

HOUSE No. 01207

The Commonwealth of Massachusetts

PRESENTED BY:

James M. Murphy

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to the Massachusetts life and health insurance guaranty association law.

PETITION OF:

NAME:

James M. Murphy

DISTRICT/ADDRESS:

4th Norfolk

HOUSE No. 01207

By Mr. James M. Murphy of Weymouth, petition (accompanied by bill, House, No. 01207) of James M. Murphy relative to the Massachusetts life and health insurance guaranty association law

Joint Committee on Financial Services.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to the Massachusetts life and health insurance guaranty association law.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

- 1 SECTION 1. Subsection (2) of Section 146B of chapter 175 of the General Laws, as appearing in
- 2 the 2008 Official Edition, is hereby amended by adding the following:-
- 3 “Basic Hospital Expense Insurance”, coverage for services rendered while confined in a
- 4 hospital.
- 5 “Basic Medical-Surgical Expense Insurance”, coverage for in-hospital or surgical health services
- 6 rendered by a physician or other covered health care provider.
- 7 “Benefit plan”, a specific employee, union or association of natural persons benefit plan.
- 8 “Disability Income Insurance”, coverage providing weekly or monthly benefits to replace
- 9 income that is lost due to disability arising from accident and/or sickness. It also includes

10 business expense insurance and business buy-out insurance policies that condition receipt of
11 benefits upon the disability of the insured.

12 “Long term Care Insurance”, coverage for one or more necessary or medically necessary
13 diagnostic, preventative, therapeutic, rehabilitative, maintenance or personal care services in a
14 setting other than an acute care unit of a hospital.

15 “Major Medical Expense Insurance”, coverage for inpatient and outpatient health care services.

16 “Owner” of a policy or contract and “policy owner” and “contract owner”, the person who is
17 identified as the legal owner under the terms of the policy or contract or who is otherwise vested
18 with legal title to the policy or contract through a valid assignment completed in accordance with
19 the terms of the policy or contract and properly recorded as the owner on the books of the
20 insurer. The terms owner, contract owner and policy owner do not include persons with a mere
21 beneficial interest in a policy or contract.

22 “Principal Place of Business” of a plan sponsor or a person other than a natural person is
23 the single state in which the natural persons who establish policy for the direction, control and
24 coordination of the operations of the entity as a whole primarily exercise that function,
25 determined by the association in its reasonable judgment by considering the following factors:

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

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

30 (c) The state in which the board of directors (or similar governing person or persons) of the
31 entity conducts the majority of its meetings;

32 (d) The state in which the executive or management committee of the board of directors (or
33 similar governing person or persons) of the entity conducts the majority of its meetings;

34 (e) The state from which management of the overall operations of the entity is directed; and

35 (f) In the case of a benefit plan sponsored by affiliated companies comprising a consolidated
36 corporation, the state in which the holding company or controlling affiliate has its principal place
37 of business as determined using the above factors.

38 However, in the case of a plan sponsor, if more than fifty percent (50%) of the participants in the
39 benefit plan are employed in a single state that state shall be deemed to be the principal place of
40 business of the plan sponsor.

41 In the case of a benefit plan established or maintained by two (2) or more employers or jointly by
42 one or more employers and one or more employee organizations, the principal place of business
43 of a plan sponsor of such a benefit plan shall be deemed to be the principal place of business of
44 the association, committee, joint board of trustees or other similar group of representatives of the
45 parties who establish or maintain the benefit plan that, in lieu of a specific or clear designation of
46 a principal place of business, shall be deemed to be the principal place of business of the
47 employer or employer organization that has the largest investment in the benefit plan in question.

48 "Receivership court", means the court in the insolvent or impaired insurer's state having
49 jurisdiction over the conservation, rehabilitation or liquidation of the insurer.

50 “Structured settlement annuity”, means an annuity purchased in order to fund periodic payments
51 for a plaintiff or other claimant in payment for or with respect to personal injury suffered by the
52 plaintiff or other claimant.

53 SECTION 2. Said subsection (2) of Section 146B of chapter 175 of the General Laws, as
54 appearing in the 2008 Official Edition, is hereby further amended by inserting after the word
55 “corporation”, in line 33, the following:-

56 , limited liability company, government body or entity

57 SECTION 3. Said subsection (2) of Section 146B of chapter 175 of the General Laws, as
58 appearing in the 2008 Official Edition, is hereby further amended by striking out, in lines 39
59 through 41, the words “paragraph (B) of subsection (4), except for subclause (d) of clause (2) of
60 said paragraph (B) and clause (3) of paragraph (B)” and inserting in place thereof the following:-

61 subsection (4) (B), except that assessable premiums shall not be reduced on account of
62 subsection (4) (B) (2) (d) relating to interest limitations and subsection (4) (B) (3) relating to
63 limitations with respect to one individual and one contract owner. Premiums shall not include,
64 with respect to multiple non-group policies of life insurance owned by one owner, whether the
65 policy owner is an individual, firm, corporation or other person, and whether the persons insured
66 are officers, managers, employees or other persons, premiums in excess of \$5,000,000 with
67 respect to these policies or contracts, regardless of the number of policies or contracts held by the
68 owner.

69 SECTION 4. Said subsection 2 of Section 146B of chapter 175 of the General Laws, as
70 appearing in the 2008 Official Edition, is hereby further amended by inserting after the word
71 “business.” in line 52 the following:-

72 Citizens of the United States that are either (i) residents of foreign countries, or (ii) residents of
73 United States possessions, territories or protectorates that do not have an association similar to
74 the Association created by this section, shall be deemed residents of the state of domicile of the
75 insurer that issued the policies or contracts.

76 SECTION 5. Section 146B of chapter 175 of the General Laws, as appearing in the 2008 Official
77 Edition, is hereby amended by striking out, in lines 70 through 77, the words “To persons who
78 are owners of such policies or contracts, or are insureds or annuitants under such policies or
79 contracts, and who (a) are residents, or (b) are not residents, but only under all of the following
80 conditions: (i) the insurer which issued such policies or contracts is domiciled in the
81 commonwealth, (ii) such insurers never held a license or certificate of authority in the states in
82 which such persons reside, (iii) such states have a life and health insurance guaranty association,
83 and (iv) such persons are not eligible for coverage by such guaranty association” and inserting in
84 place thereof the following:-

85 To persons who are owners of or certificate holders under such policies or contracts (other than
86 structured settlement annuities), and in each case who (a) are residents, or (b) are not residents,
87 but only under all of the following conditions: (i) the insurers which issued such policies or
88 contracts are domiciled in the commonwealth, (ii) the states in which the persons reside have a
89 life and health insurance guaranty association, and (iii) such persons are not eligible for coverage
90 by such guaranty association due to the fact that the insurer was not licensed in the state at the
91 time specified in the state’s guaranty association law

92 SECTION 6. Subsection (4)(A) of Section 146B of chapter 175 of the General Laws, as
93 appearing in the 2008 Official Edition, is hereby amended by inserting the following
94 paragraphs:-

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

99 (a) is a resident regardless of where the contract owner resides, or

100 (b) is not a resident, but only under both of the following conditions:

101 (i)(I) the contract owner of the structured settlement is a resident; or

102 (II) the contract owner of the structured settlement is not a resident; but

103 (A) the insurer that issued the structured settlement annuity is

104 domiciled in the commonwealth; and

105 (B) the states in which the persons reside have a life and health insurance guaranty association;

106 and

107 (ii) neither the payee (or beneficiary) nor the contract owner is eligible for coverage by the

108 association of the state in which the payee or contract owner resides.

109 (4) This subsection shall not provide coverage to a person who is a payee (or beneficiary) of a

110 contract owner resident of this commonwealth, if the payee (or beneficiary) is afforded any

111 coverage by the association of another state.

112 (5) This section is intended to provide coverage to a person who is a resident of this
113 commonwealth and, in special circumstances to a non-resident. In order to avoid duplicate
114 coverage, if a person who would otherwise receive coverage under this section is provided
115 coverage under the laws of any other state, the person shall not be provided coverage under this
116 section. In determining the application of the provisions of this paragraph in situations where a
117 person could be covered by the association of more than one state, whether as an owner or payee,
118 beneficiary or assignee, this section shall be construed in conjunction with other state laws to
119 result in coverage by only one association.

120 SECTION 7. Section 146B of chapter 175 of the General Laws, as appearing in the 2008
121 Official Edition, is hereby further amended by inserting after the word “based” in line 94 the
122 following:- or the interest rate, crediting rate or similar factor determined by use of an index or
123 other external reference stated in the policy or contract employed in calculating returns or
124 changes in value

125 SECTION 8. Section 146B of chapter 175 of the General Laws, as appearing in the 2008 Official
126 Edition, is hereby further amended by inserting after the words “the commonwealth.”, in line
127 120, the following sub-clauses:-

128 (h) any policy or contract and any portion of a policy or contract to the extent that the
129 assessments required by subsection (9) with respect to the policy or contract are pre-empted by
130 federal or state law;

131 (i) any obligation that does not arise under the express written terms of the policy or contract
132 issued to the contract owner or policy owner, including without limitation:

133 (i) claims based on marketing materials;

134 (ii) claims based on side letters, riders or other documents that were issued by the insurer without
135 meeting applicable policy form filing or approval requirements;

136 (iii) misrepresentation of or regarding policy benefits;

137 (iv) extra-contractual claims, such as claims relating to bad faith in the payment of claims,
138 punitive or exemplary damages or attorneys fees and costs; or

139

140 (v) a claim for penalties or consequential or incidental damages.

141 (j) Any portion of a policy or contract to the extent it provides for interest or other changes in
142 value to be determined by the use of an index or other external reference stated in the policy or
143 contract but which have not been credited to the policy or contract, or as to which the policy or
144 contract owner's rights are subject to forfeiture, as of the date the member insurer becomes an
145 impaired or insolvent insurer under this section, whichever is earlier. If a policy's or contract's
146 interest or changes in value are credited less frequently than annually, then for the purposes of
147 determining the values that have been credited and are not subject to forfeiture under this
148 subsection (4)(B)(2)(j), the interest or change in value determined by using the procedures
149 defined in the policy or contract will be credited as if the contractual date of crediting interest or
150 changing values was the date of impairment or insolvency, whichever is earlier, and will not be
151 subject to forfeiture.

152

153 (k) a policy or contract providing any hospital, medical, prescription drug or other health care
154 benefits pursuant to Part C or Part D of Subchapter XVIII, Chapter 7 of Title 42 of the United

155 States Code (commonly known as Medicare Part C&D) or any regulation issued pursuant
156 thereto.

157 SECTION 9. Section 146B of chapter 175 of the General Laws, as appearing in the 2008
158 Official Edition, is hereby further amended by inserting after the word “life” in line 125 the
159 following:- regardless of the number of policies or contracts

160 SECTION 10. Section 146B of chapter 175 of the General Laws, as appearing in the 2008
161 Official Edition, is hereby amended by striking out, in lines 128 through 135, the words “(ii) one
162 hundred thousand dollars in health insurance benefits, including any net cash surrender and net
163 cash withdrawal values; (iii) one hundred thousand dollars in the present value of annuity
164 benefits, including net cash surrender and net cash withdrawal values; but in no event shall the
165 association’s liability exceed three hundred thousand dollars in the aggregate for all life
166 insurance, health insurance and annuity benefits, including net cash surrender and net cash
167 withdrawal values” and inserting in place thereof the following:-

168 (ii) In health insurance benefits:

169 (I) \$100,000 for coverages not defined as disability income insurance or basic hospital expense
170 insurance, basic medical – surgical insurance, major medical expense insurance or long term care
171 insurance, including any cash surrender and net cash withdrawal values.

172 (II) \$300,000 for disability income insurance, and \$300,000 for long term care insurance.

173 (III) \$500,000 for basic hospital expense insurance, basic medical - surgical expense insurance or
174 major medical expense insurance.

175 (iii) \$250,000 in the present value of annuity benefits, including net cash surrender and net cash
176 withdrawal values.

177 SECTION 11. Subsection (4) of Section 146B of chapter 175 of the General Laws, as appearing
178 in the 2008 Official Edition, is hereby further amended by inserting after sub-clause (B)(3)(b) the
179 following sub-clauses:-

180 (c) with respect to each payee of a structured settlement annuity (or beneficiary or beneficiaries
181 of the payee if deceased), \$250,000 in present value of annuity benefits in the aggregate,
182 including net cash surrender and net cash withdrawal values;

183 (d) However, in no event shall the association be obligated to cover more than

184 (i) an aggregate of \$300,000 in benefits with respect to any one life under subsection (4)(B)(3)
185 (b) and (c) of this subsection except with respect to benefits for basic hospital expense insurance,
186 basic medical-surgical insurance or major medical expense insurance under subsection
187 (4)(B)(3)(b)(ii)(III) of this subsection, in which case the aggregate liability of the association
188 shall not exceed \$500,000 with respect to any one individual, or

189 (ii) with respect to one owner of multiple non-group policies of life insurance, whether the policy
190 owner is an individual, firm, corporation or other person, and whether the persons insured are
191 officers, managers, employees or other persons, more than \$5,000,000 in benefits, regardless of
192 the number of policies and contracts held by the owner.

193 (e) The limitations set forth in the subsection are limitations on the benefits for which the
194 association is obligated before taking into account either its subrogation and assignment rights or
195 the extent to which those benefits could be provided out of the assets of the impaired or insolvent

196 insurer attributable to covered policies. The costs of the association's obligations under the law
197 may be met by the use of assets attributable to covered policies or reimbursed to the association
198 pursuant to its subrogation and assignment rights.

199 SECTION 12. Subsection (4) of Section 146B of chapter 175 of the General Laws is hereby
200 further amended by inserting after paragraph (C) the following paragraph:-

201 (D) In performing its obligations to provide coverage under subsection (8), the association shall
202 not be required to guarantee, assume, reinsure, or perform, or cause to be guaranteed, assumed,
203 or reinsured, or perform , the contractual obligations of the impaired or insolvent insurer under a
204 covered policy or contract that do not materially affect the economic values or economic benefits
205 of the covered policy or contract.

206 SECTION 13. Section 146B of chapter 175 of the General Laws, as appearing in the 2008
207 Official Edition, is hereby amended by striking out subsection (5) and inserting in place thereof
208 the following subsection:-

209 (5) This section shall be construed to effect the purpose under subsection (3).

210 SECTION 14. Section 146B of chapter 175 of the General Laws, as appearing in the 2008
211 Official Edition, is hereby amended by striking out subsection 8(A) and inserting in place
212 thereof the following subsection:-

213 (8) (A) If a member is an impaired insurer, the association may, in its discretion, and subject to
214 any conditions imposed by the association that do not impair the contractual obligations of the
215 impaired insurer and that are approved by the commissioner,

216 (1) Guarantee, assume or reinsure or cause to be guaranteed, assumed, or reinsured, any or all of
217 the policies or contracts of the impaired insurer; or

218 (2) Provide such monies, pledges, loans, guarantees or other means as are proper to effectuate
219 subsection (8)(A)(1) and assure payment of the contractual obligations of the impaired insurer
220 pending action under subsection (8)(A)(1).

221 SECTION 15. Section 146B of chapter 175 of the General Laws is hereby amended by striking
222 out subsection 8(B).

223 SECTION 16. Section 146B of chapter 175 of the General Laws, as appearing in the 2008
224 Official Edition, is hereby amended by striking out, in line 226, "(C)" and inserting in place
225 thereof the following:- (B)

226 SECTION 17. Section 146B of chapter 175 of the General Laws, as appearing in the 2008
227 Official Edition, is hereby amended by striking out, in line 236, "(D)" and inserting in place
228 thereof the following:- (C)

229 SECTION 18. Section 146B of chapter 175 of the General Laws, as appearing in the 2008
230 Official Edition, is hereby amended by striking out, in lines 237 through 239, the words "(D)(1)
231 When proceeding under subclause (b) of clause (1) of paragraph (B) or clause (2) of paragraph
232 (C), the association shall, with respect to only life and health insurance policies", and inserting in
233 place thereof the following:-

234 (C)(1) When proceeding under subsection (8)(A) or subsection (8)(B) clause (2), the association
235 shall, with respect to life and health insurance policies and annuities:

236 SECTION 19. Said subsection (8) of Section 146B of chapter 175 of the General Laws, as
237 appearing in the 2008 Official Edition, is hereby further amended by striking out, in lines 258
238 through 271, “(ii) make diligent efforts to provide all known insureds, or owners, if other than
239 the insureds, and group policyholders with respect to group policies, thirty days notice of the
240 termination of the benefits provided; and (iii) with respect to individual policies, make available
241 to each known insured, or owner if other than the insured, and with respect to an individual
242 formerly insured under a group policy who is not eligible for replacement group coverage, make
243 available substitute coverage on an individual basis in accordance with the provisions of clause
244 (2) of paragraph (D), if such insured or owner had a right under law or under the terminated
245 policy to convert coverage to individual coverage or to continue an individual policy in force
246 until a specified age or for a specified time, during which the insurer had no right unilaterally to
247 make changes in any provision of the policy or had a right only to make changes in premium by
248 class” and inserting in place thereof the following:-

249 (ii) make diligent efforts to provide all known insureds, annuitants, or owners, if other than the
250 insureds or annuitants, and group policyholders with respect to group policies, thirty days notice
251 of the termination of the benefits provided; and (iii) with respect to individual policies, make
252 available to each known insured, annuitant or owner if other than the insured or annuitant, and
253 with respect to an individual formerly insured under a group policy who is not eligible for
254 replacement group coverage, make available substitute coverage on an individual basis in
255 accordance with the provisions of clause (2) of paragraph (C), if such insured or owner had a
256 right under law or under the terminated policy to convert coverage to individual coverage or to
257 continue an individual policy in force until a specified age or for a specified time, during which

258 the insurer had no right unilaterally to make changes in any provision of the policy or had a right
259 only to make changes in premium by class.

260 SECTION 20. Section 146B of chapter 175 of the General Laws, as appearing in the 2008
261 Official Edition, is hereby amended by striking out, in line 272, "(D)" and inserting in place
262 thereof the following:- (C)

263 SECTION 21. Section 146B of chapter 175 of the General Laws, as appearing in the 2008
264 Official Edition, is hereby further amended by inserting after the word "association.", in lines
265 303 through 304, the following clause:-

266 (6) When proceeding under subsection (8)(C)(2) with respect to a policy or contract carrying
267 minimum guaranteed interest rates, the association shall assure the payment or crediting of a rate
268 of interest consistent with subsection (4)(B)(2)(d).

269 SECTION 22. Section 146B of chapter 175 of the General Laws, as appearing in the 2008
270 Official Edition, is hereby amended by striking out, in line 305, "(E)" and inserting in place
271 thereof the following:- (D)

272 SECTION 23. Section 146B of chapter 175 of the General Laws, as appearing in the 2008
273 Official Edition, is hereby amended by striking out, in line 312, "(F)" and inserting in place
274 thereof the following:- (E)

275 SECTION 24. Section 146B of chapter 175 of the General Laws, as appearing in the 2008
276 Official Edition, is hereby amended by striking out, in line 316 through 317, the words "(G) In
277 carrying out its duties under paragraphs (B) and (C) of this subsection" and inserting in place
278 thereof the following:- (F) In carrying out its duties under paragraph (B) of this subsection

279 SECTION 25. Section 146B of chapter 175 of the General Laws, as appearing in the 2008
280 Official Edition, is hereby further amended by inserting after the word “value.”, in line 329, the
281 following:-

282 In addition, in the event of a temporary moratorium charge imposed by the receivership court on
283 payment of cash values or policy loans, or any other right to withdraw funds held in conjunction
284 with policies or contracts, out of assets of the impaired or insolvent insurer, the association may
285 defer the payment of such values, policy loans or other rights by the association for a period of
286 the moratorium or moratorium charge imposed by the receivership court, except for claims
287 covered by the association to be paid in accordance with a hardship procedure established by the
288 liquidator or rehabilitator and approved by the receivership court.

289 SECTION 26. Section 146B of chapter 175 of the General Laws, as appearing in the 2008
290 Official Edition, is hereby amended by striking out, in line 330 through 331, the words “(H) If
291 the association fails to act within a reasonable period of time as provided in paragraphs (B), (C),
292 and (D)” and inserting in place thereof the following:- (G) If the association fails to act within a
293 reasonable period of time as provided in paragraphs (B) and (C)

294 SECTION 27. Section 146B of chapter 175 of the General Laws, as appearing in the 2008
295 Official Edition, is hereby amended by striking out, in line 334, “(I)” and inserting in place
296 thereof the following:- (H)

297 SECTION 28. Section 146B of chapter 175 of the General Laws is hereby amended by striking
298 out subsection 8(J), as appearing in the 2008 Official Edition, and inserting in place thereof the
299 following subsection:-

300 (8)(I). The association, shall have standing to appear or intervene before any court or agency in
301 the commonwealth with jurisdiction over an impaired or insolvent insurer concerning which the
302 association is or may become obligated under this section or with jurisdiction over any person or
303 property against whom the association may have rights through subrogation or otherwise. Such
304 standing shall extend to all matters germane to the powers and duties of the association,
305 including, but not limited to, proposals for reinsuring, modifying or guaranteeing the covered
306 policies or contracts of the impaired or insolvent insurer and the determination of the covered
307 policies or contracts and contractual obligations. The association shall also have the right to
308 appear or intervene before a court or agency in any other state with jurisdiction over an impaired
309 or insolvent insurer for which the association is or may become obligated or with jurisdiction
310 over any person or property against whom the association may have rights through subrogation
311 of the insurer's policyholders.

312 SECTION 29. Section 146B of chapter 175 of the General Laws, as appearing in the 2008
313 Official Edition, is hereby amended by striking out, in line 352, "(K)" and inserting in place
314 thereof the following:- (J)

315 SECTION 30. Section 146B of chapter 175 of the General Laws, as appearing in the 2008
316 Official Edition, is hereby further amended by inserting after the word "contracts.", in lines 371
317 through 372, the following clauses:-

318 (4) If the preceding provisions of this paragraph are invalid or ineffective with respect to any
319 person or claim for any reason, the amount payable by the Association with respect to the related
320 coverage obligations shall be reduced by the amount realized by any other person with respect to

321 the person or claim that is attributable to the policies (or portion thereof) covered by the
322 Association.

323 (5) If the Association has provided benefits with respect to a covered obligation and a person
324 recovers amounts as to which the Association has rights as described in the preceding paragraphs
325 of this subsection, the person shall pay to the Association the portion of the recovery attributable
326 to the policies (or portion thereof) covered by the Association.

327 SECTION 31. Section 146B of chapter 175 of the General Laws, as appearing in the 2008
328 Official Edition, is hereby amended by striking out, in lines 373 through 376, the words “(L) The
329 association may: (i) enter into such contracts as are necessary or proper to carry out the
330 provisions and purposes of this section; (ii) sue or be sued, including taking any legal actions
331 necessary or proper for recovery of any unpaid assessments under subsection (9)”, and inserting
332 in place thereof the following:-

333 (K) In addition to the rights and powers elsewhere in this section, the association may: (i) enter
334 into such contracts as are necessary or proper to carry out the provisions and purposes of this
335 section; (ii) sue or be sued, including taking any legal actions necessary or proper for recovery of
336 any unpaid assessments under subsection (9) and to settle claims or potential claims against it

337 SECTION 32. Subsection (8) of Section 146B of chapter 175 of the General Laws, as appearing
338 in the 2008 Official Edition, is hereby further amended by inserting the following paragraphs:-

339 (L) (1) (a) At any time within one hundred eighty (180) days of the date of the order of
340 liquidation, the association may elect to succeed to the rights and obligations of the ceding
341 member insurer that relate to policies or annuities covered, in whole or in part, by the
342 association, in each case under one or more reinsurance contracts entered into by the insolvent

343 insurer and its reinsurers and selected by the association. Any such assumption shall be effective
344 as of the date of the order of liquidation. The election shall be effected by the association or the
345 National Organization of Life and Health Insurance Guaranty Associations (NOLHGA) on its
346 behalf sending written notice, return receipt requested, to the affected reinsurers.

347 (b) To facilitate the earliest practicable decision about whether to assume any of the contracts of
348 reinsurance, and in order to protect the financial position of the estate, the receiver and each
349 reinsurer of the ceding member insurer shall upon request make available to the association or
350 NOLHGA on its behalf as soon as possible after commencement of formal delinquency
351 proceedings (i) copies of in-force contracts of reinsurance and all related files and records
352 relevant to the determination of whether such contracts should be assumed, and (ii) notices of
353 any defaults under the reinsurance contracts or any known event or condition which with the
354 passage of time could become a default under the reinsurance contracts.

355 (c) The following subparagraphs (i) through (iv) shall apply to reinsurance contracts so assumed
356 by the association:

357 (i) The association shall be responsible for all unpaid premiums due under the reinsurance
358 contracts for periods both before and after the date of the order of liquidation and shall be
359 responsible for the performance of all other obligations to be performed after the date of the
360 order of liquidation, in each case which relate to policies or annuities covered, in whole or in
361 part, by the association. The association may charge policies or annuities covered in part by the
362 association, through reasonable allocation methods, the cost for reinsurance in excess of the
363 obligations of the association and shall provide notice and an accounting of these charges to the
364 liquidator;

365 (ii) The association shall be entitled to any amounts payable by the reinsurer under the
366 reinsurance contracts with respect to losses or events that occur in periods after the date of the
367 order of liquidation and that relate to policies or annuities covered, in whole or in part, by the
368 association, provided that, upon the receipt of any such amounts, the association shall be
369 obligated to pay to the beneficiary under the policy or annuity on account of which the amounts
370 were paid a portion of the amount equal to the lesser of:

371 (A) The amount received by the association; and

372 (B) The excess of the amount received by the association over the amount equal to the benefits
373 paid by the association on account of the policy or annuity less the retention of the insurer
374 applicable to the loss or event.

375 (iii) Within thirty (30) days following the associations election, (the “election date”), the
376 association and each reinsurer under contracts assumed by the association shall calculate the net
377 balance due to or from the association under each reinsurance contract as of the election date
378 with respect to policies or annuities covered, in whole or in part, by the association, which
379 calculation shall give full credit to all items paid by either the insurer or its receiver or the
380 reinsurer prior to the election date. The reinsurer shall pay the receiver any amounts due for
381 losses or events prior to the date of the order of liquidation, subject to any set-off for premiums
382 unpaid for periods prior to the date, and the association or reinsurer shall pay any remaining
383 balance due the other, in each case within five (5) days of the completion of the aforementioned
384 calculation. Any dispute over the amounts due to either the association or the reinsurer shall be
385 resolved by arbitration pursuant to the terms of the affected reinsurance contracts or, if the
386 contract contains no arbitration clause, as otherwise provided by law. If the receiver has

387 received any amounts due the association pursuant to subparagraph (c)(ii) of this (8)(L)(1), the
388 receiver shall remit the same to the association as promptly as practicable.

389 (iv) If the association, or the receiver, on the association's behalf within sixty (60) days of the
390 election date, pays the unpaid premiums due for periods both before and after the election date
391 that relate to policies or annuities covered, in whole or in part, by the association, the reinsurer
392 shall not be entitled to terminate the reinsurance contracts for failure to pay premium insofar as
393 the reinsurance contracts relate to policies or annuities covered, in whole or in part, by the
394 association, and shall not be entitled to set off any unpaid amounts due under other contracts, or
395 unpaid amounts due from parties other than the association, against amounts due the association.

396 (2) During the period from the date of the order of liquidation until the election date (or, if the
397 election date does not occur, until one hundred eighty (180) days after the date of the order of
398 liquidation),

399 (a) (i) Neither the association nor the reinsurer shall have any rights or obligations under
400 reinsurance contracts that the association has the right to assume under subsection (8)(L)(1),
401 whether for periods prior to or after the date of the order of liquidation; and

402 (ii) The reinsurer, the receiver and the association shall, to the extent practicable, provide each
403 other data and records reasonably requested;

404 (b) Provided that once the association has elected to assume a reinsurance contract, the parties'
405 rights and obligations shall be governed by subsection (8)(L)(1).

406 (3) If the association does not elect to assume a reinsurance contract by the election date pursuant
407 to subsection (8)(L)(1), the association shall have no rights or obligations, in each case for

408 periods both before and after the date of the order of liquidation, with respect to the reinsurance
409 contract.

410 (4) When policies or annuities, or covered obligations with respect thereto, are transferred to an
411 assuming insurer, reinsurance on the policies or annuities may also be transferred by the
412 association, in the case of contracts assumed under subsection (8)(L)(1), subject to the following;

413 (a) Unless the reinsurer and the assuming reinsurer agree otherwise, the reinsurance contract
414 transferred shall not cover any new policies of insurance or annuities in addition to those
415 transferred;

416 (b) the obligations described in subsection (8)(L)(1) shall no longer apply with respect to matters
417 arising after the effective date of the transfer; and

418 (c) notice shall be given in writing, return receipt requested, by the transferring party to the
419 affected reinsurer not less than thirty (30) days prior to the effective date of the transfer.

420 (5) The provisions of this paragraph shall supersede the provisions of any law or of any affected
421 reinsurance contract that provides for or requires any payment of reinsurance proceeds, on
422 account of losses or events that occur in periods after the date of the order of liquidation, to the
423 receiver of the insolvent insurer or any other person. The receiver shall remain entitled to any
424 amounts payable by the reinsurer under the reinsurance contracts with respect to losses or events
425 that occur in periods prior to the date of the order of liquidation, subject to applicable setoff
426 provisions.

427 (6) Except as otherwise provided in this paragraph (L), nothing in this paragraph shall alter or
428 modify the terms and conditions of any reinsurance contract. Nothing in this said paragraph

429 shall abrogate or limit any rights of any reinsurer to claim that it is entitled to rescind a
430 reinsurance contract. Nothing in this said paragraph shall give a policyholder or beneficiary an
431 independent cause of action against a reinsurer that is not otherwise set forth in the reinsurance
432 contract. Nothing in this said paragraph shall limit or affect the association's rights as a creditor
433 of the estate against the assets of the estate. Nothing in this said paragraph shall apply to
434 reinsurance agreements covering property or casualty risks.

435 (M) In carrying out its duties in connection with guaranteeing, assuming or reinsuring policies
436 or contracts under paragraphs (8)(A) or (8)(B) the association may, subject to approval of the
437 receivership court, issue substitute coverage for a policy or contract that provides an interest rate,
438 crediting rate or similar factor determined by use of an index or other external reference stated in
439 the policy or contract employed in calculating returns or changes in value by issuing an
440 alternative policy or contract in accordance with the following provisions;

441 (a) In lieu of the index or other external reference provided for in the original policy or contract
442 the alternative policy or contract provides for (i) a fixed interest rate or (ii) payment of dividends
443 with minimum guarantees or (iii) a different method for calculating interest or changes in value;

444 (b) There is no requirement for evidence of insurability, waiting period or other exclusion that
445 would not have applied under the replaced policy or contract, and;

446 (c) The alternative policy or contract is substantially similar to the replaced policy or contract in
447 all material terms.

448 (N) The Board of Directors of the Association shall have discretion and may exercise reasonable
449 business judgment to determine the means by which the Association is to provide the benefits of
450 this section in an economical and efficient manner.

451 (O) Where the Association has arranged or offered to provide the benefits of this section to a
452 covered person under a plan or arrangement that fulfills the Association's obligations under this
453 section, the person shall not be entitled to benefits from the Association in addition to or other
454 than those provided under the plan or arrangement.

455 SECTION 33. Section 146B of chapter 175 of the General Laws, as appearing in the 2008
456 Official Edition, is hereby amended by striking out, in lines 402 through 403, the words " and
457 examinations conducted under the authority of paragraph (E) of subsection (12)".

458 SECTION 34. Section 146B of chapter 175 of the General Laws, as appearing in the 2008
459 Official Edition, is hereby amended by striking out, in lines 407 through 408, "(A), (B) or (C)"
460 and inserting in place thereof the following:- (A) or (B)

461 SECTION 35. Section 146B of chapter 175 of the General Laws, as appearing in the 2008
462 Official Edition, is hereby amended by striking out, in lines 409 through 414, the words "The
463 amount of any Class A assessment shall be determined by the board of directors and may be
464 made on a pro rata or non-pro rata basis. If made on a pro rata basis, the board of directors may
465 provide that it be credited against future Class B assessments. If it is made on a non-pro rata
466 basis, such assessment shall not exceed one hundred and fifty dollars per member insurer in any
467 one calendar year." and inserting in place thereof the following:- The amount of any Class A
468 assessment shall be determined by the board of directors and may be made on a pro rata or non-
469 pro rata basis or any combination thereof. If made on a pro rata basis, the board of directors may
470 provide that it be credited against future Class B assessments.

471 SECTION 36. Section 146B of chapter 175 of the General Laws, as appearing in the 2008
472 Official Edition, is hereby further amended by inserting after “E”, in line 442, the following:-

473 (1)(a)

474 SECTION 37. Section 146B of chapter 175 of the General Laws, as appearing in the 2008
475 Official Edition, is hereby further amended by inserting after the word “section.”, in line 451, the
476 following:-

477 (b) The board of directors may provide a method of allocating funds among claims, whether
478 relating to one or more impaired or insolvent insurers, when the maximum assessment will be
479 insufficient to cover anticipated claims.

480 (2) If the maximum assessment for the life or annuity account in any one year does not provide
481 an amount sufficient to carry out the responsibilities of the association, then pursuant to
482 subsection (9)(C)(2), the board of directors shall assess the other account for the necessary
483 additional amount, subject to the maximum stated in subsection (9)(E)(1) above.

484 SECTION 38. Section 146B of chapter 175 of the General Laws, as appearing in the 2008
485 Official Edition, is hereby amended by striking out, in line 504, “(K)” and inserting in place
486 thereof the following:- (J)

487 SECTION 39. Subsection (12) of Section 146B of chapter 175 of the General Laws, as appearing
488 in the 2008 Official Edition, is hereby amended by striking out paragraphs (E), (F) and (G) and
489 inserting in place thereof the following:-

490 (E) The board of directors may, upon majority vote, make recommendations to the commissioner
491 for the detection and prevention of insurer insolvencies.

492 SECTION 40. Subsection (14) of section 146B of chapter 175 of the General Laws, as appearing
493 in the 2008 Official Edition, is hereby amended by striking out paragraph (B) and inserting in
494 place thereof the following:-

495 (B) Records shall be kept of all meetings of the board of directors to discuss the activities of the
496 association in carrying out its powers and duties under subsection (8). The records of the
497 association with respect to an impaired or insolvent insurer shall not be disclosed prior to the
498 termination of a liquidation, rehabilitation, or conservation proceeding involving the impaired or
499 insolvent insurer, except (i) upon the termination of the impairment of insolvency of the insurer,
500 or (ii) upon the order of a court of competent jurisdiction. Nothing in this subsection shall limit
501 the duty of the association to render a report of its activities under subsection (15)

502 SECTION 41. Section 146B of chapter 175 of the General Laws, as appearing in the 2008
503 Official Edition, is hereby amended by striking out, in line 667, “(K)” and inserting in place
504 thereof the following:- (J)

505 SECTION 42. Section 146B of chapter 175 of the General Laws, as appearing in the 2008
506 Official Edition, is hereby amended by striking out, in line 711, “paragraph (3)” and inserting in
507 place thereof the following:- clause (3)

508 SECTION 43. Subsection (14) of section 146B of chapter 175 of the General Laws, as appearing
509 in the 2008 Official Edition, is hereby further amended by inserting the following paragraph:-

510 (F) As a creditor of the impaired or insolvent insurer as established in paragraph (C) of this
511 subsection and consistent with chapter 175, section 180C, the Association and other similar
512 associations shall be entitled to receive a disbursement of assets out of the marshaled assets, from
513 time to time as the assets become available to reimburse it, as a credit against contractual

514 obligations under this section. If the liquidator has not, within 120 days of a final determination
515 of insolvency of an insurer by the receivership court, made an application to the court for the
516 approval of a proposal to disburse assets out of marshaled assets to guaranty associations having
517 obligations because of the insolvency, then the Association shall be entitled to make application
518 to the receivership court for approval of its own proposal to disburse assets.

519 SECTION 44. Section 146B of chapter 175 of the General Laws, as appearing in the 2008
520 Official Edition, is hereby amended by striking out, in line 732, “(L)” and inserting in place
521 thereof the following:- (K)

522 SECTION 45. Section 146B of chapter 175 of the General Laws, as appearing in the 2008
523 Official Edition, is hereby amended by striking out, in lines 734 through 737, the words “All
524 proceedings in which the insolvent insurer is a party in any court in the commonwealth shall be
525 stayed sixty days from the date an order of rehabilitation or liquidation is final to permit proper
526 legal action by the association on any matters germane to its powers or duties” and inserting in
527 place thereof the following:-

528 All proceedings in which the insolvent insurer is a party in any court in the commonwealth shall
529 be stayed one hundred eighty (180) days from the date an order of rehabilitation, conservation or
530 liquidation is final to permit proper legal action by the association on any matters germane to its
531 powers or duties

532 SECTION 46. Section 146B of chapter 175 of the General Laws, as appearing in the 2008
533 Official Edition, is hereby further amended by inserting after the word “eighty-six.”, in line 757,
534 the following:-

535 Amendments to this section shall not apply to any insurer which was placed under an order of
536 rehabilitation or under an order of liquidation prior to the effective date of the Amendment.