S T A T E O F N E W Y O R K

6972

I N S E N A T E

April 9, 2014

Introduced by Sen. SEWARD -- (at request of the Department of Financial Services) -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance

AN ACT to amend the insurance law, in relation to the life insurance company guaranty corporation of New York

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 7702 of the insurance law, as added by chapter 802 of the laws of 1985, is amended to read as follows:

S 7702. Purpose. The purpose of this article is to provide funds to protect [resident policyowners] POLICY OWNERS, insureds, beneficiaries, annuitants, payees and assignees of life insurance policies, health insurance policies, annuity contracts, funding agreements and supplemental contracts issued by life insurance companies, subject to certain limitations, against failure in the performance of contractual obligations due to the impairment or insolvency of the insurer issuing such policies [or], contracts, OR FUNDING AGREEMENTS. In the judgment of the legislature, the foregoing objects and purposes not being capable of accomplishment by a corporation created under general laws, the creation of a not-for-profit corporation of insurers is provided for by this article to enable the guarantee of payment of benefits and of continuation of coverages, and members of the corporation are subject to assessment to carry out the purposes of this article.

S 2. Section 7703 of the insurance law, as added by chapter 802 of the laws of 1985, is amended to read as follows:

S 7703. Scope. (a) (1) This article shall apply to direct life insurance policies, health insurance policies, annuity contracts, funding agreements, and SUPPLEMENTAL contracts [supplemental to life and health insurance policies, annuity contracts or funding agreements] issued [to a resident] by a life insurance company licensed to transact life or health insurance or annuities in this state at the time the policy, contract, or FUNDING agreement was issued or [at the time it became] ON THE DATE OF ENTRY OF A COURT ORDER OF LIQUIDATION OR REHABILITATION WITH

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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RESPECT TO SUCH A COMPANY THAT IS an impaired or insolvent insurer, as the case may be.

(2) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THIS ARTICLE SHALL APPLY TO THE POLICIES, CONTRACTS, AND FUNDING AGREEMENTS SPECIFIED IN PARAGRAPH ONE OF THIS SUBSECTION WITH REGARD TO A PERSON WHO IS:

(A) AN OWNER OR CERTIFICATE HOLDER UNDER A POLICY, CONTRACT, OR FUNDING AGREEMENT AND IN EACH CASE WHO:

(I) IS A RESIDENT; OR

(II) IS NOT A RESIDENT, BUT ONLY UNDER ALL OF THE FOLLOWING CONDITIONS:

(I) THE INSURER THAT ISSUED THE POLICY, CONTRACT, OR AGREEMENT IS DOMICILED IN THIS STATE;

(II) THE STATE OR STATES IN WHICH THE PERSON RESIDES HAS OR HAVE A GUARANTY ENTITY SIMILAR TO THE CORPORATION CREATED BY THIS ARTICLE; AND

(III) THE PERSON IS NOT ELIGIBLE FOR COVERAGE BY A GUARANTY ENTITY IN ANY OTHER STATE BECAUSE THE INSURER WAS NOT LICENSED OR AUTHORIZED IN THAT STATE AT THE TIME SPECIFIED IN THAT STATE'S GUARANTY ENTITY LAW; OR

(B) THE BENEFICIARY, ASSIGNEE, OR PAYEE OF THE PERSON SPECIFIED IN SUBPARAGRAPH (A) OF THIS PARAGRAPH, REGARDLESS OF WHERE THE PERSON RESIDES.

(3) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION:

(A) WITH REGARD TO A GROUP ANNUITY CONTRACT (OR PORTION OF ANY SUCH CONTRACT) THAT DOES NOT GUARANTEE ANNUITY BENEFITS WITH RESPECT TO ANY SPECIFIC INDIVIDUAL IDENTIFIED IN THE CONTRACT, THIS ARTICLE SHALL APPLY TO A PERSON WHO IS THE OWNER OF SUCH A CONTRACT:

(I) IF THE CONTRACT IS ISSUED TO OR IN CONNECTION WITH A SPECIFIC BENEFIT PLAN WHERE THE PLAN SPONSOR HAS ITS PRINCIPAL PLACE OF BUSINESS IN THIS STATE; PROVIDED, HOWEVER, THAT FOR THE PURPOSE OF THIS SUBPARAGRAPH:

(I) "PLAN SPONSOR" SHALL MEAN:

(AA) THE EMPLOYER IN THE CASE OF A BENEFIT PLAN ESTABLISHED OR MAINTAINED BY A SINGLE EMPLOYER;

(BB) THE EMPLOYEE ORGANIZATION IN THE CASE OF A BENEFIT PLAN ESTABLISHED OR MAINTAINED BY AN EMPLOYEE ORGANIZATION, PROVIDED THAT "EMPLOYEE ORGANIZATION" SHALL MEAN ANY LABOR UNION OR ANY ORGANIZATION OF ANY KIND, OR ANY AGENCY OR EMPLOYEE REPRESENTATION COMMITTEE, ASSOCIATION, GROUP, OR PLAN, IN WHICH EMPLOYEES PARTICIPATE AND THAT EXISTS FOR THE PURPOSE, IN WHOLE OR IN PART, OF DEALING WITH EMPLOYERS CONCERNING AN EMPLOYEE BENEFIT PLAN, OR OTHER MATTERS INCIDENTAL TO EMPLOYMENT RELATIONSHIPS, OR ANY EMPLOYEES' BENEFICIARY ASSOCIATION ORGANIZED FOR THE PURPOSE IN WHOLE OR IN PART, OF ESTABLISHING SUCH A PLAN; OR

(CC) IN THE CASE OF A BENEFIT PLAN ESTABLISHED OR MAINTAINED BY TWO OR MORE EMPLOYERS OR JOINTLY BY ONE OR MORE EMPLOYERS AND ONE OR MORE EMPLOYEE ORGANIZATIONS, THE ASSOCIATION, COMMITTEE, JOINT BOARD OF TRUSTEES, OR OTHER SIMILAR GROUP OF REPRESENTATIVES OF THE PARTIES WHO ESTABLISH OR MAINTAIN THE BENEFIT PLAN; AND

(II) "PRINCIPAL PLACE OF BUSINESS" SHALL MEAN:

(AA) THE STATE IN WHICH THE INDIVIDUALS WHO ESTABLISH POLICY FOR THE DIRECTION, CONTROL, AND COORDINATION OF THE OPERATIONS OF THE ENTITY AS A WHOLE PRIMARILY EXERCISE THAT FUNCTION, EXCEPT THAT IF MORE THAN FIFTY PERCENT OF THE PARTICIPANTS IN THE BENEFIT PLAN ARE EMPLOYED IN A SINGLE STATE, THEN THAT STATE SHALL BE DEEMED TO BE THE PRINCIPAL PLACE OF BUSINESS OF THE PLAN SPONSOR; OR

(BB) WITH REGARD TO A PLAN SPONSOR OF A BENEFIT PLAN DESCRIBED IN SUBITEM (CC) OF CLAUSE (I) OF THIS ITEM, THE PRINCIPAL PLACE OF BUSINESS, AS DETERMINED PURSUANT TO SUBITEM (AA) OF THIS CLAUSE, OF THE

EMPLOYER OR EMPLOYEE ORGANIZATION THAT HAS THE LARGEST INVESTMENT IN THE BENEFIT PLAN; OR

(II) ISSUED TO OR IN CONNECTION WITH A GOVERNMENT LOTTERY IF THE OWNER IS A RESIDENT; AND

(B) WITH REGARD TO A STRUCTURED SETTLEMENT ANNUITY, THIS SECTION SHALL APPLY TO A PERSON WHO IS A PAYEE UNDER THE STRUCTURED SETTLEMENT ANNUITY, OR THE BENEFICIARY OF A PAYEE IF THE PAYEE IS DECEASED, IF THE PAYEE (OR BENEFICIARY):

(I) IS A RESIDENT, REGARDLESS OF WHERE THE OWNER OF THE STRUCTURED SETTLEMENT ANNUITY RESIDES; OR

(II) IS NOT A RESIDENT, BUT ONLY UNDER THE FOLLOWING CONDITIONS:

(I) (AA) THE OWNER OF THE STRUCTURED SETTLEMENT ANNUITY IS A RESIDENT; OR

(BB) THE OWNER OF THE STRUCTURED SETTLEMENT ANNUITY IS NOT A RESIDENT, BUT THE INSURER THAT ISSUED THE STRUCTURED SETTLEMENT ANNUITY IS DOMICILED IN THIS STATE AND THE STATE IN WHICH THE OWNER RESIDES HAS A GUARANTY ENTITY SIMILAR TO THE CORPORATION CREATED BY THIS ARTICLE; AND

(II) NEITHER THE PAYEE (OR BENEFICIARY) NOR THE OWNER OF THE STRUCTURED SETTLEMENT ANNUITY IS ELIGIBLE FOR COVERAGE BY A GUARANTY ENTITY OF THE STATE IN WHICH THE PAYEE (OR BENEFICIARY) OR OWNER RESIDES.

(b) This article shall not apply to:

(1) [That] THAT portion or part of a variable life insurance policy, variable annuity contract or variable funding agreement not guaranteed by an insurer;

(2) [That] THAT portion or part of any policy, contract or agreement under which the risk is borne by the holder thereof;

(3) [Any] ANY policy, contract, or agreement, or part thereof, assumed by the impaired or insolvent insurer under a contract of reinsurance, other than reinsurance for which assumption certificates have been issued;

(4) [Any] ANY policy, contract, or agreement issued by or through the facilities of the New York Insurance Exchange, Inc., or any similar entity, or pursuant to article sixty-three of this chapter;

(5) [Any] ANY policy, contract, or agreement issued or issued for delivery outside the United States, to the extent it covers persons not citizens or permanent residents of the United States; and

(6) [Any] ANY policy, contract, or agreement payable other than in United States dollars.

(C) THIS ARTICLE SHALL NOT APPLY TO A PERSON:

(1) WHO IS A PAYEE, OR THE BENEFICIARY OF A PAYEE IF THE PAYEE IS DECEASED, OF AN OWNER RESIDENT IF THE PAYEE (OR BENEFICIARY) IS AFFORDED ANY COVERAGE BY A GUARANTY ENTITY OF ANOTHER STATE; OR

(2) COVERED UNDER SUBPARAGRAPH (A) OF PARAGRAPH THREE OF SUBSECTION (A) OF THIS SECTION IF THE GUARANTY ENTITY OF ANOTHER STATE PROVIDES ANY COVERAGE TO THE PERSON.

S 3. Subsections (d), (h), (j), and (k) of section 7705 of the insurance law, as added by chapter 802 of the laws of 1985, are amended and a new subsection (l) is added to read as follows:

(d) "Covered policy" means any of the kinds of insurance specified in paragraph one, two or three of subsection (a) of section one thousand one hundred thirteen of this chapter, ANY SUPPLEMENTAL CONTRACT, or any funding agreement referred to in section three thousand two hundred twenty-two of this chapter, or any portion or part thereof, within the scope of this article under section seven thousand seven hundred three of this article, except that any certificate issued to an individual under any group policy or contract shall be considered to be a separate

covered policy for purposes of section seven thousand seven hundred eight of this article.

(h) "Member insurer" means any life insurance company licensed to transact in this state any kind of insurance to which this article applies under section seven thousand seven hundred three of this article[. Solely for purposes of subsections (f) and (g) of this section,]; PROVIDED, HOWEVER, THAT the term "member insurer" [shall] also [mean] MEANS any life insurance company formerly licensed to transact in this state any kind of insurance to which this article applies under section seven thousand seven hundred three of this article.

(j) "Person" means any individual OR LEGAL ENTITY, INCLUDING A corporation, partnership, association, LIMITED LIABILITY COMPANY, TRUST, or voluntary organization.

(k) "Resident" means [any] A person to whom A contractual [obligations are] OBLIGATION IS owed and who either: (1) resides in this state [at the time] ON THE DATE OF ENTRY OF A COURT ORDER OF LIQUIDATION OR REHABILITATION WITH RESPECT TO a member insurer [is determined to be] THAT IS an impaired or insolvent insurer[,]; or (2) resided in this state at the time a member insurer issued a covered policy to such person.

(L) "SUPPLEMENTAL CONTRACT" MEANS AN AGREEMENT OR ANY OTHER MECHANISM FOR THE DISTRIBUTION OF PROCEEDS UNDER A LIFE INSURANCE POLICY, HEALTH INSURANCE POLICY, ANNUITY CONTRACT, OR FUNDING AGREEMENT.

S 4. Subsections (a) and (b) of section 7708 of the insurance law, as added by chapter 802 of the laws of 1985, is amended to read as follows:

(a) (1) If a domestic insurer is an impaired or insolvent insurer, the corporation shall, with the approval of the superintendent:

[(1)] (A) guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the covered policies [of residents], or arrange for replacement by policies found by the superintendent to be substantially similar to such covered policies;

[(2)] (B) assure payment of the contractual obligations of the impaired or insolvent insurer [to residents]; and

[(3)] (C) provide such moneys, pledges, notes, guarantees or other means as are reasonably necessary to discharge such duties.

(2) The aggregate liability of the corporation under this subsection shall not exceed five hundred thousand dollars for all benefits, including cash values, with respect to any one life or, to the extent benefits are not allocated pursuant to a covered policy to any one life, to any one covered policy; provided, however, [(i)] that (A) the foregoing limitation shall not apply to any group or blanket accident or health insurance or accident and health insurance policy; and [(ii) that] (B) the corporation shall be liable under this subsection in an amount not to exceed one million dollars for all benefits, including cash values, with respect to any group annuity contract (or portion of any such contract) that does not guarantee annuity benefits with respect to any specific individual identified in the contract and with respect to any funding agreement issued to fund benefits under any employee benefit plan.

(b) (1) If a foreign or alien insurer is an impaired or insolvent insurer, the corporation shall, with the approval of the superintendent:

[(1)] (A) guarantee, assume, or reinsure or cause to be guaranteed, assumed, or reinsured the covered policies [of residents], or arrange for replacement by policies found by the superintendent to be substantially similar to such covered policies;

[(2)] (B) assure payment of the contractual obligations of the insolvent insurer [to residents]; and

[(3)] (C) provide such moneys, pledges, notes, guarantees, or other means as are reasonably necessary to discharge such duties.

(2) The aggregate liability of the corporation under this subsection shall be the excess over any amount that the superintendent determines to be the statutory obligation of the guaranty corporation or association of the foreign or alien insurer's state of domicile or state of entry, but in no event shall the corporation's liability, when added to the amount so determined to be available from such other guaranty corporation or association, exceed five hundred thousand dollars for all benefits, including cash values, with respect to any one life, or, to the extent benefits are not allocated pursuant to a covered policy to any one life, to any one covered policy; provided, however, [(i)] that the (A) foregoing five hundred thousand dollar limitation shall not apply to any group or blanket accident or health insurance or accident and health insurance policy; and [(ii) that the] (B) liability of all such guaranty corporations or associations may in the aggregate equal, but shall not exceed one million dollars for all benefits, including cash values, with respect to any group annuity contract (or portion of any such contract) that does not guarantee annuity benefits with respect to any specific individual identified in the contract and with respect to any funding agreement issued to fund benefits under any employee benefit plan.

S 5. Subsection (h) of section 7708 of the insurance law, as added by chapter 802 of the laws of 1985, is amended to read as follows:

(h) The corporation may:

(1) [Enter] ENTER into such contracts as are necessary or proper to carry out the provisions and purposes of this article[.];

(2) [Sue] SUE or be sued, including taking any legal actions necessary or proper for recovery of any unpaid assessments under section seven thousand seven hundred nine of this article[.];

(3) [Borrow] BORROW money to effect the purposes of this article[. The], PROVIDED, HOWEVER, THAT THE corporation may agree, as a condition of any borrowing, that the lender will be subrogated to the rights of the corporation against the impaired or insolvent insurer to the extent of the amount borrowed and interest accruing thereon[. Any], AND PROVIDED FURTHER THAT ANY note or other evidence of indebtedness of the corporation not in default shall be a legal investment for domestic insurers and may be carried as admitted assets[.];

(4) [Employ] EMPLOY or retain such persons as are necessary or proper to handle the financial transactions of the corporation, and to perform such other functions as become necessary or proper under this article[.];

(5) [With] WITH the approval of the superintendent, negotiate and contract with any liquidator, rehabilitator, conservator or ancillary receiver to carry out the powers and duties of the corporation[.];

(6) [Take] TAKE such legal action as may be necessary to avoid payment of improper claims[.];

(7) [Exercise] EXERCISE, for the purposes of this article and to the extent approved by the superintendent, the powers of a domestic life insurance company, but in no case may the corporation issue insurance policies or annuity contracts other than those issued to perform the contractual obligations of the impaired or insolvent insurer[.];

(8) FUND A RESOLUTION FACILITY ESTABLISHED PURSUANT TO SECTION SEVEN THOUSAND SEVEN HUNDRED NINETEEN OF THIS ARTICLE; AND

(9) [Exercise] EXERCISE all powers necessary or convenient for the purposes of this article.

S 6. Paragraph 1 of subsection (e) of section 7709 of the insurance law, as amended by chapter 217 of the laws of 2012, is amended to read as follows:

(1) [The total assessment against all member insurers for all impairments and insolvencies, less the amount of refunds (not including interest) to member insurers pursuant to subsection (f) of this section, shall not exceed five hundred million dollars, except that with] WITH respect to a member insurer that is a domestic insurer and is subject to an order of rehabilitation under article seventy-four of this chapter as of March first two thousand twelve, [such] THE TOTAL assessment [limit] AGAINST ALL MEMBER INSURERS FOR IMPAIRMENTS AND INSOLVENCIES, LESS THE AMOUNT OF REFUNDS (NOT INCLUDING INTEREST) TO MEMBER INSURERS PURSUANT TO SUBSECTION (F) OF THIS SECTION, shall be five hundred fifty-eight million dollars; provided, however, that such five hundred fifty-eight million dollar [limit] TOTAL shall be subject to reduction in an amount, if any, determined by the superintendent, on a date not earlier than twelve months after the entry of an order of liquidation with respect to such domestic insurer, to be not needed for the corporation to be able to pay its obligations and reasonable expenses in connection with the liquidation of such domestic insurer, but in no event shall such reduction exceed fifty-eight million dollars.

S 7. Subsection (b) of section 7712 of the insurance law, as added by chapter 802 of the laws of 1985, is amended and a new subsection (c) is added to read as follows:

(b) [The] EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, THE maximum authorized credit for each company in respect of the assessments paid during the most recent calendar year covered by such statement shall be as follows:

(1) if the sum of the net assessments paid by all companies in the period reported on in the statement of operations required to be furnished by the superintendent pursuant to the provisions of subsection (a) of this section is less than one hundred million dollars, THEN no such credits shall be authorized;

(2) (A) if the sum of such net assessments IS EQUAL TO OR exceeds one hundred million dollars, the maximum authorized credit for each company with respect to net assessments paid by such company in any year shall be the excess, if any, of (i) over (ii), where (i) is the sum of such company's tentative cross-over year credit and its tentative credits for subsequent years, both as determined pursuant to subparagraphs (B) and (C) of this paragraph, and (ii) is the sum of the maximum credits theretofore authorized for the years covered by such statement, to and including the most recently completed year, determined with reference to the periods covered by all prior such statements.

(B) Such company's tentative cross-over year credit shall be eighty per centum of the product of (i) and (ii), where (i) is the sum of assessments paid by such company during the cross-over year, and (ii) is a fraction, the numerator of which is the excess over one hundred million dollars of the sum of net assessments paid by all companies during such period and the denominator of which is the sum of net assessments paid by such companies during the cross-over year. For purposes of this paragraph, the cross-over year is the first year during the period covered by such statement in which the net assessments paid by all companies during such period exceeded one hundred million dollars in whole or in part.

(C) Such company's tentative credit for each year subsequent to the cross-over year shall be eighty per centum of the net assessments paid by such company during such year.

(C) A CREDIT SHALL NOT BE AUTHORIZED FOR ANY MEMBER INSURER IN RESPECT OF THE ASSESSMENTS PAID IN CONNECTION WITH THE REHABILITATION OR LIQUIDATION OF A DOMESTIC MEMBER INSURER SUBJECT TO AN ORDER OF REHABILITATION OR LIQUIDATION UNDER ARTICLE SEVENTY-FOUR OF THIS CHAPTER ENTERED ON OR AFTER APRIL FIRST, TWO THOUSAND THIRTEEN.

[(3)] (D) For the purposes of this section, net assessments means gross assessments, less any recoveries or reimbursements, paid during the period covered by the most recent statement of operations furnished by the superintendent pursuant to the provisions of subsection (a) of this section.

S 8. The insurance law is amended by adding a new section 7719 to read as follows:

S 7719. RESOLUTION FACILITY. (A) THE CORPORATION MAY INCORPORATE ONE OR MORE NOT-FOR-PROFIT CORPORATIONS, KNOWN AS A RESOLUTION FACILITY, IN CONNECTION WITH THE LIQUIDATION OF AN INSOLVENT DOMESTIC LIFE INSURANCE COMPANY UNDER ARTICLE SEVENTY-FOUR OF THIS CHAPTER FOR THE PURPOSE OF ADMINISTERING AND DISPOSING OF THE BUSINESS OF THE INSOLVENT DOMESTIC LIFE INSURANCE COMPANY.

(B) TO THE EXTENT THAT THE PROVISIONS OF THE NOT-FOR-PROFIT CORPORATION LAW DO NOT CONFLICT WITH THE PROVISIONS OF THIS SECTION OR THE PLAN OF OPERATION OF THE RESOLUTION FACILITY HEREUNDER, THE NOT-FOR-PROFIT CORPORATION LAW SHALL APPLY TO THE RESOLUTION FACILITY AND THE RESOLUTION FACILITY SHALL BE A TYPE C NOT-FOR-PROFIT CORPORATION PURSUANT TO THE NOT-FOR-PROFIT CORPORATION LAW. IF AN APPLICABLE PROVISION OF THIS SECTION OR THE PLAN OF OPERATION OF THE RESOLUTION FACILITY HEREUNDER RELATES TO A MATTER EMBRACED IN A PROVISION OF THE NOT-FOR-PROFIT CORPORATION LAW BUT IS NOT IN CONFLICT THEREWITH, THEN BOTH PROVISIONS SHALL APPLY. THE CORPORATION SHALL BE A MEMBER OF THE RESOLUTION FACILITY, AND OTHER PERSONS, INCLUDING THE LIFE INSURANCE GUARANTY CORPORATION CONTINUED UNDER ARTICLE SEVENTY-FIVE OF THIS CHAPTER AND GUARANTY ENTITIES OF OTHER STATES, MAY BECOME MEMBERS OF THE RESOLUTION FACILITY IN ACCORDANCE WITH THE RESOLUTION FACILITY'S CERTIFICATE OF INCORPORATION AND PLAN OF OPERATION.

(C) IN ADDITION TO ITS CERTIFICATE OF INCORPORATION, A RESOLUTION FACILITY SHALL SUBMIT TO THE SUPERINTENDENT A PLAN OF OPERATION, AND AMENDMENTS THERETO, NECESSARY OR SUITABLE TO ASSURE THE FAIR, REASONABLE, AND EQUITABLE ADMINISTRATION OF THE RESOLUTION FACILITY. THE PLAN OF OPERATION, AND ANY AMENDMENTS THERETO, SHALL BECOME EFFECTIVE UPON APPROVAL IN WRITING BY THE SUPERINTENDENT. THE PLAN OF OPERATION SHALL CONSTITUTE THE BYLAWS OF THE RESOLUTION FACILITY.

(D) A RESOLUTION FACILITY MAY:

(1) GUARANTEE, ASSUME, OR REINSURE, OR CAUSE TO BE GUARANTEED, ASSUMED, OR REINSURED, THE COVERED POLICIES, OR ARRANGE FOR REPLACEMENT BY POLICIES FOUND BY THE SUPERINTENDENT TO BE SUBSTANTIALLY SIMILAR TO THE COVERED POLICIES;

(2) EXERCISE, FOR THE PURPOSES OF THIS ARTICLE AND TO THE EXTENT APPROVED BY THE SUPERINTENDENT, THE POWERS OF A DOMESTIC LIFE INSURANCE COMPANY, BUT IN NO CASE MAY THE RESOLUTION FACILITY ISSUE INSURANCE POLICIES, ANNUITY CONTRACTS, FUNDING AGREEMENTS, OR SUPPLEMENTAL CONTRACTS OTHER THAN THOSE ISSUED TO PERFORM THE CONTRACTUAL OBLIGATIONS OF THE IMPAIRED OR INSOLVENT INSURER;

(3) ASSURE PAYMENT OF THE CONTRACTUAL OBLIGATIONS OF THE INSOLVENT INSURER; AND

(4) PROVIDE SUCH MONEYS, PLEDGES, NOTES, GUARANTEES, OR OTHER MEANS AS ARE REASONABLY NECESSARY TO DISCHARGE ITS DUTIES.

(E) A RESOLUTION FACILITY SHALL NOT BE SUBJECT TO ANY PROVISIONS OF THIS CHAPTER OR THE FINANCIAL SERVICES LAW EXCEPT:

(1) THIS SECTION; AND

(2) SECTIONS SEVEN THOUSAND SEVEN HUNDRED FOURTEEN, SEVEN THOUSAND SEVEN HUNDRED FIFTEEN, AND SEVEN THOUSAND SEVEN HUNDRED SIXTEEN OF THIS CHAPTER, WHICH SHALL APPLY IN THE SAME MANNER AS THEY APPLY TO THE CORPORATION.

(F) NOTWITHSTANDING SUBSECTION (E) OF THIS SECTION, THE SUPERINTENDENT MAY ADDRESS TO THE RESOLUTION FACILITY ANY INQUIRY IN RELATION TO ITS TRANSACTIONS OR CONDITION OR ANY MATTER CONNECTED THEREWITH PURSUANT TO SECTION THREE HUNDRED EIGHT OF THIS CHAPTER.

(G) (1) IF THE SUPERINTENDENT DETERMINES THAT THE RESOLUTION FACILITY IS NOT ADMINISTERING AND DISPOSING OF THE BUSINESS OF AN INSOLVENT DOMESTIC LIFE INSURANCE COMPANY CONSISTENT WITH THE RESOLUTION FACILITY'S CERTIFICATE OF INCORPORATION, PLAN OF OPERATION, OR THIS SECTION, THEN THE SUPERINTENDENT SHALL PROVIDE NOTICE TO THE RESOLUTION FACILITY AND THE RESOLUTION FACILITY SHALL HAVE THIRTY DAYS TO RESPOND TO THE SUPERINTENDENT AND CURE THE DEFECT.

(2) IF, AFTER THIRTY DAYS, THE SUPERINTENDENT CONTINUES TO BELIEVE THAT THE RESOLUTION FACILITY IS NOT ADMINISTERING AND DISPOSING OF THE BUSINESS OF AN INSOLVENT DOMESTIC LIFE INSURANCE COMPANY CONSISTENT WITH THE RESOLUTION FACILITY'S CERTIFICATE OF INCORPORATION, PLAN OF OPERATION, OR THIS SECTION, THEN THE SUPERINTENDENT MAY APPLY TO THE COURT FOR AN ORDER DIRECTING THE RESOLUTION FACILITY TO CORRECT THE DEFECT OR TAKE OTHER APPROPRIATE ACTIONS.

S 9. Section 1108 of the insurance law is amended by adding a new subsection (n) to read as follows:

(N) A RESOLUTION FACILITY ESTABLISHED PURSUANT TO SECTION SEVEN THOUSAND SEVEN HUNDRED NINETEEN OF THIS CHAPTER.

S 10. Subsection (f) of section 7503 of the insurance law is amended to read as follows:

(f) The corporation shall have the power:

(1) [To] TO use a corporate seal, to contract, to sue and be sued and to possess and exercise all powers necessary or convenient for the purposes of this article[.];

(2) [With] WITH the approval of the superintendent, to assume, reinsure or guaranty, or cause to be assumed, reinsured or guaranteed, partially or wholly, any or all policies or contracts of any member company and to make available from the fund such sums as may be necessary for such purposes[.];

(3) [To] TO carry out the provisions of this article, the corporation shall have and may exercise all necessary rights, powers, privileges and franchises of a domestic life insurance company except that it shall not be authorized to issue contracts or policies unless they replace contracts or policies representing obligations in whole or in part of another domestic life insurance company or of the corporation[.];

(4) [To] TO borrow money for the purposes of the fund with or without security and pledge such assets in the fund as security for such loans and in connection therewith to rehypothecate any securities or collateral pledged to it by a company[. Obligations], PROVIDED, HOWEVER, THAT OBLIGATIONS of the corporation shall be legal investments for domestic life insurance companies and to the extent authorized by the superintendent may be carried as admitted assets[.];

(5) [To] TO collect, or enforce by legal proceedings, if necessary, the payment of, all assessments for which any contributor may be liable under this article; to collect any obligation due to the corporation or to the fund[.]; AND

(6) TO FUND A RESOLUTION FACILITY ESTABLISHED PURSUANT TO SECTION SEVEN THOUSAND SEVEN HUNDRED NINETEEN OF THIS CHAPTER.

S 11. This act shall take effect immediately.