FIRST REGULAR SESSION

SENATE BILL NO. 59

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR RUPP.

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TERRY L. SPIELER, Secretary.

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AN ACT

To repeal sections 375.772, 375.775, 375.776, and 376.717, RSMo, and to enact in lieu thereof four new sections relating to the regulation of insurance guaranty associations.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 375.772, 375.775, 375.776, and 376.717, RSMo, are
2 repealed and four new sections enacted in lieu thereof, to be known as sections
3 375.772, 375.775, 375.776, and 376.717, to read as follows:

375.772. 1. There is created a nonprofit unincorporated legal entity to be
2 known as the "Missouri Property and Casualty Insurance Guaranty Association",
3 hereinafter referred to as "association". All member insurers shall be and remain
4 members of the association as a condition of their authority to transact insurance
5 in this state. The association shall perform its functions under a plan of
6 operation and through a board of directors established by section 375.776.
7 2. As used in sections 375.771 to 375.779, the following terms mean:
8 (1) "Account", any one of the four accounts established by section 375.773;
9 (2) "Affiliate", a person who directly or indirectly through one or more
10 intermediaries controls, is controlled by, or is under common control with another
11 person;
12 (3) "Affiliate of an insolvent insurer", a person who directly or indirectly
13 through one or more intermediaries controls, is controlled by, or is under common
14 control with an insolvent insurer on December thirty-first of the year immediately
15 preceding the date the insurer becomes an insolvent insurer;
16 (4) "Association", the Missouri property and casualty insurance guaranty
17 association;

EXPLANATION–Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 (5) "Claimant", any insured making a first-party claim or any person
19 instituting a liability claim, provided that no person who is an affiliate of the
20 insolvent insurer may be a claimant;
21 (6) "Control", the possession, direct or indirect, of the power to direct or
22 cause the direction of the management and policies of a person, whether through
23 the ownership of voting securities, by contract other than a commercial contract
24 for goods or nonmanagement services, or otherwise, unless the power is the result
25 of an official position with the corporate office held by the person. Control shall
26 be presumed to exist if any person, directly or indirectly, owns, controls, holds the
27 power to vote, or holds proxies representing ten percent or more of the voting
28 securities of any other person. Such presumption may be rebutted by a showing
29 that control does not exist in fact;
30 (7) "Covered claim", an unpaid claim including those for unearned
31 premiums, presented by a claimant within the time specified in accordance with
32 subsection 1 and subdivision (2) of subsection 2 of section 375.775, and is for a
33 loss arising out of and is within the coverage of an insurance policy to which
34 sections 375.771 to 375.779 apply made by a person insured under such policy or
35 by a person suffering injury or for which a person insured under such policy is
36 legally liable, if:
37 (a) The policy is issued by a member insurer and such member insurer
38 becomes an insolvent insurer after August 28, 2004; and
39 (b) The claimant or insured is a resident of this state at the time of the
40 insured event, or the claim is a first-party claim by an insured for damage to
41 property and the property from which the claim arises is permanently located in
42 this state or in the case of an unearned premium, the policyholder is a resident
43 of this state at the time the policy is issued. The residency of the claimant,
44 insured, or policyholder, other than an individual, is the state in which its
45 principal place of business is located at the time of the insured event;
46 (c) "Covered claim" shall not include:
47 a. Any amount awarded as punitive or exemplary damages, or which is
48 a fine or penalty;
49 b. Any amount sought as a return of premium under any retrospective
50 rating plan; or
51 c. Any amount due any reinsurer, insurer, insurance pool, or underwriting
52 association, health maintenance organization, hospital plan corporation, health
53 services corporation, or self-insurer as subrogation recoveries, reinsurance

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54 recoveries, contribution, indemnity, or otherwise. To the extent of any amount
55 due any reinsurer, insurer, insurance pool, or underwriting association, health
56 maintenance organization, hospital plan corporation, health services corporation,
57 or self-insurer as subrogation recoveries or otherwise there shall be no right of
58 recovery by any person against a tort-feasor insured of an insolvent insurer,
59 except that such limitation shall not apply with respect to those amounts that
60 exceed the limits of the policy issued such tort-feasor by the insolvent insurer;
61 d. A claim by or against an insured of an insolvent insurer, if such
62 insured has a net worth of more than twenty-five million dollars on the later of
63 the end of the insured's most recent fiscal year or the December thirty-first of the
64 year next preceding the date the insurer becomes an insolvent insurer; provided
65 that an insured's net worth on such date shall be deemed to include the aggregate
66 net worth of the insured and all of its affiliates as calculated on a consolidated
67 basis;
68 e. Any first-party claim by an insured which is an affiliate of the insolvent
69 insurer;
70 f. Supplementary payment obligations incurred prior to the final order of
71 liquidation, including but not limited to adjustment fees and expenses, fees for
72 medical cost containment services, including but not limited to medical case
73 management fees, attorney's fees and expenses, court costs, penalties, and bond
74 premiums;
75 g. Any claims for interest;
76 h. Any amount that constitutes a portion of a covered claim that is within
77 an insured's deductible or self-insured retention;
78 i. Any fee or other amount sought by or on behalf of an attorney or other
79 provider of goods or services retained by an insured or claimant in connection
80 with the assertion or prosecuting of any claim, covered or otherwise, against the
81 association;
82 j. Any amount that constitutes a claim under a policy**, except in the**
83 **case of a claim for benefits under workers' compensation coverage,**
84 issued by an insolvent insurer with a deductible or self-insured retention of three
85 hundred thousand dollars or more. However, such a claim shall be considered a
86 covered claim, if, as of the deadline set forth for the filing of claims against the
87 insolvent insurer or its liquidator, the insured is a debtor under 11 U.S.C. Section
88 701, et seq.;
89 k. Any amount to the extent that it is covered by any insurance that is

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90 available to the claimant or the insured, whether such other insurance is
91 primary, pro rata, or excess. In all such instances, the association's obligations
92 to the insured or claimant shall not be deemed to be other insurance;
93 (8) "Insolvent insurer", an insurer licensed to transact insurance in this
94 state, either at the time the policy was issued or when the insured event
95 occurred, and against whom a final order of liquidation with a finding of
96 insolvency has been entered by a court of competent jurisdiction in the insurer's
97 state of domicile or of this state under the provisions of sections 375.950 to
98 375.990 or sections 375.1150 to 375.1246, and which such order of liquidation has
99 not been stayed or been the subject of a writ of supersedeas or other comparable
100 order;
101 (9) "Insured", any named insured, additional insured, vendor, lessor, or
102 any other party identified as an insured under the policy;
103 (10) "Member insurer", any person who writes any kind of insurance to
104 which sections 375.771 to 375.779 apply, including the exchange of reciprocal or
105 interinsurance contracts, and possesses a certificate of authority to transact the
106 business of insurance in this state issued by the director of the department of
107 insurance, financial institutions and professional registration. Whether or not
108 approved by the director of the department of insurance, financial institutions
109 and professional registration for the placing of lines of insurance by producers so
110 authorized under the provisions of chapter 384, an insurance company not
111 licensed to do business in this state shall not be a member insurer. Missouri
112 mutual and extended Missouri mutual insurance companies doing business under
113 chapter 380 shall be considered member insurers for the purposes of sections
114 375.771 to 375.779, and a special account shall be established applicable only to
115 such companies;
116 (11) "Net direct written premiums", direct gross premiums written in this
117 state on insurance policies to which sections 375.771 to 375.779 apply, less return
118 premiums thereon and dividends paid or credited to policyholders on such direct
119 business. "Net direct written premiums" does not include premiums on contracts
120 between insurers or reinsurers;
121 (12) "Net worth", the total assets of a person less the total liabilities
122 against those assets. Where the person is one who prepares an annual report to
123 shareholders such report for the fiscal year immediately preceding the date of
124 insolvency of the insurance carrier shall be used to determine net worth. If the
125 person is one who does not prepare such an annual report, but does prepare an

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126 annual financial report for management which reflects net worth, then such
127 report for the fiscal year immediately preceding the date of insolvency of the
128 insurance carrier shall be used to determine net worth;

129 (13) "Ocean marine insurance" includes marine insurance that insures
130 against maritime perils or risks and other related perils or risks which are
131 usually insured against by traditional marine insurance, such as hull and
132 machinery, marine builders' risks, and marine protection and indemnity. Such
133 perils and risks insured against include, without limitation, loss, damage, or
134 expense or legal liability of the insured arising out of an incident related to
135 ownership, operation, chartering, maintenance, use, repair, or construction of any
136 vessel, craft, or instrumentality in use in ocean or inland waters for commercial
137 purposes, including liability of the insured for personal injury, illness, or death
138 for loss or damage to the property of the insured or another person;

139 (14) "Person", any individual, corporation, partnership, association or
140 voluntary organization, municipality, or political subdivision;

141 (15) "Political subdivision", the same meaning as such term is defined in
142 section 70.210;

143 (16) "Self-insurer", a person that covers its liability through a qualified
144 individual or group self-insurance program or any other formal program created
145 for the specific purpose of covering liabilities typically covered by
146 insurance. Self-insurer does not include the Missouri private sector individual
147 self-insurers guaranty corporation created pursuant to section 287.860, et seq.

375.775. 1. The association shall be obligated to the extent of the covered
2 claims existing prior to the date of a final order of liquidation or a judicial
3 determination by a court of competent jurisdiction in the insurer's domiciliary
4 state that an insolvent insurer exists and arising within thirty days from the date
5 or at the time of the first such order or determination, or before the policy
6 expiration date if less than thirty days after such date, or before or at the time
7 the insured replaces the policy or causes its cancellation, if he does so within
8 thirty days of such date. Such obligation shall be satisfied by paying to the
9 claimant an amount as follows:

10 (1) The full amount of a covered claim for benefits under workers'
11 compensation insurance coverage;

12 (2) An amount not exceeding twenty-five thousand dollars per policy for
13 a covered claim for the return of unearned premium;

14 (3) An amount not exceeding three hundred thousand dollars per claim

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15 for all other covered claims.

16 2. In no event shall the association be obligated to an insured or claimant 17 in an amount in excess of the face amount or the limits of the policy from which 18 a claim arises or be obligated for the payment of unearned premium in excess of 19 the amount of twenty-five thousand dollars, or to an insured or claimant on any 20 covered claim until it receives confirmation from the receiver or liquidator of an 21 insolvent insurer that the claim is within the coverage of an applicable policy of 22 the insolvent insurer, except that within the sole discretion of the association, if 23 the association deems it has sufficient evidence from other sources, including any 24 claim forms which may be propounded by the association, that the claim is within 25 the coverage of an applicable policy of the insolvent insurer, it shall proceed to 26 process the claim, pursuant to its statutory obligations, without such confirmation 27 by the receiver or liquidator:

28 (1) All covered claims shall be filed with the association on the claim 29 information form required by this subdivision no later than the final date first set 30 by the court for the filing of claims against the liquidator or receiver of an 31 insolvent insurer, except that if the time first set by the court for filing claims is 32 one year or less from the date of insolvency, and an extension of the time to file 33 claims is granted by the court, claims may be filed with the association no later 34 than the new date set by the court or within one year of the date of insolvency, 35 whichever first occurs. In no event shall the association be obligated on a claim 36 filed after such date or on one not filed on the required form. A claim information 37 form shall consist of a statement verified under oath by the claimant which 38 includes all of the following:

39 (a) The particulars of the claim;

40 (b) A statement that the sum claimed is justly owing and that there is no 41 setoff, counterclaim, or defense to said claim;

42 (c) The name and address of the claimant and the attorney who represents 43 the claimant, if any; and

44 (d) If the claimant is an insured, that the insured's net worth did not 45 exceed twenty-five million dollars on the date the insurer became an insolvent 46 insurer. The association may require that a prescribed form be used and may 47 require that other information and documents be included. A covered claim shall 48 not include any claim not described in a timely filed claim information form even 49 though the existence of the claim was not known to the claimant at the time a 50 claim information form was filed;

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51 (2) In the case of claims arising from a member insurer subject to a final
52 order of liquidation issued on or after September 1, 2000, the provisions of
53 subdivision (1) of subsection 2 of this section shall not apply and in lieu thereof,
54 such claims shall be governed by this subdivision. All covered claims shall be
55 filed with the association, liquidator or receiver. Notwithstanding any other
56 provisions of sections 375.771 to 375.779, a covered claim shall not include a
57 claim filed after the earlier of eighteen months after the date of the order of
58 liquidation, or the final date set by the court for the filing of claims against the
59 liquidator or receiver of an insolvent insurer. The association may require that
60 other information and documents be included in confirming the existence of a
61 covered claim or in determining eligibility of any claimant. Such information may
62 include, but is not limited to:

63 (a) The particulars of the claim;

64 (b) A statement that the sum claimed is justly owing and that there is no
65 setoff, counterclaim, or defense to said claim;

66 (c) The name and address of the claimant and the attorney who represents
67 the claimant, if any; and

68 (d) A verification under oath of such requested information. In no event
69 shall the association be obligated on a claim filed with the association, liquidator
70 or receiver for protection afforded under the insured's policy for incurred but not
71 reported losses. A covered claim shall not include any claim that is not filed prior
72 to the final date for filing claims, even though the existence of the claims was not
73 known to the claimant prior to such final date.

74 3. In the case of claims arising from bodily injury, sickness or disease, the
75 amount of any such award shall not exceed the claimant's reasonable expenses
76 incurred for necessary medical, surgical, X-ray, dental services and comparable
77 services for individuals who, in the exercise of their constitutional rights, rely on
78 spiritual means alone for healing in accordance with the tenets and practices of
79 a recognized church or religious denomination by a duly accredited practitioner
80 thereof, including prosthetic devices and necessary ambulance, hospital,
81 professional nursing, and any amounts lost or to be lost by reason of claimant's
82 inability to work and earn wages or salary or their equivalent, except that the
83 association shall pay the full amount of any covered claim arising out of a
84 workers' compensation policy. Such award may also include payments in fact
85 made to others, not members of claimant's household, which were reasonably
86 incurred to obtain from such other persons ordinary and necessary services for

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87 the production of income in lieu of those services the claimant would have
88 performed for himself had he not been injured. Verdicts as respect only those
89 civil actions as may be brought to recover damages as provided in this section
90 shall specifically set out the sums applicable to each item in this section for which
91 an award may be made.

92 4. In the case of claims arising from a member insurer subject to a final
93 order of liquidation dated on or after August 31, 2004, the provisions of
94 subsection 3 of this section shall not apply.

95 5. Notwithstanding any other provision of sections 375.771 to 375.779,
96 except in the case of a claim for benefits under workers' compensation coverage,
97 any obligation of the association to or on behalf of the insured and its affiliates
98 on covered claims shall cease when ten million dollars has been paid in the
99 aggregate by the association and any one or more associations similar to the
100 association in any other state or states to or on behalf of such insured, its
101 affiliates, and additional insureds on covered claims or allowed claims arising
102 under the policy or policies of any one insolvent insurer.

103 6. If the association determines that there may be more than one claimant
104 having a covered claim or allowed claim against the association, or any
105 associations similar to the association in other states, under the policy or policies
106 of any one solvent insurer, the association may establish a plan to allocate
107 amounts payable by the association in such manner as the association in its
108 discretion deems equitable.

109 7. The association shall be deemed the insurer only to the extent of its
110 obligations on the covered claims and to such extent, subject to the limitations
111 provided in sections 375.771 to 375.779, shall have all rights, duties, and
112 obligations of the insolvent insurer as if the insurer had not become insolvent,
113 including but not limited to the right to pursue and retain salvage and
114 subrogation recoverable on paid covered claim obligations. The association shall
115 not be deemed the insolvent insurer for any purpose relating to the issue of
116 whether the association is amenable to the personal jurisdiction of the courts of
117 any states. However, any obligation to defend an insured shall cease upon:

118 (1) The association's payment by settlement releasing the insured or on
119 a judgment of an amount equal to the lesser of the association's covered claim
120 obligation limit or the applicable policy limit; or

121 (2) The association's tender of such amount.

122 8. The association shall allocate claims paid and expenses incurred among

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123 the four accounts separately, and assess member insurers separately for each
124 account amounts necessary to pay the obligations of the association under
125 subsection 1 of this section to an insolvency, the expenses of handling covered
126 claims subsequent to an insolvency, the cost of examinations under subdivision
127 (3) of subsection 9 of this section, and other expenses authorized by sections
128 375.771 to 375.779. The assessments of each member insurer shall be in the
129 proportion that the net direct written premiums of the member insurer for the
130 preceding calendar year on the kinds of insurance in the account bears to the net
131 direct written premiums of all member insurers for the preceding calendar year
132 of the kinds of insurance in the account. Each member insurer's assessment may
133 be rounded to the nearest ten dollars. Each member insurer shall be notified of
134 the assessment not later than thirty days before it is due. No member insurer
135 may be assessed in any year on any account an amount greater than **[**one**]** **two**
136 percent of that member insurer's net direct written premiums for the preceding
137 calendar year on the kinds of insurance in the account. If the maximum
138 assessment, together with the other assets of the association in any account, does
139 not provide in any one year in any account an amount sufficient to make all
140 necessary payments from that account, the funds available shall be prorated and
141 the unpaid portion shall be paid as soon thereafter as funds become
142 available. The association may defer, in whole or in part, the assessment of any
143 member insurer, if the assessment would cause the member insurer's financial
144 statement to reflect amounts of capital or surplus less than the minimum
145 amounts required for a certificate of authority by any jurisdiction in which the
146 member insurer is authorized to transact insurance. Deferred assessments shall
147 be paid when such payment will not reduce capital or surplus below required
148 minimums. Such payments shall be refunded to those companies receiving larger
149 assessments by virtue of such deferment, or, in the discretion of any such
150 company, credited against future assessments. No dividends shall be paid
151 stockholders or policyholders of a member insurer so long as all or part of any
152 assessment against such insurer remains deferred. Each member insurer may
153 set off against any assessment, authorized payments made on covered claims and
154 expenses incurred in the payment of such claims by the member insurer if they
155 are chargeable to the account for which the assessment is made. Assessments
156 made under sections 375.771 to 375.779 and section 375.916 shall not be subject
157 to subsection 1 of section 375.916;

158 9. The association shall:

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159 (1) Handle claims through its employees or through one or more insurers
160 or other persons designated as servicing facilities. Designation of a servicing
161 facility is subject to the approval of the director, but such designation may be
162 declined by a member insurer;

163 (2) Reimburse each servicing facility for obligations of the association paid
164 by the facility and for actual expenses incurred by the facility while handling
165 claims on behalf of the association and shall pay the other expenses of the
166 association authorized by this section;

167 (3) Be subject to examination and regulation by the director. The board
168 of directors shall submit, not later than March thirtieth of each year, a financial
169 report for the preceding calendar year in a form approved by the director; and

170 (4) Proceed to investigate, settle, and determine covered claims.

171 10. The association may:

172 (1) Appear in, defend and appeal any action on a claim brought against
173 the association;

174 (2) Employ or retain such persons as are necessary to handle claims and
175 perform other duties of the association;

176 (3) Act as a servicing facility for other similar entities created by similar
177 laws in this state or other states;

178 (4) Borrow funds necessary to effect the purposes of sections 375.771 to
179 375.779 in accord with the plan of operation;

180 (5) Sue or be sued. Such power to sue includes the power and right to
181 intervene as a party before any court that has jurisdiction over an insolvent
182 insurer as defined in section 375.772;

183 (6) Negotiate and become a party to such contracts as are necessary to
184 carry out the purpose of sections 375.771 to 375.779;

185 (7) Perform such other acts as are necessary or proper to effectuate the
186 purpose of sections 375.771 to 375.779;

187 (8) Refund to the member insurers in proportion to the contribution of
188 each member insurer to that account that amount by which the assets of the
189 account exceed the liabilities, if, at the end of any calendar year, the board of
190 directors finds that the assets of the association in any account exceed the
191 liabilities of that account as estimated by the board of directors for the coming
192 year; and

193 (9) Become a member of the National Conference on Insurance Guaranty
194 Funds.

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375.776. 1. The board of directors, subject to the supervision of the
2 director, shall:
3 (1) Establish a plan of operation whereby the duties of the association
4 under section 375.775 will be performed;
5 (2) Establish procedures for handling assets of the association;
6 (3) Establish regular places and times for meetings of the board of
7 directors;
8 (4) Establish procedures for records to be kept of all financial transactions
9 of the association, its agents, and the board of directors;
10 (5) Provide that any member insurer aggrieved by any final action or
11 decision of the association may appeal to the director within thirty days after the
12 action or decision;
13 (6) Establish the procedures whereby selections for the board of directors
14 will be submitted to the director; and
15 (7) Have and exercise such additional powers necessary or proper for the
16 execution of the powers and duties of the association.
17 2. The plan of operation may provide that any or all powers and duties of
18 the association, except those under subsection 8 and subdivision (4) of subsection
19 10 of section 375.775, are delegated to a corporation, association, or organization
20 which performs or will perform functions similar to those of this association, or
21 its equivalent, in two or more states. Such a corporation, association or
22 organization shall be reimbursed as a servicing facility would be reimbursed and
23 shall be paid for its performance of any other functions of the association. A
24 delegation under this section shall take effect only with the approval of both the
25 board of directors and the director, and may be made only to a corporation,
26 association, or organization which extends protection not substantially less
27 favorable and effective than that provided by sections 375.771 to 375.779.
28 3. The board of directors of the association shall consist of **not less than**
29 seven **nor more than nine** persons serving terms as established in the plan of
30 operation. The members of the board shall be selected by member insurers
31 subject to the approval of the director. Not less than four of the members shall
32 represent domestic insurers. Vacancies on the board shall be filled for the
33 remaining period of the term by **[**appointment**] a majority vote of the**
34 **remaining board members subject to the approval** of the director. **[**If no
35 members are selected within sixty days, the director shall appoint the initial
36 members of the board of directors.**]**

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4. Members of the board shall receive no remuneration.

5. To aid in the detection and prevention of insurer insolvencies:

(1) It shall be the duty of the board of directors, upon majority vote, to notify the director of any information indicating any member insurer may be insolvent or in a financial condition hazardous to the policyholders or the public;

(2) The board of directors may, upon majority vote, make reports and recommendations to the director upon any matter germane to the solvency, liquidation, rehabilitation or conservation of any member insurer. Such reports and recommendations shall not be considered public documents; and

(3) The board of directors shall, at the conclusion of any insurer insolvency in which the association was obligated to pay covered claims, prepare a report on the history and causes of such insolvency, based on the information available to the association, and submit such report to the director.

376.717. 1. Sections 376.715 to 376.758 shall provide coverage for the policies and contracts specified in subsection 2 of this section:

(1) To persons who, regardless of where they reside, except for nonresident certificate holders under group policies or contracts, are the beneficiaries, assignees or payees of the persons covered under subdivision (2) of this subsection; and

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

(a) Are residents of this state; or

(b) Are not residents, but only under all of the following conditions:

a. The insurers which issued such policies or contracts are domiciled in this state;

b. The persons are not eligible for coverage by an association in any other state due to the fact that the insurer was not licensed in such state at the time specified in such state's guaranty association law; and

c. The states in which the persons reside have associations similar to the association created by sections 376.715 to 376.758;

(3) For structured settlement annuities specified in subsection 2 of this section, subdivisions (1) and (2) of subsection 1 of this section shall not apply, and sections 376.715 to 376.758 shall, except as provided in subdivisions (4) and (5) of this subsection, provide coverage to a person who is a payee under a structured settlement annuity, or beneficiary of a payee if the payee is deceased, if the payee:

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24 (a) Is a resident, regardless of where the contract owner resides; or
25 (b) Is not a resident, but only under both of the following conditions:
26 a. (i) The contract owner of the structured settlement annuity is a
27 resident; or
28 (ii) The contract owner of the structure settlement annuity is not a
29 resident, but:
30 i. The insurer that issued the structured settlement annuity is domiciled
31 in this state; and
32 ii. The state in which the contract owner resides has an association
33 similar to the association created under sections 376.715 to 376.758; and
34 b. Neither the payee or beneficiary nor the contract owner is eligible for
35 coverage by the association of the state in which the payee or contract owner
36 resides;
37 (4) Sections 376.715 to 376.758 shall not provide to a person who is a
38 payee or beneficiary of a contract owner resident of this state, if the payee or
39 beneficiary is afforded any coverage by such an association of another state;
40 (5) Sections 376.715 to 376.758 are intended to provide coverage to a
41 person who is a resident of this state and, in special circumstances, to a
42 nonresident. In order to avoid duplicate coverage, if a person who would
43 otherwise receive coverage under sections 376.715 to 376.758 is provided coverage
44 under the laws of any other state, the person shall not be provided coverage
45 under sections 376.715 to 376.758. In determining the application of the
46 provisions of this subdivision in situations where a person could be covered by
47 such an association of more than one state, whether as an owner, payee,
48 beneficiary, or assignee, sections 376.715 to 376.758 shall be construed in
49 conjunction with the other state's laws to result in coverage by only one
50 association.
51 2. Sections 376.715 to 376.758 shall provide coverage to the persons
52 specified in subsection 1 of this section for direct, nongroup life, health, annuity
53 policies or contracts, and supplemental contracts to any such policies or contracts,
54 and for certificates under direct group policies and contracts, except as limited by
55 the provisions of sections 376.715 to 376.758. Annuity contracts and certificates
56 under group annuity contracts include allocated funding agreements, structured
57 settlement annuities, and any immediate or deferred annuity contracts.
58 3. Sections 376.715 to 376.758 shall not provide coverage for:
59 (1) Any portion of a policy or contract not guaranteed by the insurer, or

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60 under which the risk is borne by the policy or contract holder;
61 (2) Any policy or contract of reinsurance, unless assumption certificates
62 have been issued;
63 (3) Any portion of a policy or contract to the extent that the rate of
64 interest on which it is based, or the interest rate, crediting rate, or similar factor
65 determined by use of an index or other external reference stated in the policy or
66 contract employed in calculating returns or changes in value:
67 (a) Averaged over the period of four years prior to the date on which the
68 association becomes obligated with respect to such policy or contract, exceeds the
69 rate of interest determined by subtracting three percentage points from Moody's
70 Corporate Bond Yield Average averaged for that same four-year period or for such
71 lesser period if the policy or contract was issued less than four years before the
72 association became obligated; and
73 (b) On and after the date on which the association becomes obligated with
74 respect to such policy or contract exceeds the rate of interest determined by
75 subtracting three percentage points from Moody's Corporate Bond Yield Average
76 as most recently available;
77 (4) Any portion of a policy or contract issued to a plan or program of an
78 employer, association or other person to provide life, health, or annuity benefits
79 to its employees or members to the extent that such plan or program is
80 self-funded or uninsured, including but not limited to benefits payable by an
81 employer, association or other person under:
82 (a) A multiple employer welfare arrangement as defined in 29 U.S.C.
83 Section 1144, as amended;
84 (b) A minimum premium group insurance plan;
85 (c) A stop-loss group insurance plan; or
86 (d) An administrative services only contract;
87 (5) Any portion of a policy or contract to the extent that it provides
88 dividends or experience rating credits, voting rights, or provides that any fees or
89 allowances be paid to any person, including the policy or contract holder, in
90 connection with the service to or administration of such policy or contract;
91 (6) Any policy or contract issued in this state by a member insurer at a
92 time when it was not licensed or did not have a certificate of authority to issue
93 such policy or contract in this state;
94 (7) A portion of a policy or contract to the extent that the assessments
95 required by section 376.735 with respect to the policy or contract are preempted

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96 by federal or state law;

97 (8) An obligation that does not arise under the express written terms of
98 the policy or contract issued by the insurer to the contract owner or policy owner,
99 including without limitation:

100 (a) Claims based on marketing materials;

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

104 (c) Misrepresentations of or regarding policy benefits;

105 (d) Extra-contractual claims;

106 (e) A claim for penalties or consequential or incidental damages;

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

112 (10) An unallocated annuity contract;

113 (11) A portion of a policy or contract to the extent it provides for interest
114 or other changes in value to be determined by the use of an index or other
115 external reference stated in the policy or contract, but which have not been
116 credited to the policy or contract, or as to which the policy or contract owner's
117 rights are subject to forfeiture, as of the date the member insurer becomes an
118 impaired or insolvent insurer under sections 376.715 to 376.758, whichever is
119 earlier. If a policy's or contract's interest or changes in value are credited less
120 frequently than annually, for purposes of determining the value that have been
121 credited and are not subject to forfeiture under this subdivision, the interest or
122 change in value determined by using the procedures defined in the policy or
123 contract will be credited as if the contractual date of crediting interest or
124 changing values was the date of impairment or insolvency, whichever is earlier,
125 and will not be subject to forfeiture;

126 (12) A policy or contract providing any hospital, medical, prescription drug
127 or other health care benefit under Part C or Part D of Subchapter XVIII, Chapter
128 7 of Title 42 of the United States Code, Medicare **[**Part**]** **Parts** C & D, or any
129 regulations issued thereunder.

130 4. The benefits for which the association may become liable**, with regard**
131 **to a member insurer that was first placed under an order of**

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132 **rehabilitation or under an order of liquidation if no order of**
133 **rehabilitation was entered prior to August 28, 2013,** shall in no event
134 exceed the lesser of:
135 (1) The contractual obligations for which the insurer is liable or would
136 have been liable if it were not an impaired or insolvent insurer; or
137 (2) With respect to any one life, regardless of the number of policies or
138 contracts:
139 (a) Three hundred thousand dollars in life insurance death benefits, but
140 not more than one hundred thousand dollars in net cash surrender and net cash
141 withdrawal values for life insurance;
142 (b) One hundred thousand dollars in health insurance benefits, including
143 any net cash surrender and net cash withdrawal values;
144 (c) One hundred thousand dollars in the present value of annuity benefits,
145 including net cash surrender and net cash withdrawal values. Provided, however,
146 that in no event shall the association be liable to expend more than three
147 hundred thousand dollars in the aggregate with respect to any one life under
148 paragraphs (a), (b), and (c) of this subdivision.
149 5. **Except as otherwise provided in subdivision (2) of this**
150 **subsection, the benefits for which the association may become liable**
151 **with regard to a member insurer that was first placed under an order**
152 **of rehabilitation or under an order of liquidation if no order of**
153 **rehabilitation was entered on or after August 28, 2013, shall in no event**
154 **exceed the lesser of:**
155 **(1) The contractual obligations for which the insurer is liable or**
156 **would have been liable if it were not an impaired or insolvent insurer;**
157 **or**
158 **(2) (a) With respect to any one life, regardless of the number of**
159 **policies or contracts:**
160 **a. Three hundred thousand dollars in life insurance death**
161 **benefits, but not more than one hundred thousand dollars in net cash**
162 **surrender and net cash withdrawal values for life insurance;**
163 **b. In health insurance benefits:**
164 **(i) One hundred thousand dollars of coverages other than**
165 **disability insurance or basic hospital, medical, and surgical insurance**
166 **or major medical insurance, or long-term care insurance, including any**
167 **net cash surrender and net cash withdrawal values;**

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168 **(ii) Three hundred thousand dollars for disability insurance and**
169 **three hundred thousand dollars for long-term care insurance;**
170 **(iii) Five hundred thousand dollars for basic hospital, medical,**
171 **and surgical insurance or major medical insurance;**
172 **c. Two hundred fifty thousand dollars in the present value of**
173 **annuity benefits, including net cash surrender and net cash withdrawal**
174 **values; or**
175 **(b) With respect to each payee of a structured settlement**
176 **annuity, or beneficiary or beneficiaries of the payee if deceased, two**
177 **hundred fifty thousand dollars in present value annuity benefits, in the**
178 **aggregate, including net cash surrender and net cash withdrawal**
179 **values, if any;**
180 **(c) Except that, in no event shall the association be obligated to**
181 **cover more than:**
182 **a. An aggregate of three hundred thousand dollars in benefits**
183 **with respect to any one life under paragraphs (a) and (b) of this**
184 **subdivision, except with respect to benefits for basic hospital, medical,**
185 **and surgical insurance and major medical insurance under item (iii) of**
186 **subparagraph b. of paragraph (a) of this subdivision, in which case the**
187 **aggregate liability of the association shall not exceed five hundred**
188 **thousand dollars with respect to any one individual; or**
189 **b. With respect to one owner of multiple nongroup policies of life**
190 **insurance, whether the policy owner is an individual, firm, corporation,**
191 **or other person, and whether the person insured are officers, managers,**
192 **employees, or other persons, more than five million dollars in benefits,**
193 **regardless of the number of policies and contracts held by the owner.**
194 **6.** The limitations set forth in **[**subsection 4**] subsections 4 and 5** of this
195 section are limitations on the benefits for which the association is obligated before
196 taking into account either its subrogation and assignment rights or the extent to
197 which such benefits could be provided out of the assets of the impaired or
198 insolvent insurer attributable to covered policies. The costs of the association's
199 obligations under sections 376.715 to 376.758 may be met by the use of assets
200 attributable to covered policies or reimbursed to the association under its
201 subrogation and assignment rights.

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