

SECOND REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1690
99TH GENERAL ASSEMBLY

5490H.03T

2018

AN ACT

To repeal sections 375.1218, 376.715, 376.717, 376.718, 376.720, 376.722, 376.724, 376.725, 376.726, 376.733, 376.734, 376.735, 376.737, 376.738, 376.742, 376.743, 376.746, 376.747, 376.748, 376.755, 376.756, and 376.758, RSMo, and to enact in lieu thereof twenty-two new sections relating to the Missouri life and health insurance guaranty association act.

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

Section A. Sections 375.1218, 376.715, 376.717, 376.718, 376.720, 376.722, 376.724, 376.725, 376.726, 376.733, 376.734, 376.735, 376.737, 376.738, 376.742, 376.743, 376.746, 376.747, 376.748, 376.755, 376.756, and 376.758, RSMo, are repealed and twenty-two new sections enacted in lieu thereof, to be known as sections 375.1218, 376.715, 376.717, 376.718, 376.720, 376.722, 376.724, 376.725, 376.726, 376.733, 376.734, 376.735, 376.737, 376.738, 376.742, 376.743, 376.746, 376.747, 376.748, 376.755, 376.756, and 376.758, to read as follows:

375.1218. The priority of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is herein set forth. Every claim in each class shall be paid in full or adequate funds retained for such payment before the members of the next class receive any payment. No subclasses shall be established within any class. No claim by a shareholder, policyholder or other creditor shall be permitted to circumvent the priority class through the use of equitable remedies. The order of distribution of claims shall be:

(1) Class 1. The costs and expenses of administration during rehabilitation and liquidation, including but not limited to the following:

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

9 (a) The actual and necessary costs of preserving or recovering the assets of the insurer,
10 and costs necessary to store records required to be preserved pursuant to section 375.1228;

11 (b) Compensation for all authorized services rendered in the rehabilitation and
12 liquidation;

13 (c) Any necessary filing fees;

14 (d) The fees and mileage payable to witnesses;

15 (e) Authorized reasonable attorney's fees and other professional services rendered in the
16 rehabilitation and liquidation; **and**

17 **(f) The reasonable expenses of the Missouri property and casualty insurance**
18 **guaranty association, the Missouri life and health insurance guaranty association, and any**
19 **similar organization in any other state, including overhead, salaries, and other general**
20 **administrative expenses allocable to the receivership. These expenses shall be subordinate**
21 **to all other costs and expenses of administration under paragraphs (a) to (e) of this**
22 **subdivision. The provisions of this paragraph shall apply to the distribution of claims from**
23 **an insurer's estate if such insurer was first placed under an order of rehabilitation or an**
24 **order of liquidation if no order of rehabilitation was entered on or after August 28, 2018.**

25 (2) Class 2. All claims under policies including such claims of the federal or any state
26 or local government for losses incurred ("loss claims") including third party claims and all
27 claims of a guaranty association or foreign guaranty association including reasonable allocated
28 loss adjustment expenses and all claims of a life and health insurance guaranty association or
29 foreign guaranty association which covers claims of life and health insurance policies, relating
30 to the handling of such claims. All claims under life insurance and annuity policies and funding
31 agreements, whether for death proceeds, annuity proceeds or investment values shall be treated
32 as loss claims. That portion of any loss, indemnification for which is provided by other benefits
33 or advantages recovered by the claimant, shall not be included in this class, other than benefits
34 or advantages recovered or recoverable in discharge of familial obligation of support or by way
35 of succession at death or as proceeds of life insurance, or as gratuities. No payment by an
36 employer to his employee shall be treated as a gratuity. Early distributions to guaranty
37 associations and foreign guaranty associations may be made in the manner provided in section
38 375.1205, provided that such guaranty associations and foreign guaranty associations agree to
39 indemnify the liquidator if a shortage occurs in the insurer's estate of property necessary to settle
40 claims as provided by this section. Any early distributions shall not increase the proportionate
41 share of such guaranty associations and foreign guaranty associations, of distributions of the
42 insurer's estate. The liquidator shall have authority to inquire into the reasonableness of any
43 allocated loss adjustment expenses claimed by a guaranty association or foreign guaranty
44 association and such claim shall not be allowed if it is found to be unreasonable.

45 (3) Class 3. Claims of the United States government other than those claims included
46 in class 2.

47 (4) Class 4. Reasonable compensation to employees for services performed to the extent
48 that they do not exceed two months of monetary compensation and represent payment for
49 services performed within one year before the filing of the petition for liquidation or, if
50 rehabilitation preceded liquidation, within one year before the filing of the petition for
51 rehabilitation. Principal officers and directors shall not be entitled to the benefit of this priority
52 except as otherwise approved by the liquidator and the court. Such priority shall be in lieu of any
53 other similar priority which may be authorized by law as to wages or compensation of
54 employees.

55 (5) Class 5. Claims under nonassessable policies for unearned premiums or other
56 premium refunds and claims of general creditors including claims of ceding and assuming
57 companies in their capacity as such.

58 (6) Class 6. Claims of any state or local government except those under class 2 of this
59 section. Claims, including those of any governmental body for a penalty or forfeiture, shall be
60 allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction,
61 or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs
62 occasioned thereby. The remainder of such claims shall be postponed as class 9 claims.

63 (7) Class 7. Claims filed late or any other claims other than class 8 or 9 claims.

64 (8) Class 8. Surplus or contribution notes, or similar obligations, and premium refunds
65 on assessable policies. Payments to members of domestic mutual insurance companies shall be
66 limited in accordance with law.

67 (9) Class 9. The claims of shareholders or other owners in their capacity as shareholders.

376.715. 1. Sections 376.715 to 376.758 shall be known and may be cited as the
2 "Missouri Life and Health Insurance Guaranty Association Act".

3 2. The purpose of sections 376.715 to 376.758 is to protect, subject to certain limitations,
4 the persons specified in subsection 1 of section 376.717 against failure in the performance of
5 contractual obligations, under life, ~~and~~ health, ~~insurance policies~~ and annuity **policies, plans,**
6 **or** contracts specified in subsection 2 of section 376.717, because of the impairment or
7 insolvency of the member insurer that issued the policies or contracts.

8 3. To provide this protection, an association of **member** insurers is created to pay
9 benefits and to continue coverages as limited herein, and members of the association are subject
10 to assessment to provide funds to carry out the purpose of sections 376.715 to 376.758.

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

3 (1) To persons who, regardless of where they reside, except for nonresident certificate
4 holders under group policies or contracts, are the beneficiaries, assignees or payees, **including**
5 **health care providers rendering services covered under health insurance policies or**
6 **certificates**, of the persons covered under subdivision (2) of this subsection; and

7 (2) To persons who are owners of [øæ] , certificate holders, **or enrollees** under such
8 policies or contracts, other than structured settlement annuities, who:

9 (a) Are residents of this state; or

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

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

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

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

18 (3) For structured settlement annuities specified in subsection 2 of this section,
19 subdivisions (1) and (2) of subsection 1 of this section shall not apply, and sections 376.715 to
20 376.758 shall, except as provided in subdivisions (4) and (5) of this subsection, provide coverage
21 to a person who is a payee under a structured settlement annuity, or beneficiary of a payee if the
22 payee is deceased, if the payee:

23 (a) Is a resident, regardless of where the contract owner resides; or

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

25 a. (i) The contract owner of the structured settlement annuity is a resident; or

26 (ii) The contract owner of the structure settlement annuity is not a resident, but:

27 i. The insurer that issued the structured settlement annuity is domiciled in this state; and

28 ii. The state in which the contract owner resides has an association similar to the
29 association created under sections 376.715 to 376.758; and

30 b. Neither the payee or beneficiary nor the contract owner is eligible for coverage by the
31 association of the state in which the payee or contract owner resides;

32 (4) Sections 376.715 to 376.758 shall not provide to a person who is a payee or
33 beneficiary of a contract owner resident of this state, if the payee or beneficiary is afforded any
34 coverage by such an association of another state;

35 (5) Sections 376.715 to 376.758 are intended to provide coverage to a person who is a
36 resident of this state and, in special circumstances, to a nonresident. In order to avoid duplicate
37 coverage, if a person who would otherwise receive coverage under sections 376.715 to 376.758
38 is provided coverage under the laws of any other state, the person shall not be provided coverage

39 under sections 376.715 to 376.758. In determining the application of the provisions of this
40 subdivision in situations where a person could be covered by such an association of more than
41 one state, whether as an owner, payee, **enrollee**, beneficiary, or assignee, sections 376.715 to
42 376.758 shall be construed in conjunction with the other state's laws to result in coverage by only
43 one association.

44 2. Sections 376.715 to 376.758 shall provide coverage to the persons specified in
45 subsection 1 of this section for **policies or contracts of direct, nongroup life insurance, health[;**
46 ~~annuity policies or contracts,]~~ **insurance, which for the purposes of sections 376.715 to**
47 **376.758 includes health maintenance organizations' subscriber contracts and certificates,**
48 **or annuities** and supplemental contracts to any such policies or contracts, and for certificates
49 under direct group policies and contracts, except as limited by the provisions of sections 376.715
50 to 376.758. Annuity contracts and certificates under group annuity contracts include allocated
51 funding agreements, structured settlement annuities, and any immediate or deferred annuity
52 contracts.

53 3. **Except as otherwise provided in paragraph (c) of subdivision (3) of this**
54 **subsection,** sections 376.715 to 376.758 shall not provide coverage for:

55 (1) Any portion of a policy or contract not guaranteed by the **member** insurer, or under
56 which the risk is borne by the policy or contract holder;

57 (2) Any policy or contract of reinsurance, unless assumption certificates have been
58 issued;

59 (3) Any portion of a policy or contract to the extent that the rate of interest on which it
60 is based, or the interest rate, crediting rate, or similar factor determined by use of an index or
61 other external reference stated in the policy or contract employed in calculating returns or
62 changes in value:

63 (a) Averaged over the period of four years prior to the date on which the association
64 becomes obligated with respect to such policy or contract, exceeds the rate of interest determined
65 by subtracting three percentage points from Moody's Corporate Bond Yield Average averaged
66 for that same four-year period or for such lesser period if the policy or contract was issued less
67 than four years before the association became obligated; ~~and~~

68 (b) On and after the date on which the association becomes obligated with respect to
69 such policy or contract exceeds the rate of interest determined by subtracting three percentage
70 points from Moody's Corporate Bond Yield Average as most recently available; **and**

71 (c) **The exclusion from coverage referenced in this subdivision shall not apply to**
72 **any portion of a policy or contract, including a rider, that provides long-term care or any**
73 **other health insurance benefits;**

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

78 (a) A multiple employer welfare arrangement as defined in 29 U.S.C. Section 1144, as
79 amended;

80 (b) A minimum premium group insurance plan;

81 (c) A stop-loss group insurance plan; or

82 (d) An administrative services only contract;

83 (5) Any portion of a policy or contract to the extent that it provides dividends or
84 experience rating credits, voting rights, or provides that any fees or allowances be paid to any
85 person, including the policy or contract holder, in connection with the service to or
86 administration of such policy or contract;

87 (6) Any policy or contract issued in this state by a member insurer at a time when it was
88 not licensed or did not have a certificate of authority to issue such policy or contract in this state;

89 (7) A portion of a policy or contract to the extent that the assessments required by section
90 376.735 with respect to the policy or contract are preempted by federal or state law;

91 (8) An obligation that does not arise under the express written terms of the policy or
92 contract issued by the **member** insurer to the **enrollee, certificate holder, contract owner, or**
93 **policy owner**, including without limitation:

94 (a) Claims based on marketing materials;

95 (b) Claims based on side letters, riders, or other documents that were issued by the
96 **member** insurer without meeting applicable policy **or contract** form filing or approval
97 requirements;

98 (c) Misrepresentations of or regarding policy **or contract** benefits;

99 (d) Extra-contractual claims;

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

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

105 (10) An unallocated annuity contract;

106 (11) A portion of a policy or contract to the extent it provides for interest or other
107 changes in value to be determined by the use of an index or other external reference stated in the
108 policy or contract, but which have not been credited to the policy or contract, or as to which the
109 policy or contract owner's rights are subject to forfeiture, as of the date the member insurer

110 becomes an impaired or insolvent insurer under sections 376.715 to 376.758, whichever is
111 earlier. If a policy's or contract's interest or changes in value are credited less frequently than
112 annually, for purposes of determining the value that have been credited and are not subject to
113 forfeiture under this subdivision, the interest or change in value determined by using the
114 procedures defined in the policy or contract will be credited as if the contractual date of crediting
115 interest or changing values was the date of impairment or insolvency, whichever is earlier, and
116 will not be subject to forfeiture;

117 (12) A policy or contract providing any hospital, medical, prescription drug or other
118 health care benefit under Part C or Part D of Subchapter XVIII, Chapter 7 of Title 42 of the
119 United States Code, Medicare Parts C & D, **Subchapter XIX, Chapter 7 of Title 42 of the**
120 **United States Code, Medicaid**, or any regulations issued thereunder.

121 4. The benefits for which the association may become liable, with regard to a member
122 insurer that was first placed under an order of rehabilitation or under an order of liquidation if
123 no order of rehabilitation was entered prior to August 28, 2013, shall in no event exceed the
124 lesser of:

125 (1) The contractual obligations for which the **member** insurer is liable or would have
126 been liable if it were not an impaired or insolvent insurer; or

127 (2) With respect to any one life, regardless of the number of policies or contracts:

128 (a) Three hundred thousand dollars in life insurance death benefits, but not more than
129 one hundred thousand dollars in net cash surrender and net cash withdrawal values for life
130 insurance;

131 (b) One hundred thousand dollars in health insurance benefits, including any net cash
132 surrender and net cash withdrawal values;

133 (c) One hundred thousand dollars in the present value of annuity benefits, including net
134 cash surrender and net cash withdrawal values.

135

136 Provided, however, that in no event shall the association be liable to expend more than three
137 hundred thousand dollars in the aggregate with respect to any one life under paragraphs (a), (b),
138 and (c) of this subdivision.

139 5. Except as otherwise provided in subdivision (2) of this subsection, the benefits for
140 which the association may become liable with regard to a member insurer that was first placed
141 under an order of rehabilitation or under an order of liquidation if no order of rehabilitation was
142 entered on or after August 28, 2013, shall in no event exceed the lesser of:

143 (1) The contractual obligations for which the insurer is liable or would have been liable
144 if it were not an impaired or insolvent insurer; or

145 (2) (a) With respect to any one life, regardless of the number of policies or contracts:

- 146 a. Three hundred thousand dollars in life insurance death benefits, but not more than one
147 hundred thousand dollars in net cash surrender and net cash withdrawal values for life insurance;
- 148 b. ~~[H]~~ For health insurance benefits:
- 149 (i) One hundred thousand dollars of coverages other than disability **income** insurance
150 ~~[or basic hospital, medical, and surgical insurance or major medical insurance]~~, **health benefit**
151 **plans**, or long-term care insurance, including any net cash surrender and net cash withdrawal
152 values;
- 153 (ii) Three hundred thousand dollars for disability **income** insurance and three hundred
154 thousand dollars for long-term care insurance;
- 155 (iii) Five hundred thousand dollars for ~~[basic hospital, medical, and surgical insurance~~
156 ~~or major medical insurance]~~ **health benefit plans**;
- 157 c. Two hundred fifty thousand dollars in the present value of annuity benefits, including
158 net cash surrender and net cash withdrawal values; or
- 159 (b) With respect to each payee of a structured settlement annuity, or beneficiary or
160 beneficiaries of the payee if deceased, two hundred fifty thousand dollars in present value annuity
161 benefits, in the aggregate, including net cash surrender and net cash withdrawal values, if any;
- 162 (c) Except that, in no event shall the association be obligated to cover more than:
- 163 a. An aggregate of three hundred thousand dollars in benefits with respect to any one life
164 under paragraphs (a) and (b) of this subdivision, except with respect to benefits for ~~[basic~~
165 ~~hospital, medical, and surgical insurance and major medical insurance]~~ **health benefit plans**
166 under item (iii) of subparagraph b. of paragraph (a) of this subdivision, in which case the
167 aggregate liability of the association shall not exceed five hundred thousand dollars with respect
168 to any one individual; or
- 169 b. With respect to one owner of multiple nongroup policies of life insurance, whether
170 the policy owner is an individual, firm, corporation, or other person, and whether the persons
171 insured are officers, managers, employees, or other persons, more than five million dollars in
172 benefits, regardless of the number of policies and contracts held by the owner.
- 173 6. The limitations set forth in subsections 4 and 5 of this section are limitations on the
174 benefits for which the association is obligated before taking into account either its subrogation
175 and assignment rights or the extent to which such benefits could be provided out of the assets
176 of the impaired or insolvent insurer attributable to covered policies. The costs of the
177 association's obligations under sections 376.715 to 376.758 may be met by the use of assets
178 attributable to covered policies or reimbursed to the association under its subrogation and
179 assignment rights.

180 **7. For the purposes of sections 376.715 to 376.758, benefits provided by a long-term**
181 **care rider to a life insurance policy or annuity contract shall be considered the same type**
182 **of benefits as the basic life insurance policy or annuity contract to which it relates.**

376.718. As used in sections 376.715 to 376.758, the following terms shall mean:

2 (1) "Account", any of the accounts created under section 376.720;

3 (2) "Association", the Missouri life and health insurance guaranty association created
4 under section 376.720;

5 (3) "Benefit plan", a specific employee, union, or association of natural persons benefit
6 plan;

7 (4) "Contractual obligation", any obligation under a policy or contract or certificate under
8 a group policy or contract, or portion thereof for which coverage is provided under the provisions
9 of section 376.717;

10 (5) "Covered **contract**" or "**covered policy**", any policy or contract or portion of a
11 policy or contract for which coverage is provided under the provisions of section 376.717;

12 (6) "Director", the director of the department of insurance, financial institutions and
13 professional registration of this state;

14 (7) "Extra-contractual claims", includes but is not limited to claims relating to bad faith
15 in the payment of claims, punitive or exemplary damages, or attorneys fees and costs;

16 (8) "**Health benefit plan**", any **hospital or medical expense policy or certificate,**
17 **health maintenance organization subscriber contract, or any other similar health contract.**
18 "**Health benefit plan**" does not include:

19 **(a) Accident only insurance;**

20 **(b) Credit insurance;**

21 **(c) Dental only insurance;**

22 **(d) Vision only insurance;**

23 **(e) Medicare supplement insurance;**

24 **(f) Benefits for long-term care, home health care, community-based care, or any**
25 **combination thereof;**

26 **(g) Disability income insurance;**

27 **(h) Coverage for on-site medical clinics; or**

28 **(i) Specified disease, hospital confinement indemnity, or limited benefit health**
29 **insurance if the types of coverage do not provide coordination of benefits and are provided**
30 **under separate policies or certificates;**

31 **(9) "Impaired insurer", a member insurer which, after August 13, 1988, is not an**
32 **insolvent insurer, and is placed under an order of rehabilitation or conservation by a court of**
33 **competent jurisdiction;**

34 ~~[(9)]~~ **(10)** "Insolvent insurer", a member insurer which, after August 13, 1988, is placed
35 under an order of liquidation by a court of competent jurisdiction with a finding of insolvency;

36 ~~[(10)]~~ **(11)** "Member insurer", any insurer, **health maintenance organization**, or health
37 services corporation licensed or which holds a certificate of authority to transact in this state any
38 kind of insurance **or health maintenance organization business** for which coverage is provided
39 under section 376.717, and includes any insurer **or health maintenance organization** whose
40 license or certificate of authority in this state may have been suspended, revoked, not renewed
41 or voluntarily withdrawn, but does not include:

42 ~~(a)~~ ~~[A health maintenance organization;]~~

43 ~~[(b)]~~ A fraternal benefit society;

44 ~~[(c)]~~ **(b)** A mandatory state pooling plan;

45 ~~[(d)]~~ **(c)** A mutual assessment company or any entity that operates on an assessment
46 basis;

47 ~~[(e)]~~ **(d)** An insurance exchange;

48 ~~[(f)]~~ **(e)** An organization that issues qualified charitable gift annuities, as defined in
49 section 352.500, and does not hold a certificate or license to transact insurance business; or

50 ~~[(g)]~~ **(f)** Any entity similar to any of the entities listed in paragraphs (a) to ~~[(f)]~~ **(e)** of this
51 subdivision;

52 ~~[(11)]~~ **(12)** "Moody's Corporate Bond Yield Average", the monthly average corporates
53 as published by Moody's Investors Service, Inc., or any successor thereto;

54 ~~[(12)]~~ **(13)** "Owner", "**policyholder**", "policy owner", or "contract owner", the person
55 who is identified as the legal owner under the terms of the policy or contract or who is otherwise
56 vested with legal title to the policy or contract through a valid assignment completed in
57 accordance with the terms of the policy or contract and properly recorded as the owner on the
58 books of the **member** insurer. Owner, contract owner, **policyholder**, and policy owner shall not
59 include persons with a mere beneficial interest in a policy or contract;

60 ~~[(13)]~~ **(14)** "Person", any individual, corporation, partnership, association or voluntary
61 organization;

62 ~~[(14)]~~ **(15)** "Premiums", amounts received on covered policies or contracts, less
63 premiums, considerations and deposits returned thereon, and less dividends and experience
64 credits thereon. The term does not include any amounts received for any policies or contracts
65 or for the portions of any policies or contracts for which coverage is not provided under
66 subsection 3 of section 376.717, except that assessable premium shall not be reduced on account
67 of subdivision (3) of subsection 3 of section 376.717 relating to interest limitations and
68 subdivision (2) of subsection 4 of section 376.717 relating to limitations with respect to any one
69 life, any one participant, and any one **policy or** contract holder. Premiums shall not include:

70 (a) Premiums on an unallocated annuity contract; or

71 (b) With respect to multiple nongroup policies of life insurance owned by one owner,
72 whether the policy **or contract** owner is an individual, firm, corporation, or other person, and
73 whether the persons insured are officers, managers, employees, or other persons, premiums in
74 excess of five million dollars with respect to such policies or contracts, regardless of the number
75 of policies or contracts held by the owner;

76 ~~[(15)]~~ **(16)** "Principal place of business", for a person other than a natural person, the
77 single state in which the natural persons who establish policy for the direction, control, and
78 coordination of the operations of the entity as a whole primarily exercise that function,
79 determined by the association in its reasonable judgment by considering the following factors:

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

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

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

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

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

90 ~~[(16)]~~ **(17)** "Receivership court", the court in the insolvent or impaired insurer's state
91 having jurisdiction over the conservation, rehabilitation, or liquidation of the insurer;

92 ~~[(17)]~~ **(18)** "Resident", any person who resides in this state on the date of entry of a court
93 order that determines a member insurer to be an impaired insurer or a court order that determines
94 a member insurer to be an insolvent insurer, whichever first occurs, and to whom a contractual
95 obligation is owed. A person may be a resident of only one state, which in the case of a person
96 other than a natural person shall be its principal place of business. Citizens of the United States
97 that are either residents of foreign countries or residents of the United States' possessions,
98 territories, or protectorates that do not have an association similar to the association created
99 under sections 376.715 to 376.758 shall be deemed residents of the state of domicile of the
100 **member** insurer that issued the policies or contracts;

101 ~~[(18)]~~ **(19)** "State", a state, the District of Columbia, Puerto Rico, and a United States
102 possession, territory, or protectorate;

103 ~~[(19)]~~ **(20)** "Structure settlement annuity", an annuity purchased in order to fund periodic
104 payments for a plaintiff or other claimant in payment for or with respect to personal injury
105 suffered by the plaintiff or other claimant;

106 ~~[(20)]~~ (21) "Supplemental contract", any written agreement entered into for the
107 distribution of proceeds under a life, health, or annuity policy or contract;

108 ~~[(21)]~~ (22) "Unallocated annuity contract", any annuity contract or group annuity
109 certificate which is not issued to and owned by an individual, except to the extent of any annuity
110 benefits guaranteed to an individual by an insurer under such contract or certificate.

376.720. 1. There is created a nonprofit legal entity to be known as the "Missouri Life
2 and Health Insurance Guaranty Association". All member insurers shall be and remain members
3 of the association as a condition of their authority to transact insurance **or a health maintenance**
4 **organization business** in this state. The association shall perform its functions under the plan
5 of operation established and approved under subsections 1 to 3 of section 376.740 and shall
6 exercise its powers through a board of directors established pursuant to section 376.722. For
7 purposes of administration and assessment the association shall maintain three accounts:

- 8 (1) The health ~~[insurance]~~ account;
- 9 (2) The life insurance account;
- 10 (3) The annuity account, excluding unallocated annuity contracts.

11 2. The association shall come under the immediate supervision of the director and shall
12 be subject to the applicable provisions of the insurance laws of this state. Meetings or records
13 of the association may be opened to the public upon majority vote of the board of directors of
14 the association.

376.722. 1. The board of directors of the association shall consist of not less than ~~[five]~~
2 **seven** nor more than ~~[nine]~~ **eleven** member insurers serving terms as established in the plan of
3 operation. The members of the board shall be selected by member insurers subject to the
4 approval of the director. Each class of member insurer, as defined in section 376.718, shall be
5 represented on the board. Vacancies on the board shall be filled for the remaining period of the
6 term by a majority vote of the remaining board members, subject to the approval of the director.
7 ~~[To select the initial board of directors, and initially organize the association, the director shall~~
8 ~~give notice to all member insurers of the time and place of the organizational meeting.]~~ In
9 determining voting rights at the organizational meeting each member insurer shall be entitled to
10 one vote in person or by proxy. ~~[If the board of directors is not selected within sixty days after~~
11 ~~notice of the organizational meeting, the director may appoint the initial members.]~~

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

14 3. Members of the board may be reimbursed from the assets of the association for
15 expenses incurred by them as members of the board of directors but members of the board shall
16 not otherwise be compensated by the association for their services.

376.724. 1. If a member insurer is an impaired insurer, the association may, in its discretion, and subject to any conditions imposed by the association that do not impair the contractual obligations of the impaired insurer, that are approved by the director:

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

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

2. If a member insurer is an insolvent insurer, the association shall, in its discretion, either:

(1) (a) a. Guarantee, assume, **reissue**, or reinsure, or cause to be guaranteed, assumed, **reissued**, or reinsured, the policies or contracts of the insolvent insurer; or

b. Assure payment of the contractual obligations of the insolvent insurer; and

(b) Provide such moneys, pledges, loans, notes, guarantees, or other means as are reasonably necessary to discharge such duties; or

(2) Provide benefits and coverages in accordance with the following provisions:

(a) With respect to ~~[life and health insurance policies and annuities]~~ **policies and contracts**, assure payment of benefits ~~[for premiums identical to the premiums and benefits, except for terms of conversion and renewability,]~~ that would have been payable under the policies of the insolvent insurer, for claims incurred:

a. With respect to group policies and contracts, not later than the earlier of the next renewal date under such policies or contracts or forty-five days, but in no event less than thirty days, after the date on which the association becomes obligated with respect to such policies and contracts;

b. With respect to individual policies, contracts, and annuities, not later than the earlier of the next renewal date, if any, under such policies or contracts or one year, but in no event less than thirty days, from the date on which the association becomes obligated with respect to such policies and contracts;

(b) Make diligent efforts to provide all known insureds, **enrollees**, or annuitants for individual policies and contracts, or group ~~[policyholders]~~ **policy or contract owners** with respect to group policies or contracts, thirty days notice of the termination, under paragraph (a) of this subdivision, of the benefits provided;

(c) With respect to individual policies **and contracts**, make available to each known insured, annuitant, or owner if other than the insured, **enrollee**, or annuitant, and with respect to an individual formerly **an** insured, **enrollee**, or ~~[formerly an]~~ annuitant under a group policy **or contract** who is not eligible for replacement group coverage, make available substitute coverage

37 on an individual basis in accordance with the provisions of paragraph (d) of this subdivision, if
38 the insureds, **enrollees**, or annuitants had a right under law or the terminated policy, **contract**,
39 **or annuity** to convert coverage to individual coverage or to continue an individual policy,
40 **contract, or annuity** in force until a specified age or for a specified time, during which the
41 insurer **or health maintenance organization** had no right unilaterally to make changes in any
42 provision of the policy, **contract, or annuity** or had a right only to make changes in premium
43 by class;

44 (d) a. In providing the substitute coverage required under paragraph (c) of this
45 subdivision, the association may offer either to reissue the terminated coverage or to issue an
46 alternative policy **or contract at actuarially justified rates**;

47 b. Alternative or reissued policies **or contracts** shall be offered without requiring
48 evidence of insurability, and shall not provide for any waiting period or exclusion that would not
49 have applied under the terminated policy **or contract**;

50 c. The association may reinsure any alternative or reissued policy **or contract**;

51 (e) a. Alternative policies **or contracts** adopted by the association shall be subject to the
52 approval of the director. The association may adopt alternative policies **or contracts** of various
53 types for future issuance without regard to any particular impairment or insolvency;

54 b. Alternative policies **or contracts** shall contain at least the minimum statutory
55 provisions required in this state and provide benefits that shall not be unreasonable in relation
56 to the premium charged. The association shall set the premium in accordance with a table of
57 rates which it shall adopt. The premium shall reflect the amount of insurance to be provided and
58 the age and class of risk of each insured, but shall not reflect any changes in the health of the
59 insured after the original policy **or contract** was last underwritten;

60 c. Any alternative policy **or contract** issued by the association shall provide coverage
61 of a type similar to that of the policy **or contract** issued by the impaired or insolvent insurer, as
62 determined by the association;

63 (f) In carrying out its duties in connection with guaranteeing, assuming, **reissuing**, or
64 reinsuring policies or contracts under this subsection, the association may~~], subject to approval~~
65 ~~of the receivership court,~~ issue substitute coverage for a policy or contract that provides an
66 interest rate, crediting rate, or similar factor determined by use of an index or other external
67 reference stated in the policy or contract employed in calculating returns or changes in value by
68 issuing an alternative policy or contract in accordance with the following provisions:

69 a. In lieu of the index or other external reference provided for in the original policy or
70 contract, the alternative policy or contract provides for a fixed interest rate, payment of dividends
71 with minimum guarantees, or a different method for calculating interest or changes in value;

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

74 c. The alternative policy or contract is substantially similar to the replaced policy or
75 contract in all other terms.

 376.725. 1. If the association elects to reissue terminated coverage at a premium rate
2 different from that charged under the terminated policy **or contract**, the premium shall be
3 **actuarially justified and** set by the association in accordance with the amount of insurance **or**
4 **coverage** provided and the age and class of risk of the insured, subject to **prior** approval of the
5 director [~~or by a court of competent jurisdiction~~].

6 2. The association's obligations with respect to coverage under any policy **or contract**
7 of the impaired or insolvent insurer or under any reissued or alternative policy **or contract** shall
8 cease on the date the coverage, [~~or~~] policy, **or contract** is replaced by another similar policy **or**
9 **contract** by the policy **or contract** owner, the insured, **the enrollee**, or the association.

10 3. When proceeding under subdivision (2) of subsection 2 of section 376.724 with
11 respect to a policy or contract carrying guaranteed minimum interest rates, the association shall
12 assure the payment or crediting of a rate of interest consistent with subdivision (3) of subsection
13 3 of section 376.717.

 376.726. 1. Nonpayment of premiums within thirty-one days after the date required
2 under the terms of any guaranteed, assumed, alternative or reissued policy or contract or
3 substitute coverage shall terminate the association's obligations under such policy, **contract**, or
4 coverage under sections 376.715 to 376.758 with respect to such policy, **contract**, or coverage,
5 except with respect to any claims incurred or any net cash surrender value which may be due in
6 accordance with the provisions of sections 376.715 to 376.758.

7 2. Premiums due for coverage after entry of an order of liquidation of an insolvent
8 insurer shall belong to and be payable at the direction of the association, and the association shall
9 be liable for unearned premiums due to policy or contract owners arising after the entry of such
10 order.

 376.733. 1. Any person receiving benefits under sections 376.715 to 376.758 shall be
2 deemed to have assigned the rights under, and any causes of action against any person for losses
3 arising under, resulting from, or otherwise relating to, the covered policy or contract to the
4 association to the extent of the benefits received because of the provisions of sections 376.715
5 to 376.758, whether the benefits are payments of or on account of contractual obligations,
6 continuation of coverage or provision of substitute or alternative **policies, contracts, or**
7 coverages. The association may require an assignment to it of such rights and cause of action
8 by any **enrollee**, payee, policy or contract owner, beneficiary, insured or annuitant as a condition

9 precedent to the receipt of any right or benefits conferred by sections 376.715 to 376.758 upon
10 such person.

11 2. The subrogation rights of the association under this section have the same priority
12 against the assets of the impaired or insolvent insurer as that possessed by the person entitled to
13 receive benefits under sections 376.715 to 376.758.

14 3. In addition to subsections 1 and 2 of this section, the association shall have all
15 common law rights of subrogation and any other equitable or legal remedy which would have
16 been available to the impaired or insolvent insurer or owner, beneficiary, **enrollee**, or payee of
17 a policy or contract with respect to such policy or contracts, including, without limitation in the
18 case of a structured settlement annuity, any rights of the owner, beneficiary, or payee of the
19 annuity, to the extent of benefits received under sections 376.715 to 376.758, against a person,
20 originally or by succession, responsible for the losses arising from the personal injury relating
21 to the annuity or payment thereof, excepting any such person responsible solely by reason of
22 serving as an assignee in respect of a qualified assignment under Section 130 of the Internal
23 Revenue Code of 1986, as amended.

376.734. 1. In addition to any other rights and powers under sections 376.715 to
2 376.758, the association may:

3 (1) Enter into such contracts as are necessary or proper to carry out the provisions and
4 purposes of sections 376.715 to 376.758;

5 (2) Sue or be sued, including taking any legal actions necessary or proper for recovery
6 of any unpaid assessments under subsections 1 and 2 of section 376.735 and to settle claims or
7 potential claims against it;

8 (3) Borrow money to effect the purposes of sections 376.715 to 376.758. Any notes or
9 other evidence of indebtedness of the association not in default shall be legal investments for
10 domestic **member** insurers and may be carried as admitted assets;

11 (4) Employ or retain such persons as are necessary to handle the financial transactions
12 of the association, and to perform such other functions as become necessary or proper under
13 sections 376.715 to 376.758;

14 (5) Take such legal action as may be necessary to avoid or recover payment of improper
15 claims;

16 (6) Exercise, for the purposes of sections 376.715 to 376.758 and to the extent approved
17 by the director, the powers of a domestic life ~~[or health]~~ insurer, **health insurer, or health**
18 **maintenance organization** but in no case may the association issue ~~[insurance]~~ policies or
19 ~~[annuity]~~ contracts other than those issued to perform its obligations under sections 376.715 to
20 376.758;

21 (7) Request information from a person seeking coverage from the association in order
22 to aid the association in determining its obligations under sections 376.715 to 376.758 with
23 respect to the person, and the person shall promptly comply with the request;

24 (8) **Unless prohibited by law, in accordance with the terms and conditions of the**
25 **policy or contract, file an actuarially justified rate or premium increase for any policy or**
26 **contract for which it provides coverage under sections 376.715 to 376.758;**

27 (9) Take other necessary or appropriate action to discharge its duties and obligations or
28 to exercise its powers under sections 376.715 to 376.758; and

29 ~~[(9)]~~ (10) With respect to covered policies for which the association becomes obligated
30 after an entry of an order of liquidation or rehabilitation, elect to succeed to the rights of the
31 insolvent insurer arising after the order of liquidation or rehabilitation under any contract of
32 reinsurance to which the insolvent insurer was a party, to the extent that such contract provides
33 coverage for losses occurring after the date of the order of liquidation or rehabilitation. As a
34 condition to making this election, the association shall pay all unpaid premiums due under the
35 contract for coverage relating to periods before and after the date of the order of liquidation or
36 rehabilitation.

37 2. The board of directors of the association may exercise reasonable business judgment
38 to determine the means by which the association is to provide the benefits of sections 376.715
39 to 376.758 in an economical and efficient manner.

40 3. Where the association has arranged for or offered to provide the benefits of sections
41 376.715 to 376.758 to a covered person under a plan or arrangement that fulfills the association's
42 obligations under sections 376.715 to 376.758, the person shall not be entitled to benefits from
43 the association in addition to or other than those provided under the plan or arrangement.

44 4. The association may join an organization of one or more other state associations of
45 similar purposes, to further the purposes and administer the powers and duties of the association.

376.735. 1. For the purpose of providing the funds necessary to carry out the powers and
2 duties of the association, the board of directors shall assess the member insurers, separately for
3 each account, at such time and for such amounts as the board finds necessary. Assessments shall
4 be due not less than thirty days after prior written notice to the member insurers and shall accrue
5 interest at ten percent per annum on and after the due date.

6 2. There shall be two assessments, as follows:

7 (1) Class A assessments may be made for the purpose of meeting administrative and
8 legal costs and other expenses. Class A assessments may be made whether or not related to a
9 particular impaired or insolvent insurer;

10 (2) Class B assessments may be made to the extent necessary to carry out the powers and
11 duties of the association under sections 376.715 to 376.758 with regard to an impaired or an
12 insolvent insurer.

13 3. The amount of any class A assessment shall be determined by the board and may be
14 made on a pro rata or nonpro rata basis. If pro rata, the board may provide that it be credited
15 against future class B assessments. ~~[A nonpro rata assessment shall not exceed one hundred fifty~~
16 ~~dollars per member insurer in any one calendar year.]~~

17 4. (1) The amount of any class B assessment, **except for assessments related to long-**
18 **term care insurance**, shall be allocated for assessment purposes ~~[among]~~ **between** the accounts
19 pursuant to an allocation formula which may be based on the premiums or reserves of the
20 impaired or insolvent insurer or any other standard deemed by the board in its sole discretion as
21 being fair and reasonable under the circumstances.

22 (2) **The amount of the class B assessment for long-term care insurance written by**
23 **the impaired or insolvent insurer shall be allocated according to methodology included in**
24 **the plan of operation and approved by the director. The methodology shall provide for**
25 **fifty percent of the assessment to be allocated to accident and health member insurers and**
26 **fifty percent to be allocated to life and annuity member insurers.**

27 5. Class B assessments against member insurers for each account shall be in the
28 proportion that the premiums received on business in this state by each assessed member insurer
29 on policies or contracts covered by each account for the three most recent calendar years for
30 which information is available preceding the year in which the **member** insurer became impaired
31 or insolvent, as the case may be, bears to such premiums received on business in this state for
32 such calendar years by all assessed member insurers.

33 ~~[5-]~~ 6. Assessments for funds to meet the requirements of the association with respect
34 to an impaired or insolvent insurer shall not be made until necessary to implement the purposes
35 of sections 376.715 to 376.758. Classification of assessments under subdivisions (1) and (2) of
36 subsection 2 of this section and computation of assessments under this section shall be made
37 with a reasonable degree of accuracy, recognizing that exact determinations may not always be
38 possible. In no case shall a member insurer be liable under class A or class B for assessments
39 in any account enumerated in section 376.720, for which such insurer is not licensed by the
40 department of insurance, financial institutions and professional registration to transact business.

376.737. 1. The association may abate or defer, in whole or in part, the assessment of
2 a member insurer if, in the opinion of the board, payment of the assessment would endanger the
3 ability of the member insurer to fulfill its contractual obligations. In the event an assessment
4 against a member insurer is abated, or deferred in whole or in part, the amount by which such
5 assessment is abated or deferred may be assessed against the other member insurers in a manner

6 consistent with the basis for assessments set forth in this section. Once the conditions that
7 caused a deferral have been removed or rectified, the member insurer shall pay all assessments
8 that were deferred under a repayment plan approved by the association.

9 2. (1) Subject to the provisions of subdivision (2) of this subsection, the total of all
10 assessments upon a member insurer for each account shall not in any one calendar year exceed
11 two percent of such insurer's average annual premiums received in this state on the policies and
12 contracts covered by the account during the three calendar years preceding the year in which the
13 **member** insurer became an impaired or insolvent insurer. If the maximum assessment, together
14 with the other assets of the association in any account, does not provide in any one year in the
15 account an amount sufficient to carry out the responsibilities of the association, the necessary
16 additional funds shall be assessed as soon thereafter as permitted by sections 376.715 to 376.758.

17 (2) If two or more assessments are made in one calendar year with respect to **member**
18 insurers that become impaired or insolvent in different calendar years, the average annual
19 premiums for purposes of the aggregate assessment percentage limitation referenced in
20 subdivision (1) of this subsection shall be equal and limited to the higher of the three-year
21 average annual premiums for the applicable account as calculated under this section.

22 3. The board may provide in the plan of operation a method of allocating funds among
23 claims, whether relating to one or more impaired or insolvent insurers, when the maximum
24 assessment will be insufficient to cover anticipated claims.

25 4. The board may, by an equitable method as established in the plan of operation, refund
26 to member insurers, in proportion to the contribution of each **member** insurer to that account,
27 the amount by which the assets of the account exceed the amount the board finds is necessary
28 to carry out during the coming year the obligations of the association with regard to that account,
29 including assets accruing from assignment, subrogation net realized gains and income from
30 investments. A reasonable amount may be retained in any account to provide funds for the
31 continuing expenses of the association and for future losses.

32 5. It shall be proper for any member insurer, in determining its premium rates and policy
33 owner dividends as to any kind of insurance **or health maintenance organization business**
34 within the scope of sections 376.715 to 376.758, to consider the amount reasonably necessary
35 to meet its assessment obligations under the provisions of sections 376.715 to 376.758.

376.738. The association shall issue to each **member** insurer paying an assessment under
2 the provisions of sections 376.715 to 376.758, other than class A assessment, a certificate of
3 contribution, in a form prescribed by the director, for the amount of the assessment so paid. All
4 outstanding certificates shall be of equal dignity and priority without reference to amounts or
5 dates of issue. A certificate of contribution may be shown by the **member** insurer in its financial

6 statement as an asset in such form and for such amount, if any, and period of time as the director
7 may approve.

2 376.742. 1. In addition to the duties and powers enumerated elsewhere in sections
3 376.715 to 376.758, the director shall:

3 (1) Upon request of the board of directors, provide the association with a statement of
4 the premiums in this and any other appropriate states for each member insurer;

5 (2) When an impairment is declared and the amount of the impairment is determined,
6 serve a demand upon the impaired insurer to make good the impairment within a reasonable
7 time. Notice to the impaired insurer shall constitute notice to its shareholders, if any. The failure
8 of the **impaired** insurer to promptly comply with such demand shall not excuse the association
9 from the performance of its powers and duties under the provisions of sections 376.715 to
10 376.758;

11 (3) In any liquidation or rehabilitation proceeding involving a domestic insurer, be
12 appointed as the liquidator or rehabilitator.

13 2. The director may suspend or revoke, after notice and hearing, the certificate of
14 authority to transact ~~insurance~~ **business** in this state of any member insurer which fails to pay
15 an assessment when due or fails to comply with the plan of operation. As an alternative the
16 director may levy a forfeiture on any member insurer which fails to pay an assessment when due.
17 Such forfeiture shall not exceed five percent of the unpaid assessment per month, but no
18 forfeiture shall be less than one hundred dollars per month.

19 3. Any action of the board of directors or the association may be appealed to the director
20 by any member insurer if such appeal is taken within sixty days of the action being appealed.
21 If a member company is appealing an assessment, the amount assessed shall be paid to the
22 association and available to meet association obligations during the pendency of an appeal. If
23 the appeal on the assessment is upheld, the amount paid in error or excess shall be returned to
24 the member company. Any final action or order of the director shall be subject to judicial review
25 in a court of competent jurisdiction.

26 4. The liquidator, rehabilitator, or conservator of any impaired insurer may notify all
27 interested persons of the effect of sections 376.715 to 376.758.

28 5. To aid in the detection and prevention of **member** insurer insolvencies or
29 impairments, the director shall:

30 (1) Notify the commissioners of all the other states, territories of the United States and
31 the District of Columbia when he takes any of the following actions against a member insurer:

32 (a) Revocation of license;

33 (b) Suspension of license; or

34 (c) Makes any formal order that such ~~[company]~~ **member insurer** restricts its premium
35 writing, obtain additional contributions to surplus, withdraw from the state, reinsure all or any
36 part of its business, or increase capital, surplus, or any other account for the security of
37 ~~[policyholders]~~ **policy owners, contract owners, certificate holders**, or creditors.

38

39 Such notice shall be mailed to all commissions within thirty days following the action taken or
40 the date on which such action occurs;

41 (2) Report to the board of directors when he has taken any of the actions set forth in
42 subdivision (1) of this subsection or has received a report from any other commissioner
43 indicating that any such action has been taken in another state. Such report to the board of
44 directors shall contain all significant details of the action taken or the report received from
45 another commissioner;

46 (3) Report to the board of directors when he has reasonable cause to believe from any
47 examination, whether completed or in process, of any member company that such company may
48 be an impaired or insolvent insurer;

49 (4) Furnish to the board of directors the NAIC Insurer Regulatory Information Service
50 (IRIS) ratios and listings of companies not included in the ratios developed by the National
51 Association of Insurance Commissioners, and the board may use the information contained
52 therein in carrying out its duties and responsibilities under this section. Such report and the
53 information contained therein shall be kept confidential by the board of directors until such time
54 as made public by the director or other lawful authority.

55 6. The director may seek the advice and recommendations of the board of directors
56 concerning any matter affecting his duties and responsibilities regarding the financial condition
57 of member insurers and ~~[companies]~~ **health maintenance organizations** seeking admission to
58 transact insurance business in this state.

376.743. 1. The board of directors may, upon majority vote, make reports and
2 recommendations to the director upon any matter germane to the solvency, liquidation,
3 rehabilitation or conservation of any member insurer or germane to the solvency of any
4 ~~[company]~~ **insurer or health maintenance organization** seeking to do ~~[an insurance]~~ business
5 in this state. Such reports and recommendations shall not be considered public documents.

6 2. The board of directors shall, upon majority vote, notify the director of any information
7 indicating any member insurer may be an impaired or insolvent insurer. The board of directors
8 may, upon majority vote, make recommendations to the director for the detection and prevention
9 of **member** insurer insolvencies.

376.746. 1. Nothing in sections 376.715 to 376.758 shall be construed to reduce the liability for unpaid assessments of the insureds of an impaired or insolvent insurer operating under a plan with assessment liability.

2. Records shall be kept of all negotiations and meetings in which the association or its representatives are involved to discuss the activities of the association in carrying out its powers and duties under the provisions of sections 376.715 to 376.758. Records of such negotiations or meetings shall be made public only upon the termination of a liquidation, rehabilitation, or conservation proceeding involving the impaired or insolvent insurer, upon the termination of the impairment or insolvency of the insurer, or upon the order of a court of competent jurisdiction. Nothing in this subsection shall limit the duty of the association to render a report of its activities under subsection 1 of section 376.750.

3. For the purpose of carrying out its obligations under the provisions of sections 376.715 to 376.758, the association is deemed to be a creditor of the impaired or insolvent insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled as subrogee under the provisions of sections 376.715 to 376.758. Assets of the impaired or insolvent insurer attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the impaired or insolvent insurer as required by sections 376.715 to 376.758. Assets attributable to covered policies **or contracts**, as used in this subsection, are that proportion of the assets which the reserves that should have been established for such policies **or contracts** bear to the reserves that should have been established for all policies of insurance **or health benefit plans** written by the impaired or insolvent insurer.

376.747. 1. Prior to the termination of any liquidation, rehabilitation, or conservation proceeding, the court may take into consideration the contributions of the respective parties, including the association, the shareholders, **contract owners, certificate holders, enrollees**, and policy owners of the insolvent insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of such insolvent insurer. In such a determination consideration shall be given to the welfare of the **policy owners, contract owners, certificate holders, enrollees, and** policyholders of the continuing or successor **member** insurer.

2. No distribution to stockholders, if any, of an impaired or insolvent insurer shall be made until and unless the total amount of valid claims of the association with interest thereon for funds expended in carrying out its powers and duties under the provisions of sections 376.715 to 376.758 with respect to such **member** insurer have been fully recovered by the association.

376.748. 1. If an order for liquidation or rehabilitation of ~~an~~ **a member** insurer domiciled in this state has been entered, the receiver appointed under such order shall have a

3 right to recover on behalf of the **member** insurer, from any affiliate that controlled it, the amount
4 of distributions, other than stock dividends paid by the **member** insurer on its capital stock, made
5 at any time during the five years preceding the petition for liquidation or rehabilitation subject
6 to the limitations of subsections 2 through 4 of this section.

7 2. No such distribution shall be recoverable if the **member** insurer shows that when paid
8 the distribution was lawful and reasonable, and that the **member** insurer did not know and could
9 not reasonably have known that the distribution might adversely affect the ability of the **member**
10 insurer to fulfill its contractual obligations.

11 3. Any person who was an affiliate that controlled the **member** insurer at the time the
12 distributions were paid shall be liable up to the amount of distributions he received. Any person
13 who was an affiliate that controlled the **member** insurer at the time the distributions were
14 declared shall be liable up to the amount of distributions he would have received if they had been
15 paid immediately. If two or more persons are liable with respect to the same distributions, they
16 shall be jointly and severally liable.

17 4. The maximum amount recoverable under this section shall be the amount needed in
18 excess of all other available assets of the insolvent insurer to pay the contractual obligations of
19 the insolvent insurer.

20 5. If any person liable under subsection 3 of this section is insolvent, all its affiliates that
21 controlled it at the time the distribution was paid shall be jointly and severally liable for any
22 resulting deficiency in the amount recovered from the insolvent affiliate.

376.755. No person, including ~~[an]~~ a **member** insurer, agent or affiliate of an insurer
2 shall make, publish, disseminate, circulate, or place before the public, or cause directly or
3 indirectly, to be made, published, disseminated, circulated or placed before the public, in any
4 newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter
5 or poster, or over any radio station or television station, or in any other way, any advertisement,
6 announcement or statement, written or oral, which uses the existence of the insurance guaranty
7 association of this state for the purpose of sales, solicitation, or inducement to purchase any form
8 of insurance **or other coverage** covered by sections 376.715 to 376.758. If a policy exceeds the
9 limitations of coverage under sections 376.715 to 376.758, the insurer shall prominently inscribe
10 on an endorsement to the insurance contract the limitations of coverage provided by the guaranty
11 association. This section shall not apply to the Missouri Life and Health Insurance Guaranty
12 Association or any other entity which does not sell or solicit insurance **or coverage by a health**
13 **maintenance organization.**

376.756. 1. ~~[Within one hundred eighty days of August 13, 1988,]~~ The association shall
2 prepare a summary document describing the general purposes and current limitations of the act
3 and complying with subsection 2 of this section. This document should be submitted to the

4 director for approval. Sixty days after receiving such approval, no insurer may deliver a policy
5 or contract described in subsection 2 of section 376.717 to a policy ~~[or]~~ **owner** contract holder,
6 **certificate holder, or enrollee** unless the document is delivered to the policy or contract holder
7 prior to or at the time of delivery of the policy or contract except if subsection 3 of this section
8 applies. The document should also be available upon request by a policyholder, **contract owner,**
9 **certificate holder, or enrollee**. The distribution, delivery, or contents or interpretation of this
10 document shall not mean that either the policy or the contract or the **policy owner, contract**
11 **owner, certificate holder, or enrollee** thereof would be covered in the event of the impairment
12 or insolvency of a member insurer. The description document shall be revised by the association
13 as amendments to the act may require. Failure to receive this document does not give the
14 policyholder, contract holder, certificate holder, **enrollee**, or insured any greater rights than those
15 stated in sections 376.715 to 376.758.

16 2. The document prepared under subsection 1 of this section shall contain a clear and
17 conspicuous disclaimer on its face. The director shall promulgate a rule establishing the form
18 and content of the disclaimer. The disclaimer shall:

19 (1) State the name and address of the life and health insurance guaranty association and
20 department of insurance, financial institutions and professional registration;

21 (2) Prominently warn the policy ~~[or contract holder]~~ **owner, contract owner, certificate**
22 **holder, or enrollee** that the Missouri life and health insurance guaranty association may not
23 cover the policy **or contract** or, if coverage is available, it will be subject to substantial
24 limitations, exclusions and conditioned on continued residence in the state;

25 (3) State that the **member** insurer and its agents are prohibited by law from using the
26 existence of the life and health insurance guaranty association for the purpose of sales,
27 solicitation or inducement to purchase any form of insurance **or health maintenance**
28 **organization coverage**;

29 (4) Emphasize that the policy ~~[or contract holder]~~ **owner, contract owner, certificate**
30 **holder, or enrollee** should not rely on coverage under the Missouri life and health insurance
31 guaranty association when selecting an insurer **or health maintenance organization**;

32 (5) Provide other information as directed by the director.

33 3. No insurer or agent may deliver a policy or contract described in subsection 2 of
34 section 376.717 and excluded under subsection 3 of section 376.717 from coverage under the
35 provisions of sections 376.715 to 376.758 unless the insurer or agent, prior to or at the time of
36 delivery, gives the policy or contract holder a separate written notice which clearly and
37 conspicuously discloses that the policy or contract is not covered by the Missouri life and health
38 insurance guaranty association. The director shall by rule specify the form and content of the
39 notice.

376.758. 1. Sections 376.715 to 376.758 shall not apply to any insurer which is
2 insolvent or unable to fulfill its contractual obligations on August 13, 1988.

3 2. Sections 376.715 to 376.758 shall be liberally construed to effect the purpose under
4 subsection 2 of section 376.715 which shall constitute an aid and guide to interpretation.

5 3. The amendments to sections 376.715 to 376.758 which become effective on August
6 28, 2010, shall not apply to any member insurer that is an impaired or insolvent insurer prior to
7 August 28, 2010.

8 **4. The amendments to sections 376.715 to 376.758, which become effective on**
9 **August 28, 2018, shall not apply to any member insurer that is an impaired or insolvent**
10 **insurer prior to August 28, 2018.**

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