.250 1. The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board ~~[,]~~ ***of directors,*** payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. If an assessment against a member insurer is abated or deferred in whole or in part, the amount by which that assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. ***As soon as the conditions that caused a deferral have been removed or rectified, the member insurer shall pay all assessments that were deferred pursuant to a plan of repayment approved by the association.***

2. ~~[The]~~ ***Except as otherwise provided in subsection 3, the*** total of all assessments ~~[upon]~~ ***authorized by the association with respect to*** a member insurer for:

(a) The account for life insurance and annuities and each of its subaccounts; and

(b) The account for health insurance,

respectively must not in any 1 calendar year exceed 2 percent of the insurer's average ***annual*** premiums ***received*** in this state on the policies ***and contracts*** covered by the ***subaccount or*** account during the 3 calendar years preceding the year in which the ~~[impairment or insolvency is determined.]~~ ***insurer became impaired or insolvent.***

3. ***If two or more assessments are authorized in 1 calendar year with respect to insurers that became impaired or insolvent in different calendar years, the average annual premiums received for the purposes of the limitation provided in subsection 2 are equal and limited to the higher of the 3-year annual premiums for the applicable account or subaccount as calculated pursuant to this section.***

4. If the maximum assessment, together with the other assets of the association in ~~[either]~~ ***an*** account, does not provide in any 1 year in either account an amount sufficient to carry out the responsibilities of the association, the necessary additional money must be assessed as soon thereafter as permitted by this chapter.

~~[4. If an assessment of 1 percent for either]~~

5. If the maximum assessment for a subaccount of the account for life insurance and annuities in any 1 year does not provide an amount sufficient to carry out the responsibilities of the association, then pursuant to subsection 3 of NRS 686C.240, the board shall assess ~~[both subaccounts]~~ ***the other subaccount*** for the necessary additional amount, subject to the maximum stated in subsection 2.

~~[5.]~~ ***6.*** The board may provide in the plan of operation a method of allocating funds among claims, whether relating to one or more impaired or insolvent insurers, when the maximum assessment is insufficient to cover anticipated claims.

Sec. 48. NRS 686C.260 is hereby amended to read as follows:

686C.260 The board ***of directors*** may, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each insurer to that account, the amount by which the assets of the account exceed the amount the board finds is

necessary to carry out during the coming year the obligations of the association with regard to that account, including assets accruing from assignment, subrogation, net realized gains and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future ~~[losses.]~~ ***claims.***

Sec. 49. NRS 686C.280 is hereby amended to read as follows:

686C.280 1. The association shall issue to each insurer paying an assessment under this chapter ***, other than an assessment in Class A,*** a certificate of contribution, in a form prescribed by the commissioner, for the amount ***of the assessment*** so paid. All outstanding certificates are of equal dignity and priority without reference to ~~[the]~~ amounts or dates of issue. A member insurer may show a certificate of contribution as an asset in its financial statement in such form, for such amount, if any, and for such period as the commissioner may approve.

2. A member insurer may offset against its liability for premium tax to this state, accrued with respect to business transacted in a calendar year, an amount equal to 20 percent of the amount certified pursuant to subsection 1 in each of the 5 calendar years following the year in which the assessment was paid. If an insurer ceases to transact business, it may offset all uncredited assessments against its liability for premium tax for the year in which it so ceases.

3. Any sum acquired by refund from the association pursuant to NRS 686C.260 which previously had been written off by the contributing insurer and offset against premium taxes as provided in subsection 2 must be paid to the department of taxation and deposited by it with the state treasurer for credit to the state general fund. The association shall notify the commissioner and the department of taxation of each refund made.

Sec. 50. NRS 686C.290 is hereby amended to read as follows:

686C.290 1. The association shall submit to the commissioner a plan of operation and any amendments thereto necessary or suitable to ~~[assure]~~ ***ensure*** the fair, reasonable and equitable administration of the association. The plan of operation and any amendments thereto become effective upon approval in writing by the commissioner, or 30 days after submission if he has not disapproved them. All member insurers shall comply with the plan of operation.

2. If at any time the association fails to submit suitable amendments to the plan, the commissioner shall adopt ***, after notice and hearing,*** such reasonable regulations as are necessary or advisable to effectuate the provisions of this chapter. The regulations continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

3. ~~[The]~~ ***In addition to satisfying the other requirements of this chapter, the*** plan of operation must:

(a) Establish procedures for handling the assets of the association.

(b) Establish the amount and method of reimbursing members of the board ***of directors*** under NRS 686C.140.

(c) Establish regular places and times for meetings of the board.

(d) Establish procedures for records to be kept of all financial transactions of the association, its agents and the board.

(e) Establish the procedures whereby selections for the board will be made and submitted to the commissioner.

(f) Establish any additional procedures for assessments under NRS 686C.230 to 686C.270, inclusive.

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

4. The plan of operation may provide that any or all powers and duties of the association, except those under subsection 3 of NRS 686C.220 and NRS 686C.230 to 686C.280, inclusive, are delegated to a corporation, association or other organization which performs or will perform functions similar to those of this association **,** or its equivalent **,** in two or more states. ***Such an organization must be reimbursed for any payments made on behalf of the association and paid for its performance of any function of the association. A delegation under this subsection takes effect only with the approval of the board of directors and the commissioner, and may be made only to an organization that extends protection not substantially less favorable and effective than that provided by this chapter.***

Sec. 51. NRS 686C.300 is hereby amended to read as follows:

686C.300 1. ~~[The commissioner shall:~~

~~(a) Notify the board of the existence of an impaired insurer not later than 3 days after a determination of impairment is made or he receives notice of impairment.~~

~~(b) Upon]~~ ***In addition to the duties and powers otherwise provided in this chapter, the*** commissioner ***:***

(a) Shall, upon request of the board ~~[,]~~ ***of directors,*** provide the association with a statement of the premiums in this and any other appropriate states for each member insurer.

~~[(c) When]~~

(b) Shall, when an impairment is declared and the amount of the impairment is determined, serve a demand upon the impaired insurer to make good the impairment within a reasonable time. Notice to the insurer is notice to its stockholders, if any. The failure of the insurer to comply with such demand promptly does not excuse the association from the performance of its powers and duties under this chapter.

(c) Must, in any liquidation or rehabilitation involving a domestic insurer, be appointed as the liquidator or rehabilitator.

2. The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative the commissioner may levy a forfeiture on any member insurer which fails to pay an assessment when due. ~~[Such forfeiture shall]~~ ***The forfeiture may*** not exceed 5 percent of the unpaid assessment per month, but no forfeiture may be less than $100 per month.

3. ~~[Any]~~ ***A final*** action of the board ***of directors*** or the association may be appealed to the commissioner by any member insurer if ~~[such]~~ ***the*** appeal is taken within ~~[30]~~ ***60*** days after the ***insurer receives notice of the final*** action **.** ~~[being appealed. If a member insurer appeals from an assessment, it shall pay the amount assessed to the association and that amount is available to meet the obligations of the association during the~~

~~pendency of the appeal. If the assessment is annulled or reduced on appeal, the amount paid, or the excess, must be refunded by the association to the insurer. Any~~] *A* final action or order of the commissioner is subject to judicial review in a court of competent jurisdiction [.] ***pursuant to the procedure provided in chapter 233B of NRS for contested cases.***

4. The liquidator, rehabilitator or conservator of any impaired insurer may notify all interested persons of the effect of this chapter.

Sec. 52. NRS 686C.303 is hereby amended to read as follows:

686C.303 If the association fails to act within a reasonable time [~~to carry out its duties pursuant to~~] ***with respect to an insolvent insurer, as provided in*** NRS 686C.150 to 686C.155, inclusive, the commissioner may exercise the powers ***and perform the duties*** of the association under this chapter with respect to the ***insolvent*** insurer **.** [~~involved.~~]

Sec. 53. NRS 686C.306 is hereby amended to read as follows:

686C.306 1. The commissioner shall notify the commissioners of insurance of all the other states [~~, the territories of the United States, and the District of Columbia when~~] ***within 30 days after*** he takes any of the following actions against a member insurer:

(a) Revokes a member insurer's license;

(b) Suspends a member insurer's license; or

(c) Makes any formal order that a member insurer is to restrict its premium writing, obtain additional contributions to surplus, withdraw from the state, reinsure all or any part of its business, or increase capital, surplus, or any other account for the security of [~~policyholders~~] ***the owners of its policies*** or ***its*** creditors.

[~~This notice must be mailed to all commissioners within 30 days after the action is taken.~~]

2. The commissioner shall report to the board ***of directors*** when he has taken any of the actions set forth in subsection 1, or has received a report from any other commissioner indicating that any such action has been taken in another state. The report to the board must contain all significant details of the action taken or the report received from another commissioner.

3. ***The commissioner shall report to the board of directors when he has reasonable cause to believe from an examination of a member insurer, whether completed or in process, that the insurer may be impaired or insolvent.***

4. The commissioner shall furnish to the board the ratios of the "insurance regulatory information system" developed by the National Association of Insurance Commissioners and [~~reports of examinations and~~] listings of companies not included in those ratios, and the board may use the information contained therein in carrying out its duties and responsibilities under this chapter. Such reports and the information contained therein must be kept confidential by the board until such time as made public by the commissioner or other lawful authority.

[~~4. The board shall, at the conclusion of any insolvency of an insurer in which the association was obligated to pay covered claims, prepare a report to the commissioner containing such information as it may have in its possession bearing on the history and causes of the insolvency. The board shall cooperate with the boards of directors of guaranty associations~~

~~in other states in preparing a report on the history and causes of insolvency of a particular insurer, and may adopt by reference any report prepared by one or more other associations.]~~

Sec. 54. NRS 686C.310 is hereby amended to read as follows:

686C.310 ~~[To aid in the detection and prevention of the impairment or insolvency of insurers:]~~

1. The board ~~[shall,]~~ ***of directors may,*** upon majority vote, notify the commissioner of any information indicating any member insurer may be impaired or insolvent. ~~[The commissioner shall report to the board when he has reasonable cause to believe from any examination, whether or not completed, that any member insurer may be impaired or insolvent.~~

~~2. The board may, upon majority vote, request that the commissioner order an examination of any member insurer which the board in good faith believes may be impaired or insolvent. The commissioner shall begin the examination within 30 days after receiving the request. The examination may be conducted by the National Association of Insurance Commissioners or by such persons as the commissioner designates. The cost of the examination must be paid by the association and the report treated as are other reports of examinations. The report must not be released to the board before its release to the public, but this does not excuse the commissioner from his obligation to comply with subsection 1. The commissioner shall notify the board when the examination is completed. The request for an examination must be kept on file by the commissioner but it is not open to public inspection before the release of the report of the examination to the public and may be released at that time only if the examination discloses that the examined insurer is impaired or insolvent.~~

~~3.]~~ ***2.*** The board may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation or conservation of any member insurer or germane to the solvency of any person seeking admission to transact insurance in this state. These reports and recommendations are not open to public inspection.

~~[4.]~~ ***3.*** The commissioner may seek the advice and recommendations of the board concerning any matter affecting his duties and responsibilities regarding the financial condition of member insurers and of persons seeking admission to transact insurance in this state.

~~[5.]~~ ***4.*** The board may, upon majority vote, make recommendations to the commissioner for the detection and prevention of the insolvency of insurers.

Sec. 55. NRS 686C.330 is hereby amended to read as follows:

686C.330 1. This chapter does not reduce the liability for unpaid assessments of the insureds of an impaired insurer operating under a plan with liability for assessments.

2. Records must be kept of all ~~[negotiations and meetings in which the association or its representatives are involved]~~ ***meetings of the board of directors*** to discuss the activities of the association in carrying out its powers and duties under NRS 686C.150 to 686C.220, inclusive. ~~[Records of such negotiations or meetings must be made public upon a majority vote of the board, upon]~~ ***The records of the association with respect to an***

impaired or insolvent insurer may not be disclosed before the termination of a proceeding for liquidation, rehabilitation or conservation involving the impaired or insolvent insurer ~~[, upon]~~ ***or*** the termination of the impairment or insolvency of the insurer, ~~[or]~~ ***except*** upon the order of a court of competent jurisdiction. This subsection does not limit the duty of the association to render a report of its activities under NRS 686C.350.

3. For the purpose of carrying out its obligations under this chapter, the association shall be deemed to be a creditor of the impaired or insolvent insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled as subrogee pursuant to NRS 686C.200. Assets of the impaired or insolvent insurer attributable to covered policies must be used to continue all covered policies and pay all contractual obligations of the impaired or insolvent insurer as required by this chapter. Assets attributable to covered policies, as used in this subsection, are that proportion of the assets which the reserves that should have been established for covered policies bear to the reserves that should have been established for all policies of insurance written by the impaired or insolvent insurer.

4. ***As a creditor of the impaired or insolvent insurer under subsection 3 and consistent with NRS 696B.415, the association and other similar associations are entitled to receive a disbursement out of the marshaled assets, from time to time as the assets become available to reimburse it, as a credit against contractual obligations under this chapter. If the liquidator has not, within 120 days after a final determination of insolvency of an insurer by the court in the insolvent or impaired insurer's state which has jurisdiction over the conservation, rehabilitation or liquidation of the insurer, made an application to the court for the approval of a proposal to disburse assets out of marshaled assets to guaranty associations having obligations because of the insolvency, the association is entitled to make application to the court for approval of its own proposal to disburse those assets.***

5. Before the termination of any proceeding for liquidation, rehabilitation or conservation, the court may take into consideration the contributions of the respective parties, including the association, the shareholders and ~~[policyholders]~~ ***owners of policies and contracts*** of the impaired or insolvent insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership of the impaired or insolvent insurer. In making such a determination, consideration must be given to the welfare of the ~~[policyholders of]~~ ***owners of policies issued by*** the continuing or successor insurer. No distribution to stockholders, if any, of an impaired or insolvent insurer may be made until ~~[and unless]~~ the total amount of valid claims of the association, with interest thereon, for money expended in exercising its powers and performing its duties under NRS 686C.150 to 686C.155, inclusive, with respect to that insurer have been fully recovered by the association.

Sec. 56. NRS 686C.350 is hereby amended to read as follows:

686C.350 The association is subject to examination and regulation by the commissioner. The board ***of directors*** shall submit to the commissioner, not later than 120 days after the end of its fiscal year, a financial report in a form approved by the commissioner and a report of its

activities during the preceding fiscal year. ***Upon the request of a member insurer, the association shall provide the insurer with a copy of the report.***

Sec. 56.5. The amendatory provisions of this act:

1. Apply to the powers and duties of the Nevada Life and Health Insurance Guaranty Association relating to any member insurer that becomes an impaired or insolvent insurer on or after January 1, 2002;

2. Do not require the Nevada Life and Health Insurance Guaranty Association to recalculate the assessment bases for any year before January 1, 2002, and any assessments based on any such year must be authorized on the basis of the premium data previously collected from or reported by member insurers relating to those years; and

3. Must not be construed to affect any interpretation of any provision of chapter 686C of NRS that was in effect before January 1, 2002.

Sec. 57. NRS 686C.151, 686C.320, 686C.336 and 686C.345 are hereby repealed.

Sec. 58. This act becomes effective on January 1, 2002.