HOUSE DOCKET, NO. 1435 FILED ON: 1/20/2011

HOUSE . . . . . No. 1207

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:

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

PETITION OF:

NAME:	DISTRICT/ADDRESS:
James M. Murphy	*4th Norfolk*

HOUSE DOCKET, NO. 1435 FILED ON: 1/20/2011

HOUSE . . . . . No. 1207

By Mr. Murphy of Weymouth, petition (accompanied by bill, House, No. 1207) of James M. Murphy relative to the Massachusetts life and health insurance guaranty association law. Financial Services.

The Commonwealth of Massachusetts

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:

SECTION 1. Subsection (2) of Section 146B of chapter 175 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by adding the following:-

"Basic Hospital Expense Insurance", coverage for services rendered while confined in a hospital.

"Basic Medical-Surgical Expense Insurance", coverage for in-hospital or surgical health services rendered by a physician or other covered health care provider.

"Benefit plan", a specific employee, union or association of natural persons benefit plan.

"Disability Income Insurance", coverage providing weekly or monthly benefits to replace income that is lost due to disability arising from accident and/or sickness. It also includes business expense insurance and business buy-out insurance policies that condition receipt of benefits upon the disability of the insured.

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

"Major Medical Expense Insurance", coverage for inpatient and outpatient health care services.

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

21 books of the insurer. The terms owner, contract owner and policy owner do not include persons
22 with a mere beneficial interest in a policy or contract.

23 "Principal Place of Business" of a plan sponsor or a person other than a natural person is

24 the single state in which the natural persons who establish policy for the direction, control
25 and coordination of the operations of the entity as a whole primarily exercise that function,
26 determined by the association in its reasonable judgment by considering the following factors:

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

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

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

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

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

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

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

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

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

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

57 SECTION 2. 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 inserting after the word
59 “corporation”, in line 33, the following:-

60 , limited liability company, government body or entity

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

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

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

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

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

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

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

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

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

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

105 (i)(l) the contract owner of the structured settlement is a resident; or

106 (ll) the contract owner of the structured settlement is not a resident; but

107 (A) the insurer that issued the structured settlement annuity is
108 domiciled in the commonwealth; and

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

111 (ii) neither the payee (or beneficiary) nor the contract owner is eligible for coverage by
112 the association of the state in which the payee or contract owner resides.

113 (4) This subsection shall not provide coverage to a person who is a payee (or beneficiary)
114 of a contract owner resident of this commonwealth, if the payee (or beneficiary) is afforded any
115 coverage by the association of another state.

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

122 beneficiary or assignee, this section shall be construed in conjunction with other state laws to
123 result in coverage by only one association.

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

129 SECTION 8. Section 146B of chapter 175 of the General Laws, as appearing in the 2008
130 Official Edition, is hereby further amended by inserting after the words "the commonwealth.", in
131 line 120, the following sub-clauses:-

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

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

137 (i) claims based on marketing materials;

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

140 (iii) misrepresentation of or regarding policy benefits;

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

143

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

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

156

157 (k) a policy or contract providing any hospital, medical, prescription drug or other health
158 care benefits pursuant to Part C or Part D of Subchapter XVIII, Chapter 7 of Title 42 of the
159 United States Code (commonly known as Medicare Part C&D) or any regulation issued pursuant
160 thereto.

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

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

172 (ii) In health insurance benefits:

173 (l) $100,000 for coverages not defined as disability income insurance or basic hospital
174 expense insurance, basic medical – surgical insurance, major medical expense insurance or long
175 term care insurance, including any cash surrender and net cash withdrawal values.

176 (ll) $300,000 for disability income insurance, and $300,000 for long term care insurance.

177 (lll) $500,000 for basic hospital expense insurance, basic medical - surgical expense
178 insurance or major medical expense insurance.

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

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

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

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

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

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

197 (e) The limitations set forth in the subsection are limitations on the benefits for which the
198 association is obligated before taking into account either its subrogation and assignment rights or
199 the extent to which those benefits could be provided out of the assets of the impaired or insolvent
200 insurer attributable to covered policies. The costs of the association's obligations under the law
201 may be met by the use of assets attributable to covered policies or reimbursed to the association
202 pursuant to its subrogation and assignment rights.

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

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

210 SECTION 13. Section 146B of chapter 175 of the General Laws, as appearing in the
211 2008 Official Edition, is hereby amended by striking out subsection (5) and inserting in place
212 thereof the following subsection:-

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

214 SECTION 14. Section 146B of chapter 175 of the General Laws, as appearing in the
215 2008 Official Edition, is hereby amended by striking out subsection 8(A) and inserting in place
216 thereof the following subsection:-

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

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

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

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

227 SECTION 16. Section 146B of chapter 175 of the General Laws, as appearing in the
228 2008 Official Edition, is hereby amended by striking out, in line 226, “(C)” and inserting in place
229 thereof the following:- (B)

230 SECTION 17. Section 146B of chapter 175 of the General Laws, as appearing in the
231 2008 Official Edition, is hereby amended by striking out, in line 236, “(D)" and inserting in place
232 thereof the following:- (C)

233 SECTION 18. Section 146B of chapter 175 of the General Laws, as appearing in the
234 2008 Official Edition, is hereby amended by striking out, in lines 237 through 239, the words
235 “(D)(1) When proceeding under subclause (b) of clause (1) of paragraph (B) or clause (2) of
236 paragraph (C), the association shall, with respect to only life and health insurance policies”, and
237 inserting in place thereof the following:-

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

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

253 (ii) make diligent efforts to provide all known insureds, annuitants, or owners, if other
254 than the insureds or annuitants, and group policyholders with respect to group policies, thirty
255 days notice of the termination of the benefits provided; and (iii) with respect to individual
256 policies, make available to each known insured, annuitant or owner if other than the insured or
257 annuitant, and with respect to an individual formerly insured under a group policy who is not

258 eligible for replacement group coverage, make available substitute coverage on an individual
259 basis in accordance with the provisions of clause (2) of paragraph (C), if such insured or owner
260 had a right under law or under the terminated policy to convert coverage to individual coverage
261 or to continue an individual policy in force until a specified age or for a specified time, during
262 which the insurer had no right unilaterally to make changes in any provision of the policy or had
263 a right only to make changes in premium by class.

264 SECTION 20. Section 146B of chapter 175 of the General Laws, as appearing in the
265 2008 Official Edition, is hereby amended by striking out, in line 272, “(D)" and inserting in place
266 thereof the following:- (C)

267 SECTION 21. Section 146B of chapter 175 of the General Laws, as appearing in the
268 2008 Official Edition, is hereby further amended by inserting after the word “association.”, in
269 lines 303 through 304, the following clause:-

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

273 SECTION 22. Section 146B of chapter 175 of the General Laws, as appearing in the
274 2008 Official Edition, is hereby amended by striking out, in line 305, “(E)" and inserting in place
275 thereof the following:- (D)

276 SECTION 23. Section 146B of chapter 175 of the General Laws, as appearing in the
277 2008 Official Edition, is hereby amended by striking out, in line 312, “(F)" and inserting in place
278 thereof the following:- (E)

279 SECTION 24. Section 146B of chapter 175 of the General Laws, as appearing in the
280 2008 Official Edition, is hereby amended by striking out, in line 316 through 317, the words
281 “(G) In carrying out its duties under paragraphs (B) and (C) of this subsection” and inserting in
282 place thereof the following:- (F) In carrying out its duties under paragraph (B) of this subsection

283 SECTION 25. Section 146B of chapter 175 of the General Laws, as appearing in the
284 2008 Official Edition, is hereby further amended by inserting after the word “value.”, in line
285 329, the following:-

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

293 SECTION 26. Section 146B of chapter 175 of the General Laws, as appearing in the
294 2008 Official Edition, is hereby amended by striking out, in line 330 through 331, the words
295 "(H) If the association fails to act within a reasonable period of time as provided in paragraphs
296 (B), (C), and (D)" and inserting in place thereof the following:- (G) If the association fails to act
297 within a reasonable period of time as provided in paragraphs (B) and (C)

298 SECTION 27. Section 146B of chapter 175 of the General Laws, as appearing in the
299 2008 Official Edition, is hereby amended by striking out, in line 334, "(I)" and inserting in place
300 thereof the following:- (H)

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

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

316 SECTION 29. Section 146B of chapter 175 of the General Laws, as appearing in the
317 2008 Official Edition, is hereby amended by striking out, in line 352, "(K)" and inserting in place
318 thereof the following:- (J)

319 SECTION 30. Section 146B of chapter 175 of the General Laws, as appearing in the
320 2008 Official Edition, is hereby further amended by inserting after the word "contracts.", in
321 lines 371 through 372, the following clauses:-

322 (4) If the preceding provisions of this paragraph are invalid or ineffective with respect to
323 any person or claim for any reason, the amount payable by the Association with respect to the
324 related coverage obligations shall be reduced by the amount realized by any other person with
325 respect to the person or claim that is attributable to the polices (or portion thereof) covered by the
326 Association.

327 (5) If the Association has provided benefits with respect to a covered obligation and a
328 person recovers amounts as to which the Association has rights as described in the preceding

329 paragraphs of this subsection, the person shall pay to the Association the portion of the recovery
330 attributable to the policies (or portion thereof) covered by the Association.

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

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

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

345 (L) (1) (a) At any time within one hundred eighty (180) days of the date of the order of
346 liquidation, the association may elect to succeed to the rights and obligations of the ceding
347 member insurer that relate to policies or annuities covered, in whole or in part, by the
348 association, in each case under one or more reinsurance contracts entered into by the insolvent
349 insurer and its reinsurers and selected by the association. Any such assumption shall be effective
350 as of the date of the order of liquidation. The election shall be effected by the association or the
351 National Organization of Life and Health Insurance Guaranty Associations (NOLHGA) on its
352 behalf sending written notice, return receipt requested, to the affected reinsurers.

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

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

363 (i) The association shall be responsible for all unpaid premiums due under the
364 reinsurance contracts for periods both before and after the date of the order of liquidation and

365 shall be responsible for the performance of all other obligations to be performed after the date of
366 the order of liquidation, in each case which relate to policies or annuities covered, in whole or in
367 part, by the association. The association may charge policies or annuities covered in part by the
368 association, through reasonable allocation methods, the cost for reinsurance in excess of the
369 obligations of the association and shall provide notice and an accounting of these charges to the
370 liquidator;

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

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

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

381 (iii) Within thirty (30) days following the associations election, (the "election date"), the
382 association and each reinsurer under contracts assumed by the association shall calculate the net
383 balance due to or from the association under each reinsurance contract as of the election date
384 with respect to policies or annuities covered, in whole or in part, by the association, which
385 calculation shall give full credit to all items paid by either the insurer or its receiver or the
386 reinsurer prior to the election date. The reinsurer shall pay the receiver any amounts due for
387 losses or events prior to the date of the order of liquidation, subject to any set-off for premiums
388 unpaid for periods prior to the date, and the association or reinsurer shall pay any remaining
389 balance due the other, in each case within five (5) days of the completion of the aforementioned
390 calculation. Any dispute over the amounts due to either the association or the reinsurer shall be
391 resolved by arbitration pursuant to the terms of the affected reinsurance contracts or, if the
392 contract contains no arbitration clause, as otherwise provided by law. If the receiver has
393 received any amounts due the association pursuant to subparagraph (c)(ii) of this (8)(L)(1), the
394 receiver shall remit the same to the association as promptly as practicable.

395 (iv) If the association, or the receiver, on the association's behalf within sixty (60) days
396 of the election date, pays the unpaid premiums due for periods both before and after the election
397 date that relate to policies or annuities covered, in whole or in part, by the association, the
398 reinsurer shall not be entitled to terminate the reinsurance contracts for failure to pay premium
399 insofar as the reinsurance contracts relate to policies or annuities covered, in whole or in part, by
400 the association, and shall not be entitled to set off any unpaid amounts due under other contracts,

401 or unpaid amounts due from parties other than the association, against amounts due the
402 association.

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

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

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

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

413 (3) If the association does not elect to assume a reinsurance contract by the election date
414 pursuant to subsection (8)(L)(1), the association shall have no rights or obligations, in each case
415 for periods both before and after the date of the order of liquidation, with respect to the
416 reinsurance contract.

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

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

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

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

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

434 (6) Except as otherwise provided in this paragraph (L), nothing in this paragraph shall
435 alter or modify the terms and conditions of any reinsurance contract. Nothing in this said
436 paragraph shall abrogate or limit any rights of any reinsurer to claim that it is entitled to rescind a
437 reinsurance contract. Nothing in this said paragraph shall give a policyholder or beneficiary an
438 independent cause of action against a reinsurer that is not otherwise set forth in the reinsurance
439 contract. Nothing in this said paragraph shall limit or affect the association's rights as a creditor
440 of the estate against the assets of the estate. Nothing in this said paragraph shall apply to
441 reinsurance agreements covering property or casualty risks.

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

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

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

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

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

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

463 SECTION 33. Section 146B of chapter 175 of the General Laws, as appearing in the
464 2008 Official Edition, is hereby amended by striking out, in lines 402 through 403, the words "
465 and examinations conducted under the authority of paragraph (E) of subsection (12)".

466 SECTION 34. Section 146B of chapter 175 of the General Laws, as appearing in the
467 2008 Official Edition, is hereby amended by striking out, in lines 407 through 408, "(A), (B) or
468 (C)" and inserting in place thereof the following:- (A) or (B)

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

479 SECTION 36. Section 146B of chapter 175 of the General Laws, as appearing in the
480 2008 Official Edition, is hereby further amended by inserting after "E", in line 442, the
481 following:- (1)(a)

482 SECTION 37. Section 146B of chapter 175 of the General Laws, as appearing in the
483 2008 Official Edition, is hereby further amended by inserting after the word "section.", in line
484 451, the following:-

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

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

492 SECTION 38. Section 146B of chapter 175 of the General Laws, as appearing in the
493 2008 Official Edition, is hereby amended by striking out, in line 504, "(K)" and inserting in
494 place thereof the following:- (J)

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

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

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

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

510 SECTION 41. Section 146B of chapter 175 of the General Laws, as appearing in the
511 2008 Official Edition, is hereby amended by striking out, in line 667, "(K)" and inserting in
512 place thereof the following:- (J)

513 SECTION 42. Section 146B of chapter 175 of the General Laws, as appearing in the
514 2008 Official Edition, is hereby amended by striking out, in line 711, "paragraph (3)" and
515 inserting in place thereof the following:- clause (3)

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

519 (F) As a creditor of the impaired or insolvent insurer as established in paragraph (C) of
520 this subsection and consistent with chapter 175, section 180C, the Association and other similar
521 associations shall be entitled to receive a disbursement of assets out of the marshaled assets, from
522 time to time as the assets become available to reimburse it, as a credit against contractual
523 obligations under this section. If the liquidator has not, within 120 days of a final determination
524 of insolvency of an insurer by the receivership court, made an application to the court for the
525 approval of a proposal to disburse assets out of marshaled assets to guaranty associations having
526 obligations because of the insolvency, then the Association shall be entitled to make application
527 to the receivership court for approval of its own proposal to disburse assets.

528 SECTION 44. Section 146B of chapter 175 of the General Laws, as appearing in the
529 2008 Official Edition, is hereby amended by striking out, in line 732, "(L)" and inserting in place
530 thereof the following:- (K)

531 SECTION 45. Section 146B of chapter 175 of the General Laws, as appearing in the
532 2008 Official Edition, is hereby amended by striking out, in lines 734 through 737, the words
533 "All proceedings in which the insolvent insurer is a party in any court in the commonwealth shall
534 be stayed sixty days from the date an order of rehabilitation or liquidation is final to permit
535 proper legal action by the association on any matters germane to its powers or duties" and
536 inserting in place thereof the following:-

537 All proceedings in which the insolvent insurer is a party in any court in the
538 commonwealth shall be stayed one hundred eighty (180) days from the date an order of

539 rehabilitation, conservation or liquidation is final to permit proper legal action by the association
540 on any matters germane to its powers or duties

541 SECTION 46. Section 146B of chapter 175 of the General Laws, as appearing in the
542 2008 Official Edition, is hereby further amended by inserting after the word “eighty-six.”, in line
543 757, the following:-

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