

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:

1 Section 1. Section 7702 of the insurance law, as added by chapter 802
2 of the laws of 1985, is amended to read as follows:
3 S 7702. Purpose. The purpose of this article is to provide funds to
4 protect [resident policyowners] POLICY OWNERS, insureds, beneficiaries,
5 annuitants, payees and assignees of life insurance policies, health
6 insurance policies, annuity contracts, funding agreements and supple-
7 mental contracts issued by life insurance companies, subject to certain
8 limitations, against failure in the performance of contractual obli-
9 gations due to the impairment or insolvency of the insurer issuing such
10 policies [or], contracts, OR FUNDING AGREEMENTS. In the judgment of the
11 legislature, the foregoing objects and purposes not being capable of
12 accomplishment by a corporation created under general laws, the creation
13 of a not-for-profit corporation of insurers is provided for by this
14 article to enable the guarantee of payment of benefits and of continua-
15 tion of coverages, and members of the corporation are subject to assess-
16 ment to carry out the purposes of this article.
17 S 2. Section 7703 of the insurance law, as added by chapter 802 of the
18 laws of 1985, is amended to read as follows:
19 S 7703. Scope. (a) (1) This article shall apply to direct life insur-
20 ance policies, health insurance policies, annuity contracts, funding
21 agreements, and SUPPLEMENTAL contracts [supplemental to life and health
22 insurance policies, annuity contracts or funding agreements] issued [to
23 a resident] by a life insurance company licensed to transact life or
24 health insurance or annuities in this state at the time the policy,
25 contract, or FUNDING agreement was issued or [at the time it became] ON
26 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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1 RESPECT TO SUCH A COMPANY THAT IS an impaired or insolvent insurer, as
2 the case may be.

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

6 (A) AN OWNER OR CERTIFICATE HOLDER UNDER A POLICY, CONTRACT, OR FUND-
7 ING AGREEMENT AND IN EACH CASE WHO:

8 (I) IS A RESIDENT; OR

9 (II) IS NOT A RESIDENT, BUT ONLY UNDER ALL OF THE FOLLOWING CONDI-
10 TIONS:

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

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

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

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

21 (3) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION:

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

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

30 (I) "PLAN SPONSOR" SHALL MEAN:

31 (AA) THE EMPLOYER IN THE CASE OF A BENEFIT PLAN ESTABLISHED OR MAIN-
32 TAINED BY A SINGLE EMPLOYER;

33 (BB) THE EMPLOYEE ORGANIZATION IN THE CASE OF A BENEFIT PLAN ESTAB-
34 LISHED OR MAINTAINED BY AN EMPLOYEE ORGANIZATION, PROVIDED THAT "EMPLOY-
35 EE ORGANIZATION" SHALL MEAN ANY LABOR UNION OR ANY ORGANIZATION OF ANY
36 KIND, OR ANY AGENCY OR EMPLOYEE REPRESENTATION COMMITTEE, ASSOCIATION,
37 GROUP, OR PLAN, IN WHICH EMPLOYEES PARTICIPATE AND THAT EXISTS FOR THE
38 PURPOSE, IN WHOLE OR IN PART, OF DEALING WITH EMPLOYERS CONCERNING AN
39 EMPLOYEE BENEFIT PLAN, OR OTHER MATTERS INCIDENTAL TO EMPLOYMENT
40 RELATIONSHIPS, OR ANY EMPLOYEES' BENEFICIARY ASSOCIATION ORGANIZED FOR
41 THE PURPOSE IN WHOLE OR IN PART, OF ESTABLISHING SUCH A PLAN; OR

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

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

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

54 (BB) WITH REGARD TO A PLAN SPONSOR OF A BENEFIT PLAN DESCRIBED IN
55 SUBITEM (CC) OF CLAUSE (I) OF THIS ITEM, THE PRINCIPAL PLACE OF BUSI-
56 NESS, AS DETERMINED PURSUANT TO SUBITEM (AA) OF THIS CLAUSE, OF THE

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

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

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

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

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

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

14 (BB) THE OWNER OF THE STRUCTURED SETTLEMENT ANNUITY IS NOT A RESIDENT,
15 BUT THE INSURER THAT ISSUED THE STRUCTURED SETTLEMENT ANNUITY IS DOMI-
16 CILED IN THIS STATE AND THE STATE IN WHICH THE OWNER RESIDES HAS A GUAR-
17 ANTY ENTITY SIMILAR TO THE CORPORATION CREATED BY THIS ARTICLE; AND

18 (II) NEITHER THE PAYEE (OR BENEFICIARY) NOR THE OWNER OF THE STRUC-
19 TURED SETTLEMENT ANNUITY IS ELIGIBLE FOR COVERAGE BY A GUARANTY ENTITY
20 OF THE STATE IN WHICH THE PAYEE (OR BENEFICIARY) OR OWNER RESIDES.

21 (b) This article shall not apply to:

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

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

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

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

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

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

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

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

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

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

49 (d) "Covered policy" means any of the kinds of insurance specified in
50 paragraph one, two or three of subsection (a) of section one thousand
51 one hundred thirteen of this chapter, ANY SUPPLEMENTAL CONTRACT, or any
52 funding agreement referred to in section three thousand two hundred
53 twenty-two of this chapter, or any portion or part thereof, within the
54 scope of this article under section seven thousand seven hundred three
55 of this article, except that any certificate issued to an individual
56 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

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

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

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

25 (h) The corporation may:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44 (B) Such company's tentative cross-over year credit shall be eighty
45 per centum of the product of (i) and (ii), where (i) is the sum of
46 assessments paid by such company during the cross-over year, and (ii) is
47 a fraction, the numerator of which is the excess over one hundred
48 million dollars of the sum of net assessments paid by all companies
49 during such period and the denominator of which is the sum of net
50 assessments paid by such companies during the cross-over year. For
51 purposes of this paragraph, the cross-over year is the first year during
52 the period covered by such statement in which the net assessments paid
53 by all companies during such period exceeded one hundred million dollars
54 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[.];

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

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

7 S 11. This act shall take effect immediately.