

**First Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 21-0651.01 Christy Chase x2008

HOUSE BILL 21-1033

HOUSE SPONSORSHIP

Ricks,

SENATE SPONSORSHIP

Gardner,

House Committees
Health & Insurance

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING MODIFICATIONS TO THE "LIFE AND HEALTH INSURANCE**
102 **PROTECTION ASSOCIATION ACT".**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill amends the "Life and Health Insurance Protection Association Act" as follows:

- Adds health maintenance organizations (HMOs) as members of the association and subjects HMOs to assessments from the association; and
- Allocates responsibility for long-term care insurance

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

assessments between health insurance and life insurance association members.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 10-20-101 as
3 follows:

4 **10-20-101. Short title.** ~~This article shall be known and may be~~
5 ~~cited as~~ THE SHORT TITLE OF THIS ARTICLE 20 IS the "Life and Health
6 Insurance Protection Association Act".

7 **SECTION 2.** In Colorado Revised Statutes, **amend** 10-20-102 as
8 follows:

9 **10-20-102. Legislative declaration.** (1) The general assembly
10 finds and declares that the purpose of this ~~article~~ ARTICLE 20 is to protect,
11 subject to certain limitations, the persons specified in section 10-20-104
12 (1) against failure by member insurers in the performance of their
13 contractual obligations under life, ~~and health, insurance policies~~ and
14 annuity POLICIES, PLANS, OR contracts specified in section 10-20-104 (2),
15 because of the insolvency of the member insurer that issued the policies,
16 PLANS, or contracts.

17 (2) To provide the protection specified in subsection (1) of this
18 section, an association of MEMBER insurers shall be created and shall exist
19 to pay benefits and to continue coverages as limited pursuant to this
20 ~~article. Members~~ ARTICLE 20. MEMBER INSURERS of the association are
21 subject to assessment to provide funds to carry out the purpose of this
22 ~~article~~ ARTICLE 20.

23 **SECTION 3.** In Colorado Revised Statutes, 10-20-103, **amend**
24 the introductory portion, (6), (8) introductory portion, (10.5), (12), (12.7),
25 and (13); **repeal** (8)(b); and **add** (6.6) as follows:

1 **10-20-103. Definitions.** As used in this ~~article~~ ARTICLE 20, unless
2 the context otherwise requires:

3 (6) "Covered policy", "COVERED CONTRACT", OR "COVERED
4 POLICY OR CONTRACT" means a policy or contract, or a portion of a policy
5 or contract, for which coverage is provided under section 10-20-104.

6 (6.6) (a) "HEALTH BENEFIT PLAN" MEANS ANY HOSPITAL OR
7 MEDICAL EXPENSE POLICY OR CERTIFICATE, HEALTH MAINTENANCE
8 ORGANIZATION SUBSCRIBER CONTRACT, OR OTHER SIMILAR HEALTH
9 CONTRACT.

10 (b) "HEALTH BENEFIT PLAN" DOES NOT INCLUDE:

11 (I) AN ACCIDENT-ONLY PLAN;

12 (II) CREDIT INSURANCE;

13 (III) DENTAL-ONLY INSURANCE;

14 (IV) VISION-ONLY INSURANCE;

15 (V) A MEDICARE SUPPLEMENT PLAN;

16 (VI) BENEFITS FOR LONG-TERM CARE, HOME HEALTH CARE,
17 COMMUNITY-BASED CARE, OR ANY COMBINATION THEREOF;

18 (VII) DISABILITY INCOME INSURANCE;

19 (VIII) COVERAGE FOR ON-SITE MEDICAL CLINICS; OR

20 (IX) SPECIFIED DISEASE, HOSPITAL CONFINEMENT INDEMNITY, OR
21 LIMITED BENEFIT HEALTH INSURANCE IF THE TYPE OF COVERAGE DOES NOT
22 PROVIDE COORDINATION OF BENEFITS AND IS PROVIDED UNDER A
23 SEPARATE POLICY OR CERTIFICATE.

24 (8) "Member insurer" means any insurer OR HEALTH
25 MAINTENANCE ORGANIZATION THAT IS licensed or ~~who~~ holds a certificate
26 of authority in this state to write any kind of insurance OR HEALTH
27 MAINTENANCE ORGANIZATION BUSINESS for which coverage is provided

1 pursuant to section 10-20-104 and includes any insurer OR HEALTH
2 MAINTENANCE ORGANIZATION whose license or certificate of authority in
3 this state may have been suspended, revoked, not renewed, or voluntarily
4 withdrawn. ~~but~~ "Member insurer" does not include:

5 (b) ~~A health maintenance organization;~~

6 (10.5) (a) "Owner" of a policy or contract, ~~for insurance, or~~
7 "policy owner", "POLICYHOLDER", "CONTRACT HOLDER", or "contract
8 owner" means the person who is identified as the legal owner under the
9 terms of the policy or contract ~~for insurance~~ or who is otherwise vested
10 with legal title to the policy or contract ~~for insurance~~ through a valid
11 assignment completed in accordance with the terms of the policy or
12 contract ~~for insurance~~ and properly recorded as the owner on the books
13 of the insurer.

14 (b) The terms "owner" OF A POLICY OR CONTRACT, "contract
15 owner", "POLICYHOLDER", "CONTRACT HOLDER", and "policy owner" do
16 not include persons with a beneficial interest in a policy or contract.

17 (12) (a) "Premiums" means ~~amounts~~ THE AMOUNT of money or
18 other consideration, however designated, received on covered policies or
19 contracts less returned premiums, returned consideration, and returned
20 deposits, and less dividends and experience credits thereon.

21 (b) "Premiums" does not include:

22 (I) Any ~~amounts~~ AMOUNT of money or other consideration
23 received for any policies or contracts or for the portions of any policies
24 or contracts for which coverage is not provided under section 10-20-104
25 (2); except that assessable premiums shall not be reduced on account of
26 section 10-20-104 (2)(b)(III) relating to interest limitations and section
27 10-20-104 (3)(b) relating to limitations with respect to any one life;

1 "Premiums" does not include:

2 (a) (II) Premiums on an unallocated annuity contract; or

3 (b) (III) Premiums in excess of five million dollars with respect
4 to multiple nongroup policies of life insurance owned by one owner,
5 regardless of:

6 (H) (A) Whether the policy OR CONTRACT owner is an individual,
7 firm, corporation, or other person;

8 (H) (B) Whether the persons insured are officers, managers,
9 employees, or other persons; or

10 (H) (C) The number of policies or contracts held by the owner.

11 (12.7) "Receivership court" means the court in an impaired or
12 insolvent insurer's state having jurisdiction over the conservation,
13 rehabilitation, or liquidation of the MEMBER insurer.

14 (13) "Resident" means any person to whom a contractual
15 obligation is owed and who resides in this state on the date of entry of a
16 court order that determines a member insurer to be EITHER an impaired
17 insurer or ~~a court order that determines a member insurer to be~~ an
18 insolvent insurer. A person ~~may~~ MUST be a resident of only one state,
19 which in the case of a person other than a natural person ~~shall~~ MUST be its
20 principal place of business. Citizens of the United States who are
21 residents of a foreign country, United States possession, United States
22 territory, or United States protectorate, which country, possession,
23 territory, or protectorate does not have an association similar to the
24 association created by this ~~article, shall be~~ ARTICLE 20, ARE deemed
25 residents of the state of domicile of the MEMBER insurer that issued the
26 policies or contracts.

27 **SECTION 4.** In Colorado Revised Statutes, 10-20-104, **amend**

1 (1) introductory portion, (1)(a) introductory portion, (1)(a)(II), (1)(b),
2 (1.7), (2)(a), (2)(b) introductory portion, (2)(b)(XVI), (2)(b)(XVIII)
3 introductory portion, (2)(b)(XVIII)(B), (2)(b)(XVIII)(C), (3)(a), (3)(b)(I)
4 introductory portion, (3)(b)(I)(B), (3)(b)(II)(A), and (4); and **add**
5 (2)(b)(XX), (2)(c), and (3.5) as follows:

6 **10-20-104. Coverage and limitations - coordination of benefits.**

7 (1) This ~~article shall provide~~ ARTICLE 20 PROVIDES coverage for the
8 policies and contracts specified in subsection (2) of this section ~~and~~ to
9 persons:

10 (a) Who are owners of, ~~or~~ certificate holders under, ~~such~~ OR
11 ENROLLEES IN THE policies or contracts, other than structured settlement
12 annuities, and who:

13 (II) Are not residents, but only under all of the following
14 conditions:

15 (A) The ~~insurer which~~ MEMBER INSURER THAT issued ~~such~~ THE
16 policies or contracts is domiciled in this state;

17 (B) ~~Such insurer never held a license or certificate of authority in~~
18 ~~the states in which such persons reside;~~

19 (C) ~~Such~~ THE states IN WHICH THE PERSONS RESIDE have
20 associations similar to the association created by this ~~article~~ ARTICLE 20;
21 and

22 (D) ~~Such~~ THE persons are not eligible for any amount of coverage
23 by ~~such associations~~ AN ASSOCIATION IN ANOTHER STATE BECAUSE THE
24 MEMBER INSURER IS AN INSURER OR HEALTH MAINTENANCE
25 ORGANIZATION THAT WAS NOT LICENSED IN THE STATE AT THE TIME
26 SPECIFIED IN THE STATE'S SIMILAR ASSOCIATION LAWS;

27 (b) Regardless of where they reside, except for nonresident

1 certificate holders under group policies or contracts, who are the
2 beneficiaries, assignees, or payees, INCLUDING HEALTH CARE PROVIDERS
3 RENDERING SERVICES COVERED UNDER HEALTH INSURANCE POLICIES OR
4 CERTIFICATES, of the persons covered under ~~paragraph (a) of this~~
5 ~~subsection (1)~~ SUBSECTION (1)(a) OF THIS SECTION.

6 (1.7) This ~~article~~ ARTICLE 20 is intended to provide coverage to a
7 person who is a resident of this state and, in special circumstances, to a
8 nonresident. In order to avoid duplicate coverage, if a person who would
9 otherwise receive coverage under this ~~article~~ ARTICLE 20 is provided
10 coverage under the laws of any other state, the person shall not be
11 provided coverage under this ~~article~~ ARTICLE 20. In determining the
12 application of the provisions of this subsection (1.7) in situations where
13 a person could be covered by the association of more than one state,
14 whether as an owner, payee, beneficiary, ENROLLEE, or assignee, this
15 ~~article~~ ARTICLE 20 shall be construed in conjunction with other state laws
16 to result in coverage by only one association.

17 (2) (a) (I) This ~~article~~ ARTICLE 20 provides coverage to the
18 persons specified in subsections (1) and (1.3) of this section for THE
19 FOLLOWING POLICIES, CONTRACTS, OR CERTIFICATES ISSUED BY MEMBER
20 INSURERS, EXCEPT AS LIMITED BY THIS ARTICLE 20:

21 (A) Direct, nongroup life INSURANCE, health ~~annuity, and~~
22 ~~supplemental policies or contracts and for certificates under~~ INSURANCE,
23 INCLUDING HEALTH MAINTENANCE ORGANIZATION CONTRACTS OR
24 CERTIFICATES, OR ANNUITIES;

25 (B) CERTIFICATES UNDER direct group life INSURANCE, health
26 ~~annuity policies or contracts~~ INSURANCE, INCLUDING HEALTH
27 MAINTENANCE ORGANIZATION CONTRACTS, OR ANNUITIES; and

1 (C) Supplemental contracts to any of ~~these issued by member~~
2 ~~insurers pursuant to articles 7 and 8 and parts 1 and 2 of article 16 of this~~
3 ~~title, except as limited by this article~~ THE POLICIES, CONTRACTS, OR
4 CERTIFICATES DESCRIBED IN SUBSECTION (2)(a)(I)(A) OR (2)(a)(I)(B) OF
5 THIS SECTION.

6 (II) Annuity contracts and certificates under group annuity
7 contracts include allocated funding agreements, structured settlement
8 annuities, and any immediate or deferred annuity contracts.

9 (b) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2)(c) OF
10 THIS SECTION, this ~~article~~ ARTICLE 20 does not provide coverage for:

11 (XVI) Any policy or contract providing hospital, medical,
12 prescription drug, or other health care benefits under:

13 (A) Part C or part D of subchapter XVIII, chapter 7 of title 42,
14 United States Code, or any regulation issued under ~~these~~ THOSE parts C
15 OR D; OR

16 (B) SUBCHAPTER XIX, CHAPTER 7 OF TITLE 42, UNITED STATES
17 CODE, OR ANY REGULATION ISSUED UNDER SUBCHAPTER XIX;

18 (XVIII) Any obligation that does not arise under the ~~expressed~~
19 EXPRESS written terms of the policy or contract issued by the MEMBER
20 insurer to the ~~contract owner or to the policy~~ owner, CERTIFICATE
21 HOLDER, OR ENROLLEE, including: ~~and without limitation:~~

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

25 (C) Misrepresentations of, or regarding, policy OR CONTRACT
26 benefits;

27 (XX) STRUCTURED SETTLEMENT ANNUITY BENEFITS TO WHICH A

1 PAYEE OR BENEFICIARY HAS TRANSFERRED THE PAYEE'S OR BENEFICIARY'S
2 RIGHTS IN A STRUCTURED SETTLEMENT FACTORING TRANSACTION, AS
3 DEFINED IN 26 U.S.C. SEC. 5891 (c)(3)(A), REGARDLESS OF WHETHER THE
4 TRANSACTION OCCURRED BEFORE OR AFTER SUCH SECTION BECAME
5 EFFECTIVE.

6 (c) THE EXCLUSIONS FROM COVERAGE SPECIFIED IN SUBSECTION
7 (2)(b)(III) OF THIS SECTION DO NOT APPLY TO ANY PORTION OF A POLICY
8 OR CONTRACT, INCLUDING A RIDER, THAT PROVIDES LONG-TERM CARE OR
9 ANY OTHER HEALTH INSURANCE BENEFITS.

10 (3) The benefits for which the association may become liable shall
11 not exceed the lesser of:

12 (a) The contractual obligations for which the MEMBER insurer is
13 liable or would have been liable if it were not an impaired or insolvent
14 insurer; or

15 (b) (I) With respect to any one life, regardless of the number of
16 policies or contracts with that MEMBER insurer:

17 (B) For health insurance benefits: One hundred thousand dollars
18 for coverages not defined as disability ~~basic hospital, medical and~~
19 ~~surgical, or major medical insurance~~ INCOME INSURANCE, HEALTH
20 BENEFIT PLANS, or long-term care insurance, including any net cash
21 surrender and net cash withdrawal values; three hundred thousand dollars
22 for disability INCOME insurance; three hundred thousand dollars for
23 long-term care insurance; or five hundred thousand dollars for ~~basic~~
24 ~~hospital, medical and surgical, or major medical insurance~~ HEALTH
25 BENEFIT PLANS;

26 (II) The association is not obligated to cover:

27 (A) More than three hundred thousand dollars in benefits, in the

1 aggregate, with respect to any one life under ~~sub-subparagraphs (A) to~~
2 ~~(D) of subparagraph (I) of this paragraph (b)~~ SUBSECTION (3)(b)(I) OF
3 THIS SECTION; except that, with respect to benefits ~~for basic hospital,~~
4 ~~medical and surgical, and major medical insurance under~~
5 ~~sub-subparagraph (B) of subparagraph (I) of this paragraph (b)~~ UNDER
6 HEALTH BENEFIT PLANS AS SPECIFIED IN SUBSECTION (3)(b)(I)(B) OF THIS
7 SECTION, the aggregate liability of the association shall not exceed five
8 hundred thousand dollars with respect to any one individual; or

9 (3.5) FOR PURPOSES OF THIS ARTICLE 20, BENEFITS PROVIDED BY
10 A LONG-TERM CARE RIDER TO A LIFE INSURANCE POLICY OR ANNUITY
11 CONTRACT ARE CONSIDERED THE SAME TYPE OF BENEFITS AS THE
12 BENEFITS PROVIDED BY THE UNDERLYING LIFE INSURANCE POLICY OR
13 ANNUITY CONTRACT TO WHICH THE RIDER RELATES.

14 (4) In performing its obligations to provide coverage under section
15 10-20-108, the association is not required to guarantee, assume, reinsure,
16 REISSUE, or perform, or cause to be guaranteed, assumed, reinsured,
17 REISSUED, or performed, the contractual obligations of the impaired or
18 insolvent insurer under a covered policy or contract that do not materially
19 affect the economic values or economic benefits of the covered policy or
20 contract.

21 **SECTION 5.** In Colorado Revised Statutes, 10-20-106, **amend**
22 (1) introductory portion and (1)(b) as follows:

23 **10-20-106. Creation of the association.** (1) There is hereby
24 created a private nonprofit legal entity to be known as the life and health
25 insurance protection association. All member insurers shall be and remain
26 members of the association as a condition of their authority to transact
27 insurance OR HEALTH MAINTENANCE ORGANIZATION BUSINESS in this

1 state. The association shall perform its functions pursuant to the plan of
2 operation specified in section 10-20-110 and shall exercise its powers
3 through the board of directors provided in section 10-20-107. For
4 purposes of administration and assessment, the association shall maintain
5 three accounts:

6 (b) The health ~~insurance~~ account; and

7 **SECTION 6.** In Colorado Revised Statutes, 10-20-107, **amend**
8 (1) as follows:

9 **10-20-107. Board of directors.** (1) The board of directors of the
10 association shall consist of not less than ~~five~~ SEVEN nor more than ~~nine~~
11 ELEVEN member insurers serving terms as established in the plan of
12 operation. ~~The MEMBER INSURERS SHALL SELECT members of the board,~~
13 ~~shall be selected by member insurers~~ subject to the approval of the
14 commissioner. ~~Vacancies on the board shall be filled~~ IF A VACANCY
15 OCCURS, THE REMAINING BOARD MEMBERS SHALL FILL THE VACANCY for
16 the remaining period of the term by a majority vote, ~~of the remaining~~
17 ~~board members~~, subject to the approval of the commissioner. To select
18 the first board and initially organize the association, the commissioner
19 shall give notice to all member insurers of the time and place of the
20 organizational meeting. At the organizational meeting, each member
21 insurer ~~shall be~~ IS entitled to one vote in person or by proxy. If the board
22 is not selected within sixty days after notice of the organizational
23 meeting, the commissioner may appoint the initial members.

24 **SECTION 7.** In Colorado Revised Statutes, 10-20-108, **amend**
25 (1), (2), (5), (12), (13)(c), (13)(f), (19), and (22) introductory portion;
26 **repeal** (24); and **add** (13)(i) as follows:

27 **10-20-108. Powers and duties of the association.** (1) If a

1 member insurer is an impaired insurer, the association may, in its
2 discretion and subject to any conditions imposed by the association that
3 do not impair the contractual obligations of the impaired insurer and that
4 are approved by the commissioner:

5 (a) Guarantee, assume, REISSUE, or reinsure or cause to be
6 guaranteed, assumed, REISSUED, or reinsured any ~~or all~~ of the policies or
7 contracts of the impaired insurer; or

8 (b) Provide ~~such moneys~~ THE MONEY, pledges, loans, notes,
9 guarantees, or other means as proper to effectuate ~~paragraph (a) of this~~
10 ~~subsection (1)~~ SUBSECTION (1)(a) OF THIS SECTION and assure payment of
11 the contractual obligations of the impaired insurer pending action under
12 said ~~paragraph (a)~~ SUBSECTION (1)(a).

13 (2) If a member insurer is an insolvent insurer, the association
14 shall, in its discretion, either:

15 (a) Guarantee, assume, REISSUE, or reinsure or cause to be
16 guaranteed, assumed, REISSUED, or reinsured the covered policies of the
17 insolvent insurer and provide ~~such moneys~~ THE MONEY, pledges, notes,
18 guarantees, or other means as THAT are reasonably necessary to discharge
19 those duties; or

20 (b) Assure payment of the contractual obligations of the insolvent
21 insurer to the residents and provide ~~such moneys~~ THE MONEY, pledges,
22 notes, guarantees, or other means as THAT are reasonably necessary to
23 discharge those duties; or

24 (c) Provide benefits and coverages in accordance with the
25 following provisions:

26 (I) With respect ~~only to life and health insurance policies and~~
27 ~~annuities~~ TO COVERED POLICIES AND CONTRACTS, assure payment of

1 benefits ~~for premiums identical to the premiums and benefits, except for~~
2 ~~terms of conversion and renewability,~~ that would have been payable
3 under the policies OR CONTRACTS of the insolvent insurer for claims
4 incurred:

5 (A) With respect to group policies and contracts, not later than the
6 earlier of the next renewal date under ~~such~~ THE policies or contracts or
7 forty-five days, but in no event less than thirty days, after the date on
8 which the association becomes obligated with respect to ~~such~~ THE policies
9 or contracts;

10 (B) With respect to nongroup policies, contracts, and annuities,
11 not later than the earlier of the next renewal date, if any, under ~~such~~ THE
12 policies or contracts or one year, but in no event less than thirty days,
13 after the date on which the association becomes obligated with respect to
14 ~~such~~ THE policies or contracts.

15 (II) Make diligent efforts to provide to all known insureds,
16 ENROLLEES, or annuitants for nongroup policies and contracts, or to group
17 policy OR CONTRACT owners with respect to group policies and contracts,
18 thirty days' notice of the termination under ~~subparagraph (I) of this~~
19 ~~paragraph (c)~~ SUBSECTION (2)(c)(I) OF THIS SECTION of the benefits
20 provided.

21 (III) With respect to nongroup ~~life and health insurance policies~~
22 ~~and annuities covered by the association~~ COVERED POLICIES AND
23 CONTRACTS, make available to each known insured, ENROLLEE, or
24 annuitant, or owner if other than the insured, ENROLLEE, or annuitant, and
25 with respect to an individual formerly AN insured, ENROLLEE, or ~~formerly~~
26 ~~an~~ annuitant under a group policy OR CONTRACT who is not eligible for
27 replacement group coverage, substitute coverage on an individual basis

1 in accordance with ~~the provisions of subparagraph (IV) of this paragraph~~
2 ~~(e) SUBSECTION (2)(c)(IV) OF THIS SECTION~~, if the insureds, ENROLLEES,
3 or annuitants had a right under law or the terminated policy, CONTRACT,
4 or annuity to convert coverage to individual coverage or to continue an
5 individual policy, CONTRACT, or annuity in force until a specified age or
6 for a specified time, during which the insurer OR HEALTH MAINTENANCE
7 ORGANIZATION had no right to unilaterally make changes in any
8 provisions of the policy, CONTRACT, or annuity or had a right only to
9 make changes in premium by class.

10 (IV) (A) In providing the substitute coverage required under
11 ~~subparagraph (III) of this paragraph (e) SUBSECTION (2)(c)(III) OF THIS~~
12 SECTION, the association may offer either to reissue the terminated
13 coverage or to issue an alternative policy OR CONTRACT AT ACTUARIALLY
14 JUSTIFIED RATES APPROVED BY THE COMMISSIONER.

15 (B) The association shall offer alternative or reissued policies OR
16 CONTRACTS without requiring evidence of insurability, and the policies
17 OR CONTRACTS must not provide for any waiting period or exclusion that
18 would not have applied under the terminated policy OR CONTRACT.

19 (C) The association may reinsure any alternative or reissued
20 policy OR CONTRACT.

21 (V) ALTERNATIVE POLICIES OR CONTRACTS:

22 (A) ~~Alternative policies~~ Adopted by the association are subject to
23 ~~the COMMISSIONER approval. of the domiciliary commissioner and the~~
24 ~~receivership court.~~ The association may adopt alternative policies OR
25 CONTRACTS of various types for future issuance without regard to any
26 particular impairment or insolvency.

27 (B) ~~Alternative policies~~ Must contain at least the minimum

1 statutory provisions required in this state and provide benefits reasonably
2 related to the premium charged. The association shall set the premium in
3 accordance with a table of rates ~~which it shall adopt~~ THAT THE
4 ASSOCIATION ADOPTS. The premium must reflect the amount of insurance
5 OR COVERAGE to be provided and the age and class of risk of each insured
6 but ~~shall~~ MUST not reflect any changes in the health of the insured after
7 the original policy OR CONTRACT was last underwritten.

8 (C) ~~Any alternative policy~~ Issued by the association must provide
9 coverage of a type similar to that of the policy OR CONTRACT issued by the
10 impaired or insolvent insurer, as determined by the association.

11 (VI) If the association elects to reissue terminated coverage at a
12 premium rate different from that charged under the terminated policy OR
13 CONTRACT, the association shall set ~~the~~ AN ACTUARIALLY JUSTIFIED
14 premium in accordance with the amount of insurance OR COVERAGE
15 provided and the age and class of risk, subject to approval by the
16 commissioner. ~~or by a court of competent jurisdiction.~~

17 (VII) The obligations of the association, with respect to coverage
18 under any policy OR CONTRACT of the impaired or insolvent insurer or
19 under any reissued or alternative policy OR CONTRACT, cease on the date
20 ~~such~~ THE coverage, ~~or~~ policy, OR CONTRACT is replaced by another similar
21 policy OR CONTRACT by the policy owner, ~~the~~ insured, ENROLLEE, or ~~the~~
22 association.

23 (VIII) When proceeding under this ~~paragraph (c)~~ SUBSECTION
24 (2)(c), with respect to any policy or contract carrying guaranteed
25 minimum interest rates, the association shall assure the payment or
26 crediting of a rate of interest consistent with section 10-20-104 (2)(b)(III).

27 (5) Nonpayment of premiums within thirty-one days after the date

1 required under the terms of any guaranteed, assumed, alternative, or
2 reissued policy or contract or substitute coverage ~~shall terminate~~
3 TERMINATES the obligations of the association under ~~such~~ THE policy,
4 CONTRACT, or coverage under this ~~article~~ ARTICLE 20 with respect to ~~such~~
5 THE policy, CONTRACT, or coverage, except with respect to any claims
6 incurred or any net cash surrender value ~~which~~ THAT may be due in
7 accordance with ~~the provisions of this article~~ THIS ARTICLE 20.

8 (12) (a) Any person receiving benefits under this ~~article~~ ~~shall be~~
9 ARTICLE 20 IS deemed to have assigned the rights under, and any causes
10 of action against any person for losses arising under, resulting from, or
11 otherwise relating to, the covered policy or contract to the association to
12 the extent of the benefits received because of this ~~article~~ ARTICLE 20,
13 whether the benefits are payments of or on account of contractual
14 obligations, continuation of coverage, or the provision of substitute or
15 alternative coverage. The association may require an assignment to it of
16 such rights and causes of action by any payee, policy or contract owner,
17 beneficiary, insured, or annuitant as a condition precedent to the receipt
18 of any right or benefits conferred by this ~~article~~ ARTICLE 20 upon ~~such~~
19 THE person.

20 (b) The subrogation rights of the association under this subsection
21 (12) ~~shall~~ have the same priority against the assets of the impaired or
22 insolvent insurer as ~~that~~ THE RIGHTS possessed by the person entitled to
23 receive benefits under this ~~article~~ ARTICLE 20.

24 (c) In addition to ~~paragraphs (a) and (b) of this subsection (12)~~
25 SUBSECTIONS (12)(a) AND (12)(b) OF THIS SECTION, the association ~~shall~~
26 ~~have~~ HAS all common-law rights of subrogation and any other equitable
27 or legal remedy ~~which~~ THAT would have been available to the impaired

1 or insolvent insurer, owner, beneficiary, ENROLLEE, or payee of a policy
2 or contract.

3 (d) If any provision of ~~paragraph (a), (b), or (c) of this subsection~~
4 ~~(12)~~ SUBSECTION (12)(a), (12)(b), OR (12)(c) OF THIS SECTION is invalid
5 or ineffective with respect to any person or claim for any reason, the
6 amount payable by the association with respect to the related covered
7 obligations is reduced by the amount realized by any other person with
8 respect to the person or claim that is attributable to the COVERED policies
9 OR CONTRACTS or portions of the COVERED policies ~~covered by the~~
10 ~~association~~ OR CONTRACTS.

11 (e) If the association has provided benefits with respect to a
12 covered obligation and a person recovers amounts as to which the
13 association has rights as described in ~~paragraphs (a) to (d) of this~~
14 ~~subsection (12)~~ SUBSECTIONS (12)(a) TO (12)(d) OF THIS SECTION, the
15 person shall pay to the association the portion of the recovery attributable
16 to the COVERED policies OR CONTRACTS, or portions of THE COVERED
17 policies ~~covered by the association~~ OR CONTRACTS.

18 (13) The association may:

19 (c) Borrow money to effect the purposes of this ~~article~~ ARTICLE
20 20, and any notes or other evidence of indebtedness of the association not
21 in default ~~shall be~~ ARE legal investments for domestic MEMBER insurers
22 and may be carried as admitted assets;

23 (f) Exercise, for the purposes of this ~~article~~ ARTICLE 20 and to the
24 extent approved by the commissioner, the powers of a domestic life ~~or~~
25 INSURER, health insurer, OR HEALTH MAINTENANCE ORGANIZATION, but
26 the association shall not issue ~~insurance~~ policies or ~~annuity~~ contracts
27 other than those issued to perform its obligations under this ~~article~~

1 ARTICLE 20;

2 (i) UNLESS PROHIBITED BY LAW, FILE FOR AN ACTUARIALLY
3 JUSTIFIED RATE OR PREMIUM INCREASE FOR ANY POLICY OR CONTRACT FOR
4 WHICH IT PROVIDES COVERAGE UNDER THIS ARTICLE 20 IN ACCORDANCE
5 WITH THE TERMS AND CONDITIONS OF THE POLICY OR CONTRACT.

6 (19) (a) A person who has a claim against ~~an~~ A MEMBER insurer
7 pursuant to a provision of ~~an insurance~~ A policy OR CONTRACT, other than
8 a policy OR CONTRACT of an impaired or insolvent insurer, that also is a
9 contractual obligation under this ~~article~~ ARTICLE 20 must first exhaust ~~his~~
10 ~~or her~~ THE PERSON'S right under that policy OR CONTRACT. The amount of
11 an approved claim under this ~~article shall~~ ARTICLE 20 MUST be reduced by
12 the policy OR CONTRACT limits of, or amount paid under, that ~~insurance~~
13 policy OR CONTRACT, whichever amount is greater.

14 (b) (I) EXCEPT AS PROVIDED IN SUBSECTION (19)(b)(II) OF THIS
15 SECTION, if a claimant exhausts all rights under a policy OR CONTRACT,
16 other than a policy OR CONTRACT of an impaired or insolvent insurer, the
17 MEMBER insurer issuing that policy OR CONTRACT is not entitled to sue or
18 continue a suit against the insured of the impaired or insolvent insurer to
19 recover an amount paid to the claimant under the policy ~~except that~~ OR
20 CONTRACT;

21 (II) A person having a contractual obligation, as defined by this
22 ~~article~~ ARTICLE 20, under a life insurance policy or an annuity contract
23 issued by an impaired or insolvent insurer is not required to exhaust other
24 coverage for that claim, and the amount of an approved claim under a life
25 insurance policy or annuity contract issued by an impaired or insolvent
26 insurer may not be reduced because of that duplicate coverage.

27 (22) In carrying out its duties in connection with guaranteeing,

1 assuming, REISSUING, or reinsuring policies or contracts under this
2 section, the association may issue substitute coverage for a policy or
3 contract that provides for the calculation of returns or changes in value by
4 the use of an interest rate, crediting rate, or similar factor determined by
5 use of an index or other external reference, by issuing an alternative
6 policy or contract in accordance with the following provisions:

7 ~~(24) In carrying out its duties in connection with guaranteeing,~~
8 ~~assuming, or reinsuring policies or contracts under subsection (1) or (2)~~
9 ~~of this section, the association may, subject to approval by the~~
10 ~~receivership court, issue substitute coverage for a policy or contract that~~
11 ~~provides an interest rate, crediting rate, or similar factor, determined by~~
12 ~~use of an index or other external reference stated in the policy or contract,~~
13 ~~employed in calculating returns or changes in value by issuing an~~
14 ~~alternative policy or contract in accordance with the following provisions:~~

15 (a) In lieu of the index or other external reference provided for in
16 the original policy or contract, the alternative policy or contract provides
17 for a fixed interest rate, payment of dividends with minimum guarantees,
18 or a different method for calculating interest or changes in value;

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

22 (c) The alternative policy or contract is substantially similar to the
23 replaced policy or contract in all other material terms.

24 **SECTION 8.** In Colorado Revised Statutes, 10-20-109, **amend**
25 (3), (5)(a), (5)(b), (6), (7), (8) introductory portion, and (9) as follows:

26 **10-20-109. Assessments.** (3) (a) (I) The BOARD MUST DETERMINE
27 THE amount of any class A assessment, ~~must be determined by the board~~

1 ~~and may be authorized and called~~ WHICH THE BOARD MAY AUTHORIZE
2 AND CALL on a non-pro-rata basis. The BOARD SHALL ALLOCATE, FOR
3 ASSESSMENT PURPOSES, THE amount of any class B assessment, ~~shall be~~
4 ~~allocated for assessment purposes~~ EXCEPT FOR ANY AMOUNT OF CLASS B
5 ASSESSMENTS RELATED TO LONG-TERM CARE INSURANCE, among the
6 accounts MAINTAINED BY THE ASSOCIATION IN ACCORDANCE WITH
7 SECTION 10-20-106(1) pursuant to an allocation formula ~~which~~ THAT may
8 be based on the premiums or reserves of the impaired or insolvent insurer
9 or any other standard deemed by the board in its sole discretion to be fair
10 and reasonable under the circumstances.

11 (II) THE BOARD SHALL ALLOCATE THE AMOUNT OF THE CLASS B
12 ASSESSMENT FOR LONG-TERM CARE INSURANCE WRITTEN BY THE
13 IMPAIRED OR INSOLVENT INSURER ACCORDING TO A METHODOLOGY THAT
14 IS INCLUDED IN THE PLAN OF OPERATION MAINTAINED PURSUANT TO
15 SECTION 10-20-110, IS APPROVED BY THE COMMISSIONER, AND PROVIDES
16 FOR FIFTY PERCENT OF THE ASSESSMENT TO BE ALLOCATED TO ACCIDENT
17 AND HEALTH MEMBER INSURERS AND FIFTY PERCENT OF THE ASSESSMENT
18 TO BE ALLOCATED TO LIFE AND ANNUITY MEMBER INSURERS.

19 (b) THE BOARD SHALL DETERMINE class B assessments against
20 member insurers for each account ~~shall be in~~ BASED ON the proportion
21 that the premiums received on business in this state by each assessed
22 member insurer on policies or contracts covered by each account for the
23 three most recent calendar years for which information is available
24 preceding the year in which the MEMBER insurer became impaired or
25 insolvent, bear to ~~such~~ THE premiums received on business in this state
26 for ~~such~~ THOSE calendar years by all assessed member insurers.

27 (c) THE BOARD MUST NOT AUTHORIZE OR CALL assessments for

1 funds to meet the requirements of the association with respect to an
2 impaired or insolvent insurer ~~must not be authorized or called~~ until
3 necessary to implement the purposes of this ~~article. Classification of~~
4 ARTICLE 20. THE BOARD MUST CLASSIFY assessments under subsection (2)
5 of this section and ~~computation of~~ COMPUTE assessments under this
6 subsection (3) ~~shall be made~~ with a reasonable degree of accuracy,
7 recognizing that exact determinations may not always be possible. The
8 association shall notify each member insurer of its anticipated pro rata
9 share of an authorized assessment not yet called within one hundred
10 eighty days after the BOARD AUTHORIZES THE assessment. ~~is authorized.~~

11 (5) (a) Subject to ~~paragraph (b) of this subsection (5)~~ SUBSECTION
12 (5)(b) OF THIS SECTION, the total of all assessments authorized by the
13 association with respect to a member insurer for each account must not
14 exceed, in any one calendar year, two percent of the average premiums
15 received by the MEMBER insurer in this state on the policies and contracts
16 covered by the account during the three calendar years preceding the year
17 in which the MEMBER insurer became impaired or insolvent.

18 (b) If two or more assessments are authorized in one calendar year
19 with respect to MEMBER insurers ~~who~~ THAT become impaired or insolvent
20 in different calendar years, the average annual premiums for purposes of
21 the aggregate assessment percentage limitation referenced in ~~paragraph~~
22 ~~(a) of this subsection (5)~~ SUBSECTION (5)(a) OF THIS SECTION is equal and
23 limited to the highest of the three-year average annual premiums for the
24 applicable account as calculated under this section.

25 (6) The board shall, by an equitable method as established in the
26 plan of operation, refund to member insurers, in proportion to the
27 contribution of each MEMBER insurer to that account, the amount by

1 which the assets of the account exceed the amount the board finds is
2 necessary to carry out, during the coming year, the obligations of the
3 association with regard to that account, including assets accruing from
4 assignment, subrogation, net realized gains, and income from
5 investments. THE BOARD SHALL RETAIN a reasonable amount ~~shall be~~
6 ~~retained~~ in each account to provide funds for the continuing expenses of
7 the association and for future losses.

8 (7) ~~It shall be proper for any~~ A member insurer, in determining its
9 premium rates and policyholder dividends as to any kind of insurance OR
10 HEALTH MAINTENANCE ORGANIZATION BUSINESS within the scope of this
11 ~~article, to~~ ARTICLE 20, MAY consider the amount reasonably necessary to
12 meet its assessment obligations under this ~~article~~ ARTICLE 20.

13 (8) The association shall issue to each MEMBER insurer paying an
14 assessment for the life and annuity accounts under this ~~article~~ ARTICLE 20,
15 other than a class A assessment, a certificate of contribution from the
16 association, in a form prescribed by the commissioner, for the amount of
17 the assessment ~~so~~ THE MEMBER INSURER paid. All outstanding certificates
18 ~~shall be~~ ARE of equal dignity and priority without reference to amounts or
19 dates of issue. ~~Such~~ THE MEMBER INSURER MAY SHOW THE certificate of
20 contribution ~~may be shown by the insurer~~ in its financial statement as an
21 asset in ~~such~~ A form and for ~~such~~ THE amount, if any, and THE period of
22 time ~~as~~ the commissioner ~~may approve~~ APPROVES; but the MEMBER
23 insurer, ~~shall,~~ at its option, ~~have~~ HAS the right in any event to show ~~such~~
24 THE certificate of contribution as an admitted asset at percentages of the
25 original face amount of the assessment for calendar years as follows:

26 (9) Any member insurer whose certificate of authority OR LICENSE
27 has been terminated for any reason whatsoever ~~shall be~~ IS liable for any

1 assessment based on insolvencies arising ~~prior to such~~ BEFORE THE
2 termination OF THE MEMBER INSURER'S CERTIFICATE OF AUTHORITY OR
3 LICENSE.

4 **SECTION 9.** In Colorado Revised Statutes, 10-20-110, **amend**
5 (1)(b) as follows:

6 **10-20-110. Plan of operation - rules.** (1) (b) If the association
7 fails to submit a suitable plan of operation or suitable amendments to the
8 plan ~~by January 1, 1992~~ WITHIN ONE HUNDRED TWENTY DAYS AFTER THE
9 EFFECTIVE DATE OF THIS SUBSECTION (1)(b), AS AMENDED, the
10 commissioner shall, after notice and hearing, adopt and promulgate such
11 reasonable rules as are necessary or advisable to effectuate the provisions
12 of this ~~article. Such~~ ARTICLE 20. THE rules shall continue in force until
13 modified by the commissioner or superseded by a plan submitted by the
14 association and approved by the commissioner.

15 **SECTION 10.** In Colorado Revised Statutes, 10-20-111, **amend**
16 (1) introductory portion, (1)(c), and (2) as follows:

17 **10-20-111. Powers and duties of the commissioner.** (1) In
18 addition to any other powers and duties specified in this ~~article~~ ARTICLE
19 20, the commissioner shall:

20 (c) In any liquidation proceeding involving a domestic MEMBER
21 insurer, be appointed as the liquidator.

22 (2) The commissioner may suspend or revoke, after notice and
23 hearing, the certificate of authority OR LICENSE to transact ~~insurance~~
24 BUSINESS in this state of any member insurer ~~which~~ THAT fails to pay an
25 assessment when due or fails to comply with the plan of operation. As an
26 alternative, the commissioner may levy a forfeiture on any member
27 insurer ~~which~~ THAT fails to pay an assessment when due. ~~Such~~ THE

1 forfeiture shall not exceed five percent of the unpaid assessment per
2 month, but no forfeiture shall be less than one hundred dollars per month.

3 **SECTION 11.** In Colorado Revised Statutes, 10-20-112, **amend**
4 (1) introductory portion, (1)(a)(III), (1)(c), (2), (3), and (6) as follows:

5 **10-20-112. Prevention of insolvencies.** (1) To aid in the
6 detection and prevention of MEMBER insurer insolvencies, it ~~shall be~~ IS the
7 duty of the commissioner:

8 (a) To notify the commissioners of all the other states, territories
9 of the United States, and the District of Columbia when action is taken in
10 any of the following matters against a member insurer:

11 (III) Issuance of a formal order that ~~such~~ THE member insurer
12 restrict its premium writing, obtain additional contributions to surplus,
13 withdraw from the state, reinsure all or any part of its business, or
14 increase capital, surplus, or any other account for the security of
15 ~~policyholders~~ POLICY OWNERS, CONTRACT OWNERS, CERTIFICATE
16 HOLDERS, ENROLLEES, or creditors. ~~Such~~ THE COMMISSIONER SHALL MAIL
17 THE notice ~~shall be mailed~~ to all commissioners within thirty days
18 following the action taken or the date on which ~~such~~ THE action occurs.

19 (c) To report to the board when the commissioner has reasonable
20 cause to believe from an examination, whether completed or in process,
21 of a member ~~company~~ INSURER that ~~such~~ THE member ~~company~~ INSURER
22 may be an impaired or insolvent insurer;

23 (2) The commissioner may seek the advice and recommendations
24 of the board concerning any matter affecting ~~said~~ THE commissioner's
25 duties and responsibilities regarding the financial condition of member
26 insurers and ~~companies~~ INSURERS OR HEALTH MAINTENANCE
27 ORGANIZATIONS seeking admission to transact ~~insurance~~ business in this

1 state.

2 (3) UPON THE COMMISSIONER'S REQUEST, the board shall ~~upon~~
3 ~~request of the commissioner,~~ report and make recommendations to the
4 commissioner upon any matter germane to the solvency or liquidation of
5 any member insurer or germane to the solvency of any ~~company~~ INSURER
6 OR HEALTH MAINTENANCE ORGANIZATION seeking to do ~~an insurance~~
7 business in this state. ~~Such~~ THE reports and recommendations ~~shall~~ ARE
8 not ~~be considered~~ public documents.

9 (6) The board may make recommendations to the commissioner
10 for the detection and prevention of MEMBER insurer insolvencies.

11 **SECTION 12.** In Colorado Revised Statutes, 10-20-113, **amend**
12 (1)(d) and (2) as follows:

13 **10-20-113. Credits for assessments paid - tax offsets.**

14 (1) (d) (I) Each member insurer writing health insurance ~~is required to~~
15 MAY recoup over a reasonable length of time a sum reasonably calculated
16 to recoup the assessments paid by the member insurer under this ~~article~~
17 ARTICLE 20 by way of a surcharge on premiums charged for health
18 insurance policies to which this ~~article~~ ARTICLE 20 applies. Amounts
19 recouped shall not be considered premiums for any other purpose,
20 including the computation of gross premium tax or agent's commission.

21 (II) A MEMBER INSURER THAT IMPOSES A SURCHARGE UNDER
22 SUBSECTION (1)(d)(I) OF THIS SECTION SHALL INCLUDE the amount of the
23 surcharge ~~shall be filed~~ as part of ~~an~~ THE MEMBER insurer's rate filing
24 pursuant to section 10-16-107 (1). ~~Such~~ THE MEMBER INSURER SHALL
25 SHOW THE surcharge ~~must be shown~~ in the rate filing as a separate
26 component of the rate and shall include supporting documentation.

27 (III) ~~Such member insurers who collect~~ A MEMBER INSURER THAT

1 COLLECTS surcharges in excess of assessments paid pursuant to this ~~article~~
2 ARTICLE 20 for an insolvent insurer shall remit the excess to the
3 association as an additional assessment within one hundred twenty days
4 after the end of the collection period as determined by the association.
5 The ASSOCIATION SHALL APPLY THE excess ~~shall be applied~~ AMOUNT to
6 reduce future assessments for that MEMBER insurer in the appropriate
7 category.

8 (IV) Any such member insurer may omit the collection of the
9 surcharge in any year from its insureds when the expense of collecting the
10 surcharge in any such year would exceed the amount of the surcharge.
11 However, nothing in this ~~paragraph (d) shall relieve~~ SUBSECTION (1)(d)
12 RELIEVES the member insurer of its ultimate obligation to recoup the
13 amount of the surcharge otherwise collectible from any such previous
14 year.

15 (2) Any sums ~~which~~ THAT are acquired by refund pursuant to
16 section 10-20-109 (6) from the association by member insurers, and
17 ~~which~~ THAT have theretofore been offset against premium taxes as
18 provided in subsection (1) of this section, shall be paid by such MEMBER
19 insurers to this state in such manner as the tax authorities may require.
20 The association shall notify the commissioner that such ~~payments~~
21 REFUNDS have been made.

22 **SECTION 13.** In Colorado Revised Statutes, **amend** 10-20-114
23 as follows:

24 **10-20-114. Miscellaneous provisions - definition.** (1) Nothing
25 in this ~~article~~ ARTICLE 20 reduces the liability for unpaid assessments of
26 the insureds of an impaired or insolvent insurer operating under a plan
27 with assessment liability.

1 (2) The association must keep records of all meetings of the board
2 ~~of directors~~ to discuss the activities of the association in carrying out its
3 powers and duties pursuant to section 10-20-108. Records of ~~such~~ THE
4 meetings may be made public only upon the termination of a liquidation,
5 rehabilitation, or conservation proceeding involving the impaired or
6 insolvent insurer, upon the termination of the impairment or insolvency
7 of the MEMBER insurer, or upon the order of a court of competent
8 jurisdiction. Nothing in this subsection (2) limits the duty of the
9 association to render a report of its activities under section 10-20-115.

10 (3) (a) For the purpose of carrying out its obligations under this
11 ~~article~~ ARTICLE 20, the association is deemed a creditor of the impaired
12 or insolvent insurer to the extent of assets attributable to covered policies
13 AND CONTRACTS, reduced by any amounts to which the association is
14 entitled as assignee or subrogee pursuant to section 10-20-108 (12).
15 Assets of the impaired or insolvent insurer attributable to covered policies
16 AND CONTRACTS shall be used to continue all covered policies AND
17 CONTRACTS and pay all contractual obligations of the impaired or
18 insolvent insurer as required by this ~~article~~ ARTICLE 20.

19 (b) AS USED IN THIS SUBSECTION (3), "ASSETS OF THE IMPAIRED OR
20 INSOLVENT INSURER attributable to covered policies ~~as used in this~~
21 ~~subsection (3), are~~ AND CONTRACTS" MEANS that proportion of the assets
22 ~~which~~ THAT the reserves that should have been established for ~~such~~ THE
23 policies OR CONTRACTS bear to the reserves that should have been
24 established for all policies, ~~of insurance~~ CONTRACTS, OR HEALTH BENEFIT
25 PLANS written by the impaired or insolvent insurer.

26 (3.5) As a creditor of an impaired or insolvent insurer as
27 established in this section and consistent with section 10-3-533, the

1 association and other similar associations are entitled to receive a
2 disbursement of assets out of the marshaled assets from time to time as
3 the assets become available to reimburse the association, as a credit
4 against contractual obligations under this ~~article~~ ARTICLE 20. If the
5 liquidator has not made an application to the receivership court for
6 approval of a proposal to disburse assets out of marshaled assets to
7 guaranty associations having obligations because of the insolvency within
8 one hundred twenty days after a final determination of insolvency of ~~an~~
9 A MEMBER insurer by the receivership court, the association may apply to
10 the receivership court for approval of its own proposal to disburse these
11 assets.

12 (4) (a) Prior to the termination of any rehabilitation, conservation,
13 or liquidation proceeding, the court may take into consideration the
14 contributions of the respective parties, including the association,
15 shareholders, ~~and policyholders~~ CONTRACT OWNERS, CERTIFICATE
16 HOLDERS, ENROLLEES, AND POLICY OWNERS of the impaired or insolvent
17 insurer, and any other party with a bona fide interest, in making an
18 equitable distribution of the ownership rights of the insolvent insurer. In
19 ~~such~~ MAKING a determination ~~consideration~~ UNDER THIS SUBSECTION
20 (4)(a), THE COURT shall ~~be given to~~ CONSIDER the welfare of the
21 ~~policyholders~~ POLICY OWNERS, CONTRACT OWNERS, CERTIFICATE
22 HOLDERS, AND ENROLLEES of the continuing or successor MEMBER
23 insurer.

24 (b) ~~No~~ A distribution SHALL NOT BE MADE to stockholders, if any,
25 of an impaired or insolvent insurer ~~shall be made~~ until and unless THE
26 ASSOCIATION HAS FULLY RECOVERED the total amount of ITS valid claims,
27 ~~of the association with~~ INCLUDING interest, ~~thereon for~~ OF funds expended

1 in carrying out its powers and duties pursuant to section 10-20-108 with
2 respect to the IMPAIRED OR INSOLVENT insurer. ~~have been fully recovered~~
3 ~~by the association.~~

4 (5) (a) If THE COURT ENTERS an order for rehabilitation or
5 liquidation of ~~an~~ A MEMBER insurer domiciled in this state, ~~has been~~
6 ~~entered~~; the receiver appointed under ~~such~~ THE order ~~shall have~~ HAS a
7 right to recover on behalf of the MEMBER insurer, from any affiliate that
8 controlled it, the amount of distributions, other than stock dividends paid
9 by the MEMBER insurer on its capital stock, made at any time during the
10 five years preceding the petition for liquidation, subject to the limitations
11 ~~of paragraphs (b) to (d) of this subsection (5)~~ IN SUBSECTIONS (5)(b) TO
12 (5)(d) OF THIS SECTION.

13 (b) ~~No such~~ A distribution ~~shall be~~ DESCRIBED IN SUBSECTION
14 (5)(a) OF THIS SECTION IS NOT recoverable if the MEMBER insurer shows
15 that ~~when paid~~ the distribution, WHEN IT WAS PAID, was lawful and
16 reasonable and that the MEMBER insurer did not know, and could not
17 reasonably have known, that the distribution might adversely affect the
18 ability of the MEMBER insurer to fulfill its contractual obligations.

19 (c) Any person who was an affiliate ~~which~~ THAT controlled the
20 MEMBER insurer at the time the distributions were paid ~~shall be~~ IS liable
21 up to the amount of distributions ~~such~~ THE person received. Any person
22 who was an affiliate ~~which~~ THAT controlled the MEMBER insurer at the
23 time the distributions were declared ~~shall be~~ IS liable up to the amount of
24 the distributions ~~such~~ THE person would have received if ~~said~~ THE
25 distributions had been paid immediately. If two or more persons are liable
26 with respect to the same distributions, they ~~shall be~~ ARE jointly and
27 severally liable.

1 (d) The maximum amount recoverable under this subsection (5)
2 is the amount needed, in excess of all other available assets of the
3 impaired or insolvent insurer, to pay the contractual obligations of the
4 impaired or insolvent insurer.

5 (e) If any person liable pursuant to ~~paragraph (c) of this subsection~~
6 ~~(5) SUBSECTION (5)(c) OF THIS SECTION~~ is insolvent, all of its affiliates
7 ~~which~~ THAT controlled it at the time the distribution was paid ~~shall be~~ ARE
8 jointly and severally liable for any resulting deficiency in the amount
9 recovered from the insolvent affiliate.

10 (6) Nothing in this ~~article shall be construed to make~~ ARTICLE 20
11 IMPOSES ANY LIABILITY OR RESPONSIBILITY ON the state of Colorado ~~in~~
12 ~~any way liable~~ for the obligations of the life and health insurance
13 protection association or the unpaid claims of impaired or insolvent ~~life~~
14 ~~and health insurance companies~~ INSURERS.

15 **SECTION 14.** In Colorado Revised Statutes, **amend** 10-20-119
16 as follows:

17 **10-20-119. Prohibited advertisement of association article in**
18 **insurance sales - notice to owners, certificate holders, and enrollees.**

19 (1) ~~No~~ A person, including ~~an~~ A MEMBER insurer AND ANY agent or
20 affiliate of ~~an~~ A MEMBER insurer, shall NOT make, publish, disseminate,
21 circulate, or place before the public, or cause directly or indirectly to be
22 made, published, disseminated, circulated, or placed before the public, in
23 any newspaper, magazine, or other publication, or in the form of a notice,
24 circular, pamphlet, letter, or poster, or over any radio station or television
25 station, or in any other way, any advertisement, announcement, or
26 statement, written or oral, ~~which~~ THAT uses the existence of the life and
27 health insurance protection association for the purpose of sales,

1 solicitation, or inducement to purchase any form of insurance OR OTHER
2 COVERAGE covered by the ~~"Life and Health Insurance Protection~~
3 ~~Association Act"~~ THIS ARTICLE 20. However, this section ~~shall~~ DOES not
4 apply to the association or any other entity ~~which~~ THAT does not sell or
5 solicit insurance OR COVERAGE BY A HEALTH MAINTENANCE
6 ORGANIZATION.

7 (2) ~~By December 1, 1991,~~ The association shall prepare a
8 summary document, IN COMPLIANCE WITH SUBSECTION (3) OF THIS
9 SECTION, describing the general purposes and current limitations of this
10 ~~article, and such summary document shall be in compliance with~~
11 ~~subsection (3) of this section. Such~~ ARTICLE 20. THE ASSOCIATION SHALL
12 SUBMIT THE summary document ~~shall be submitted~~ to the commissioner
13 for approval. Sixty days after receiving ~~such~~ approval FROM THE
14 COMMISSIONER, each member ~~shall~~ INSURER, when delivering a policy or
15 contract as described in section 10-20-104 (2)(a) to a ~~policyholder or~~
16 ~~contract holder~~ POLICY OWNER, A CONTRACT OWNER, A CERTIFICATE
17 HOLDER, OR AN ENROLLEE, SHALL deliver ~~such~~ THE summary document
18 concurrently WITH or ~~prior to the delivery of such~~ BEFORE DELIVERING
19 THE policy or contract. ~~except when subsection (4) of this section applies.~~
20 The MEMBER INSURER SHALL ALSO MAKE THE summary document ~~shall~~
21 ~~also be~~ available upon request by a ~~policyholder~~ POLICY OWNER, A
22 CONTRACT OWNER, A CERTIFICATE HOLDER, OR AN ENROLLEE. The
23 distribution, delivery, or contents or interpretation of the summary
24 document ~~shall~~ DOES not mean that either the policy or the contract or the
25 ~~holder thereof~~ POLICY OWNER, CONTRACT OWNER, CERTIFICATE HOLDER,
26 OR ENROLLEE will be covered in the event of impairment or insolvency of
27 a member insurer. The ASSOCIATION SHALL REVISE THE summary

1 document ~~shall be revised by the association pursuant to~~ AS NECESSARY
2 BASED ON amendments to this ~~article~~ ARTICLE 20 or as other
3 circumstances may require. Failure to receive this summary document
4 does not give a ~~policyholder, a contract holder, or an insured~~ POLICY
5 OWNER, A CONTRACT OWNER, A CERTIFICATE HOLDER, AN ENROLLEE, OR
6 ANY OTHER PERSON any rights other than those stated in this ~~article~~
7 ARTICLE 20.

8 (3) The summary document prepared pursuant to subsection (2)
9 of this section ~~shall~~ MUST contain a clear and conspicuous disclaimer on
10 its face. The commissioner shall establish the form and content of the
11 disclaimer. The disclaimer ~~shall~~ MUST:

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

14 (b) Prominently warn the ~~policyholder or contract holder~~ POLICY
15 OWNER, CONTRACT OWNER, CERTIFICATE HOLDER, OR ENROLLEE that the
16 association may not cover the policy OR CONTRACT or, if coverage is
17 available, ~~such~~ THE policy OR CONTRACT may be subject to substantial
18 limitations and exclusions and ~~shall be~~ IS conditioned on the continued
19 residence in the state; ~~by the policyholder or contract holder;~~

20 (c) State that the MEMBER insurer and its agents are prohibited by
21 law from using the existence of the association for the purpose of sales,
22 solicitation, or inducement to purchase any form of insurance OR HEALTH
23 MAINTENANCE ORGANIZATION COVERAGE;

24 (d) Emphasize that the ~~policyholder or contract holder~~ POLICY
25 OWNER, CONTRACT OWNER, CERTIFICATE HOLDER, OR ENROLLEE should
26 not rely on coverage by the association when selecting an insurer OR
27 HEALTH MAINTENANCE ORGANIZATION; AND

1 (e) Provide other information as directed by the commissioner.

2 (4) ~~No insurer or agent may deliver a policy or contract described~~
3 ~~in section 10-20-104 (2)(a), but excluded under section 10-20-104~~
4 ~~(2)(b)(I) from coverage under this article, unless the insurer or agent,~~
5 ~~prior to or at the time of delivery, gives the policyholder or contract~~
6 ~~holder a separate written notice which clearly and conspicuously discloses~~
7 ~~that the policy or contract is not covered by the association. The~~
8 ~~commissioner shall specify the form and content of the notice.~~

9 **SECTION 15.** In Colorado Revised Statutes, **amend** 10-20-120
10 as follows:

11 **10-20-120. Prospective application.** This article shall not apply
12 ARTICLE 20 APPLIES to any MEMBER insurer ~~which is~~ declared insolvent
13 **before** ON OR AFTER THE EFFECTIVE DATE OF HOUSE BILL 21-____, AS
14 ENACTED IN 2021. ALL MATTERS RELATING TO THE INSOLVENCY OF A
15 MEMBER INSURER DECLARED INSOLVENT ON OR AFTER July 1, 1991, BUT
16 BEFORE THE EFFECTIVE DATE OF HOUSE BILL 21-____ SHALL BE
17 GOVERNED BY THE PROVISIONS OF THIS ARTICLE 20 THAT WERE IN EFFECT
18 BEFORE THE EFFECTIVE DATE OF HOUSE BILL 21-_____.

19 **SECTION 16. Act subject to petition - effective date.** This act
20 takes effect at 12:01 a.m. on the day following the expiration of the
21 ninety-day period after final adjournment of the general assembly; except
22 that, if a referendum petition is filed pursuant to section 1 (3) of article V
23 of the state constitution against this act or an item, section, or part of this
24 act within such period, then the act, item, section, or part will not take
25 effect unless approved by the people at the general election to be held in
26 November 2022 and, in such case, will take effect on the date of the
27 official declaration of the vote thereon by the governor.