



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

SB0682

Introduced 1/25/2017, by Sen. John G. Mulroe

SYNOPSIS AS INTRODUCED:

215 ILCS 5/193	from Ch. 73, par. 805
215 ILCS 5/531.03	from Ch. 73, par. 1065.80-3
215 ILCS 5/531.05	from Ch. 73, par. 1065.80-5
215 ILCS 5/531.07	from Ch. 73, par. 1065.80-7
215 ILCS 5/531.08	from Ch. 73, par. 1065.80-8
215 ILCS 5/531.09	from Ch. 73, par. 1065.80-9
215 ILCS 5/531.10	from Ch. 73, par. 1065.80-10
215 ILCS 5/531.14	from Ch. 73, par. 1065.80-14

Amends the Illinois Insurance Code. In the Article concerning the Illinois Life and Health Insurance Guaranty Association, makes changes to the organization of provisions concerning coverage and limitations and powers and duties of the Association. Makes changes in the provisions concerning definitions; the Board of Directors of the Association; assessments; and miscellaneous provisions. In a provision concerning duties of the Director of Insurance as liquidator, provides that upon the entry of an order directing liquidation of a company, the Director may, subject to a provision of the Insurance Code that allows the Association to exercise all the rights of the Director with respect to covered policies after the Association becomes obligated by statute or a provision of the Health Maintenance Organization Act, cede or reinsure all or so much as may be necessary of the in-force business to another company using assets of the liquidated company to pay therefor in preference to satisfying other obligations or creditors. Effective immediately.

LRB100 06022 SMS 16052 b

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Insurance Code is amended by
5 changing Sections 193, 531.03, 531.05, 531.07, 531.08, 531.09,
6 531.10, and 531.14 as follows:

7 (215 ILCS 5/193) (from Ch. 73, par. 805)

8 Sec. 193. Duties of Director as liquidator; sales;
9 reinsurance.

10 (1) Upon the entry of an order directing liquidation, the
11 Director shall immediately proceed to liquidate the property,
12 business, and affairs of the company. The Director is hereby
13 authorized to deal with the property, business, and affairs of
14 the company in his name as Director, or, if the court shall so
15 order, in the name of the company.

16 (2) The Director may, subject to the approval of the court,
17 sell or otherwise dispose of the real and personal property, or
18 any part thereof, and sell or compromise all debts or claims
19 owing to the company, except that whenever the value of any
20 real or personal property or the amount of any debt owing to
21 the company does not exceed \$25,000, the Director may sell,
22 dispose of, compromise, or compound the same upon such terms as
23 the Director deems to be in the best interest of the company

1 without obtaining approval of the court.

2 (3) The Director may bring any action, claim, suit, or
3 proceeding against any director or officer of the company or
4 against any other person with respect to that person's dealings
5 with the company including, but not limited to, prosecuting any
6 action, claim, suit, or proceeding on behalf of the creditors,
7 members, policyholders, or shareholders of the company.
8 Nothing in this subsection shall be construed to affect the
9 standing of the Illinois Insurance Guaranty Fund, the Illinois
10 Life and Health Insurance Guaranty Association, or the Illinois
11 Health Maintenance Organization Guaranty Association to sue or
12 be sued under applicable law.

13 (4) In order to preserve so far as possible the rights and
14 interests of the policyholders of the company whose contracts
15 were cancelled by the liquidation order and of such other
16 creditors as may be possible, the Director may solicit a
17 contract or contracts whereby a solvent company or companies
18 will agree to assume in whole, or in part, or upon a modified
19 basis, the liabilities owing to said former policyholders or
20 creditors. The Director may, subject to paragraph (h) of
21 subsection (11) of Section 531.08 ~~531.08(h)~~ of this Code or
22 Section 6-8 of the Health Maintenance Organization Act, cede or
23 reinsure all or so much as may be necessary of the in-force
24 business to another company using assets of the liquidated
25 company to pay therefor in preference to satisfying other
26 obligations or creditors. The Director may assign any rights or

1 interests of the company to receive reinsurance proceeds for
2 losses to the Illinois Life and Health Insurance Guaranty
3 Association, the Illinois Health Maintenance Organization
4 Guaranty Association or any similar organization in any other
5 state. If, after a full hearing upon a petition filed by the
6 Director, the court shall find that the Director endeavored to
7 obtain the best contract for the benefit of said parties in
8 interest, and if the said Director shall report to the court
9 that he is ready and willing to enter into a contract and
10 submit a copy thereof to the court, the court shall examine the
11 procedure and acts of the Director, and if the court shall find
12 that the best possible contract in the interests of said
13 parties has been obtained and that it is best for the interests
14 of said parties that said contract be entered into, the court
15 shall by written order approve the acts of the Director and
16 authorize him to execute said contract.

17 (5) In recognition of the rights of policyholders whose
18 "claims made" contracts were cancelled by the liquidation
19 order, he may, in his discretion, permit such policyholders to
20 purchase an extended discovery period which is subject to the
21 limitations in this Article. The policyholder shall pay to the
22 liquidator a premium which is appropriate for the rights
23 purchased as determined by the liquidator and approved by the
24 court. No extended discovery period purchased before or after
25 the entry of the liquidation order shall extend the time to
26 file claims as set by the court pursuant to Section 208 of this

1 Code. Claims accruing by virtue of such extended discovery
2 period shall be treated as any other claim under Article XXXIV
3 of this Code, and shall be subject to the limitations,
4 exclusions and conditions in the Illinois Insurance Guaranty
5 Fund Act and in the laws governing similar organizations in
6 other states.

7 (6) The Director is authorized to cancel policies, bonds,
8 and contracts of insurance subject to court approval.

9 (7) All persons, companies, and entities shall immediately
10 turn over to the Director all unearned premium that has been
11 collected by or on behalf of the company and all earned premium
12 owing the company unless otherwise directed in writing by the
13 Director or by court order. Within 30 days of the date of a
14 written request of the Director, those persons, companies, and
15 entities shall submit affidavits verifying amounts collected
16 by, on behalf of, or due and owing the company and further
17 shall provide copies of all premium fund trust account
18 information and such other applicable documentation as
19 requested by the Director. Nothing in this subsection shall be
20 construed to affect the rights of (i) the Illinois Life and
21 Health Insurance Guaranty Association to collect premium under
22 subsection (4) ~~item (6)~~ of Section 531.08 of this Code or (ii)
23 the Illinois Health Maintenance Organization Guaranty
24 Association to collect premium under item (11) of Section 6-8
25 of the Health Maintenance Organization Act.

26 (8) The amount recoverable by the Director from a reinsurer

1 shall not be reduced or diminished as a result of the entry of
2 an order of liquidation notwithstanding any provision in the
3 reinsurance contract or other such agreement. Payment made by a
4 reinsurer to or on behalf of an insured of the company shall
5 not diminish the reinsurer's obligation to the company except
6 when the reinsurance agreement lawfully provides for payment to
7 or on behalf of the company's insured by the reinsurer. All
8 reinsurance contracts to which the company is a party, which do
9 not contain the provisions required with respect to the
10 obligation of a reinsurer in the event of insolvency of the
11 reinsured to obtain credit for reinsurance or pursuant to other
12 applicable statutes, shall contain or be construed to contain
13 all of the following provisions:

14 (a) Upon the entry of an order of liquidation and
15 notwithstanding the Director's failure to pay all or a
16 portion of a claim, the reinsurance obligation shall be due
17 and owing to the Director on the basis of claims allowed in
18 the liquidation proceeding. The reinsurer shall submit the
19 amounts due and owing directly to the company as ceding
20 insurer or to the Director.

21 (b) The Director shall give written notice or arrange
22 for the giving of written notice to reinsurers or their
23 agents of the pendency of a claim against the company
24 indicating the policy or bond reinsured within a reasonable
25 time after the claim is filed. The reinsurer may interpose,
26 at its own expense, in the proceeding where the claim is to

1 be adjudicated, any defenses that it may deem available to
2 the company or the Director.

3 (Source: P.A. 88-297; 89-206, eff. 7-21-95.)

4 (215 ILCS 5/531.03) (from Ch. 73, par. 1065.80-3)

5 Sec. 531.03. Coverage and limitations.

6 (1) This Article shall provide coverage for the policies
7 and contracts specified in paragraph (2) of this Section:

8 (a) to persons who, regardless of where they reside
9 (except for non-resident certificate holders under group
10 policies or contracts), are the beneficiaries, assignees
11 or payees of the persons covered under subparagraph (1) (b),
12 and

13 (b) to persons who are owners of or certificate holders
14 under the policies or contracts (other than unallocated
15 annuity contracts and structured settlement annuities) and
16 in each case who:

17 (i) are residents; or

18 (ii) are not residents, but only under all of the
19 following conditions:

20 (A) the insurer that issued the policies or
21 contracts is domiciled in this State;

22 (B) the states in which the persons reside have
23 associations similar to the Association created by
24 this Article;

25 (C) the persons are not eligible for coverage

1 by an association in any other state due to the
2 fact that the insurer was not licensed in that
3 state at the time specified in that state's
4 guaranty association law.

5 (c) For unallocated annuity contracts specified in
6 subsection (2), paragraphs (a) and (b) of this subsection
7 (1) shall not apply and this Article shall (except as
8 provided in paragraphs (e) and (f) of this subsection)
9 provide coverage to:

10 (i) persons who are the owners of the unallocated
11 annuity contracts if the contracts are issued to or in
12 connection with a specific benefit plan whose plan
13 sponsor has its principal place of business in this
14 State; and

15 (ii) persons who are owners of unallocated annuity
16 contracts issued to or in connection with government
17 lotteries if the owners are residents.

18 (d) For structured settlement annuities specified in
19 subsection (2), paragraphs (a) and (b) of this subsection
20 (1) shall not apply and this Article shall (except as
21 provided in paragraphs (e) and (f) of this subsection)
22 provide coverage to a person who is a payee under a
23 structured settlement annuity (or beneficiary of a payee if
24 the payee is deceased), if the payee:

25 (i) is a resident, regardless of where the contract
26 owner resides; or

1 (ii) is not a resident, but only under both of the
2 following conditions:

3 (A) with regard to residency:

4 (I) the contract owner of the structured
5 settlement annuity is a resident; or

6 (II) the contract owner of the structured
7 settlement annuity is not a resident but the
8 insurer that issued the structured settlement
9 annuity is domiciled in this State and the
10 state in which the contract owner resides has
11 an association similar to the Association
12 created by this Article; and

13 (B) neither the payee or beneficiary nor the
14 contract owner is eligible for coverage by the
15 association of the state in which the payee or
16 contract owner resides.

17 (e) This Article shall not provide coverage to:

18 (i) a person who is a payee or beneficiary of a
19 contract owner resident of this State if the payee or
20 beneficiary is afforded any coverage by the
21 association of another state; or

22 (ii) a person covered under paragraph (c) of this
23 subsection (1), if any coverage is provided by the
24 association of another state to that person.

25 (f) This Article is intended to provide coverage to a
26 person who is a resident of this State and, in special

1 circumstances, to a nonresident. In order to avoid
2 duplicate coverage, if a person who would otherwise receive
3 coverage under this Article is provided coverage under the
4 laws of any other state, then the person shall not be
5 provided coverage under this Article. In determining the
6 application of the provisions of this paragraph in
7 situations where a person could be covered by the
8 association of more than one state, whether as an owner,
9 payee, beneficiary, or assignee, this Article shall be
10 construed in conjunction with other state laws to result in
11 coverage by only one association.

12 (2) (a) This Article shall provide coverage to the persons
13 specified in paragraph (1) of this Section for direct, (i)
14 nongroup life, health, annuity and supplemental policies, or
15 contracts, (ii) for certificates under direct group policies or
16 contracts, (iii) for unallocated annuity contracts and (iv) for
17 contracts to furnish health care services and subscription
18 certificates for medical or health care services issued by
19 persons licensed to transact insurance business in this State
20 under the Illinois Insurance Code. Annuity contracts and
21 certificates under group annuity contracts include but are not
22 limited to guaranteed investment contracts, deposit
23 administration contracts, unallocated funding agreements,
24 allocated funding agreements, structured settlement
25 agreements, lottery contracts and any immediate or deferred
26 annuity contracts.

1 (b) This Article shall not provide coverage for:

2 (i) that portion of a policy or contract not guaranteed
3 by the insurer, or under which the risk is borne by the
4 policy or contract owner;

5 (ii) any such policy or contract or part thereof
6 assumed by the impaired or insolvent insurer under a
7 contract of reinsurance, other than reinsurance for which
8 assumption certificates have been issued;

9 (iii) any portion of a policy or contract to the extent
10 that the rate of interest on which it is based or the
11 interest rate, crediting rate, or similar factor is
12 determined by use of an index or other external reference
13 stated in the policy or contract employed in calculating
14 returns or changes in value:

15 (A) averaged over the period of 4 years prior to
16 the date on which the member insurer becomes an
17 impaired or insolvent insurer under this Article,
18 whichever is earlier, exceeds the rate of interest
19 determined by subtracting 2 percentage points from
20 Moody's Corporate Bond Yield Average averaged for that
21 same 4-year period or for such lesser period if the
22 policy or contract was issued less than 4 years before
23 the member insurer becomes an impaired or insolvent
24 insurer under this Article, whichever is earlier; and

25 (B) on and after the date on which the member
26 insurer becomes an impaired or insolvent insurer under

1 this Article, whichever is earlier, exceeds the rate of
2 interest determined by subtracting 3 percentage points
3 from Moody's Corporate Bond Yield Average as most
4 recently available;

5 (iv) any unallocated annuity contract issued to or in
6 connection with a benefit plan protected under the federal
7 Pension Benefit Guaranty Corporation, regardless of
8 whether the federal Pension Benefit Guaranty Corporation
9 has yet become liable to make any payments with respect to
10 the benefit plan;

11 (v) any portion of any unallocated annuity contract
12 which is not issued to or in connection with a specific
13 employee, union or association of natural persons benefit
14 plan or a government lottery;

15 (vi) an obligation that does not arise under the
16 express written terms of the policy or contract issued by
17 the insurer to the contract owner or policy owner,
18 including without limitation:

19 (A) a claim based on marketing materials;

20 (B) a claim based on side letters, riders, or other
21 documents that were issued by the insurer without
22 meeting applicable policy form filing or approval
23 requirements;

24 (C) a misrepresentation of or regarding policy
25 benefits;

26 (D) an extra-contractual claim; or

1 (E) a claim for penalties or consequential or
2 incidental damages;

3 (vii) any stop-loss insurance, as defined in clause (b)
4 of Class 1 or clause (a) of Class 2 of Section 4, and
5 further defined in subsection (d) of Section 352;

6 (viii) any policy or contract providing any hospital,
7 medical, prescription drug, or other health care benefits
8 pursuant to Part C or Part D of Subchapter XVIII, Chapter 7
9 of Title 42 of the United States Code (commonly known as
10 Medicare Part C & D) or any regulations issued pursuant
11 thereto;

12 (ix) any portion of a policy or contract to the extent
13 that the assessments required by Section 531.09 of this
14 Code with respect to the policy or contract are preempted
15 or otherwise not permitted by federal or State law;

16 (x) any portion of a policy or contract issued to a
17 plan or program of an employer, association, or other
18 person to provide life, health, or annuity benefits to its
19 employees, members, or others to the extent that the plan
20 or program is self-funded or uninsured, including, but not
21 limited to, benefits payable by an employer, association,
22 or other person under:

23 (A) a multiple employer welfare arrangement as
24 defined in 29 U.S.C. Section 1002 ~~29 U.S.C. Section~~
25 ~~1144~~;

26 (B) a minimum premium group insurance plan;

- 1 (C) a stop-loss group insurance plan; or
- 2 (D) an administrative services only contract;
- 3 (xi) any portion of a policy or contract to the extent
- 4 that it provides for:
- 5 (A) dividends or experience rating credits;
- 6 (B) voting rights; or
- 7 (C) payment of any fees or allowances to any
- 8 person, including the policy or contract owner, in
- 9 connection with the service to or administration of the
- 10 policy or contract;
- 11 (xii) any policy or contract issued in this State by a
- 12 member insurer at a time when it was not licensed or did
- 13 not have a certificate of authority to issue the policy or
- 14 contract in this State;
- 15 (xiii) any contractual agreement that establishes the
- 16 member insurer's obligations to provide a book value
- 17 accounting guaranty for defined contribution benefit plan
- 18 participants by reference to a portfolio of assets that is
- 19 owned by the benefit plan or its trustee, which in each
- 20 case is not an affiliate of the member insurer;
- 21 (xiv) any portion of a policy or contract to the extent
- 22 that it provides for interest or other changes in value to
- 23 be determined by the use of an index or other external
- 24 reference stated in the policy or contract, but which have
- 25 not been credited to the policy or contract, or as to which
- 26 the policy or contract owner's rights are subject to

1 forfeiture, as of the date the member insurer becomes an
2 impaired or insolvent insurer under this Code, whichever is
3 earlier. If a policy's or contract's interest or changes in
4 value are credited less frequently than annually, then for
5 purposes of determining the values that have been credited
6 and are not subject to forfeiture under this Section, the
7 interest or change in value determined by using the
8 procedures defined in the policy or contract will be
9 credited as if the contractual date of crediting interest
10 or changing values was the date of impairment or
11 insolvency, whichever is earlier, and will not be subject
12 to forfeiture; or

13 (xv) that portion or part of a variable life insurance
14 or variable annuity contract not guaranteed by an insurer.

15 (3) The benefits for which the Association may become
16 liable shall in no event exceed the lesser of:

17 (a) the contractual obligations for which the insurer
18 is liable or would have been liable if it were not an
19 impaired or insolvent insurer, or

20 (b) (i) with respect to any one life, regardless of the
21 number of policies or contracts:

22 (A) \$300,000 in life insurance death benefits, but
23 not more than \$100,000 in net cash surrender and net
24 cash withdrawal values for life insurance;

25 (B) in health insurance benefits:

26 (I) \$100,000 for coverages not defined as

1 disability insurance or basic hospital, medical,
2 and surgical insurance or major medical insurance
3 or long-term care insurance, including any net
4 cash surrender and net cash withdrawal values;

5 (II) \$300,000 for disability insurance and
6 \$300,000 for long-term care insurance ~~as defined~~
7 ~~in Section 351A-1 of this Code;~~ and

8 (III) \$500,000 for basic hospital medical and
9 surgical insurance or major medical insurance;

10 (C) \$250,000 in the present value of annuity
11 benefits, including net cash surrender and net cash
12 withdrawal values;

13 (ii) with respect to each individual participating in a
14 governmental retirement benefit plan established under
15 Sections 401, 403(b), or 457 of the U.S. Internal Revenue
16 Code covered by an unallocated annuity contract or the
17 beneficiaries of each such individual if deceased, in the
18 aggregate, \$250,000 in present value annuity benefits,
19 including net cash surrender and net cash withdrawal
20 values;

21 (iii) with respect to each payee of a structured
22 settlement annuity or beneficiary or beneficiaries of the
23 payee if deceased, \$250,000 in present value annuity
24 benefits, in the aggregate, including net cash surrender
25 and net cash withdrawal values, if any; or

26 (iv) with respect to either (1) one contract owner

1 provided coverage under subparagraph (ii) of paragraph (c)
2 of subsection (1) of this Section or (2) one plan sponsor
3 whose plans own directly or in trust one or more
4 unallocated annuity contracts not included in subparagraph
5 (ii) of paragraph (b) of this subsection, \$5,000,000 in
6 benefits, irrespective of the number of contracts with
7 respect to the contract owner or plan sponsor. However, in
8 the case where one or more unallocated annuity contracts
9 are covered contracts under this Article and are owned by a
10 trust or other entity for the benefit of 2 or more plan
11 sponsors, coverage shall be afforded by the Association if
12 the largest interest in the trust or entity owning the
13 contract or contracts is held by a plan sponsor whose
14 principal place of business is in this State. In no event
15 shall the Association be obligated to cover more than
16 \$5,000,000 in benefits with respect to all these
17 unallocated contracts.

18 (3.1) Notwithstanding the provisions of subsection (3), in
19 ~~In~~ no event shall the Association be obligated to cover more
20 than (1) an aggregate of \$300,000 in benefits with respect to
21 any one life under subparagraphs (i), (ii), and (iii) of ~~this~~
22 paragraph (b) of subsection (3) except with respect to benefits
23 for basic hospital, medical, and surgical insurance and major
24 medical insurance under item (B) of subparagraph (i) of ~~this~~
25 paragraph (b) of subsection (3), in which case the aggregate
26 liability of the Association shall not exceed \$500,000 with

1 respect to any one individual or (2) with respect to one owner
2 of multiple nongroup policies of life insurance, whether the
3 policy owner is an individual, firm, corporation, or other
4 person and whether the persons insured are officers, managers,
5 employees, or other persons, \$5,000,000 in benefits,
6 regardless of the number of policies and contracts held by the
7 owner.

8 (3.2) The limitations set forth in subsections (3) and
9 (3.1) ~~this subsection~~ are limitations on the benefits for which
10 the Association is obligated before taking into account either
11 its subrogation and assignment rights or the extent to which
12 those benefits could be provided out of the assets of the
13 impaired or insolvent insurer attributable to covered
14 policies. The costs of the Association's obligations under this
15 Article may be met by the use of assets attributable to covered
16 policies or reimbursed to the Association pursuant to its
17 subrogation and assignment rights.

18 (4) In performing its obligations to provide coverage under
19 Section 531.08 of this Code, the Association shall not be
20 required to guarantee, assume, reinsure, or perform or cause to
21 be guaranteed, assumed, reinsured, or performed the
22 contractual obligations of the insolvent or impaired insurer
23 under a covered policy or contract that do not materially
24 affect the economic values or economic benefits of the covered
25 policy or contract.

26 (Source: P.A. 96-1450, eff. 8-20-10.)

1 (215 ILCS 5/531.05) (from Ch. 73, par. 1065.80-5)

2 Sec. 531.05. Definitions. As used in this Act:

3 "Account" means either of the 2 ~~3~~ accounts created under
4 Section 531.06.

5 "Association" means the Illinois Life and Health Insurance
6 Guaranty Association created under Section 531.06.

7 "Authorized assessment" or the term "authorized" when used
8 in the context of assessments means a resolution by the Board
9 of Directors has been passed whereby an assessment shall be
10 called immediately or in the future from member insurers for a
11 specified amount. An assessment is authorized when the
12 resolution is passed.

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

15 "Called assessment" or the term "called" when used in the
16 context of assessments means that a notice has been issued by
17 the Association to member insurers requiring that an authorized
18 assessment be paid within the time frame set forth within the
19 notice. An authorized assessment becomes a called assessment
20 when notice is mailed by the Association to member insurers.

21 "Director" means the Director of Insurance of this State.

22 "Contractual obligation" means any obligation under a
23 policy or contract or certificate under a group policy or
24 contract, or portion thereof for which coverage is provided
25 under Section 531.03.

1 "Covered person" means any person who is entitled to the
2 protection of the Association as described in Section 531.02.

3 "Covered policy" means any policy or contract within the
4 scope of this Article under Section 531.03.

5 "Extra-contractual claims" shall include, for example,
6 claims relating to bad faith in the payment of claims, punitive
7 or exemplary damages, or attorneys' fees and costs.

8 "Impaired insurer" means (A) a member insurer which, after
9 the effective date of this amendatory Act of the 96th General
10 Assembly, is not an insolvent insurer, and is placed under an
11 order of rehabilitation or conservation by a court of competent
12 jurisdiction or (B) a member insurer deemed by the Director
13 after the effective date of this amendatory Act of the 96th
14 General Assembly to be potentially unable to fulfill its
15 contractual obligations and not an insolvent insurer.

16 "Insolvent insurer" means a member insurer that, after the
17 effective date of this amendatory Act of the 96th General
18 Assembly, is placed under a final order of liquidation by a
19 court of competent jurisdiction with a finding of insolvency.

20 "Member insurer" means an insurer licensed or holding a
21 certificate of authority to transact in this State any kind of
22 insurance for which coverage is provided under Section 531.03
23 of this Code and includes an insurer whose license or
24 certificate of authority in this State may have been suspended,
25 revoked, not renewed, or voluntarily withdrawn or whose
26 certificate of authority may have been suspended pursuant to

1 Section 119 of this Code, but does not include:

2 (1) a hospital or medical service organization,
3 whether profit or nonprofit;

4 (2) a health maintenance organization;

5 (3) any burial society organized under Article XIX of
6 this Code, any fraternal benefit society organized under
7 Article XVII of this Code, any mutual benefit association
8 organized under Article XVIII of this Code, and any foreign
9 fraternal benefit society licensed under Article VI of this
10 Code ~~or a fraternal benefit society;~~

11 (4) a mandatory State pooling plan;

12 (5) a mutual assessment company or other person that
13 operates on an assessment basis;

14 (6) an insurance exchange;

15 (7) an organization that is permitted to issue
16 charitable gift annuities pursuant to Section 121-2.10 of
17 this Code;

18 (8) any health services plan corporation established
19 pursuant to the Voluntary Health Services Plans Act;

20 (9) any dental service plan corporation established
21 pursuant to the Dental Service Plan Act; or

22 (10) an entity similar to any of the above.

23 "Moody's Corporate Bond Yield Average" means the Monthly
24 Average Corporates as published by Moody's Investors Service,
25 Inc., or any successor thereto.

26 "Owner" of a policy or contract and "policy owner" and

1 "contract owner" mean the person who is identified as the legal
2 owner under the terms of the policy or contract or who is
3 otherwise vested with legal title to the policy or contract
4 through a valid assignment completed in accordance with the
5 terms of the policy or contract and properly recorded as the
6 owner on the books of the insurer. The terms owner, contract
7 owner, and policy owner do not include persons with a mere
8 beneficial interest in a policy or contract.

9 "Person" means an individual, corporation, limited
10 liability company, partnership, association, governmental body
11 or entity, or voluntary organization.

12 "Plan sponsor" means:

13 (1) the employer in the case of a benefit plan
14 established or maintained by a single employer;

15 (2) the employee organization in the case of a benefit
16 plan established or maintained by an employee
17 organization; or

18 (3) in a case of a benefit plan established or
19 maintained by 2 or more employers or jointly by one or more
20 employers and one or more employee organizations, the
21 association, committee, joint board of trustees, or other
22 similar group of representatives of the parties who
23 establish or maintain the benefit plan.

24 "Premiums" mean amounts or considerations, by whatever
25 name called, received on covered policies or contracts less
26 returned premiums, considerations, and deposits and less

1 dividends and experience credits.

2 "Premiums" does not include:

3 (A) amounts or considerations received for policies or
4 contracts or for the portions of policies or contracts for
5 which coverage is not provided under Section 531.03 of this
6 Code except that assessable premium shall not be reduced on
7 account of the provisions of subparagraph (iii) of
8 paragraph (b) of subsection (2) ~~(a)~~ of Section 531.03 of
9 this Code relating to interest limitations and the
10 provisions of paragraph (b) of subsection (3), subsection
11 (3.1), or subsection (3.2) of Section 531.03 relating to
12 limitations with respect to one individual, one
13 participant, and one contract owner;

14 (B) premiums in excess of \$5,000,000 on an unallocated
15 annuity contract not issued under a governmental
16 retirement benefit plan (or its trustee) established under
17 Section 401, 403(b) or 457 of the United States Internal
18 Revenue Code; or

19 (C) with respect to multiple nongroup policies of life
20 insurance owned by one owner, whether the policy owner is
21 an individual, firm, corporation, or other person, and
22 whether the persons insured are officers, managers,
23 employees, or other persons, premiums in excess of
24 \$5,000,000 with respect to these policies or contracts,
25 regardless of the number of policies or contracts held by
26 the owner.

1 "Principal place of business" of a plan sponsor or a person
2 other than a natural person means the single state in which the
3 natural persons who establish policy for the direction,
4 control, and coordination of the operations of the entity as a
5 whole primarily exercise that function, determined by the
6 Association in its reasonable judgment by considering the
7 following factors:

8 (A) the state in which the primary executive and
9 administrative headquarters of the entity is located;

10 (B) the state in which the principal office of the
11 chief executive officer of the entity is located;

12 (C) the state in which the board of directors (or
13 similar governing person or persons) of the entity conducts
14 the majority of its meetings;

15 (D) the state in which the executive or management
16 committee of the board of directors (or similar governing
17 person or persons) of the entity conducts the majority of
18 its meetings;

19 (E) the state from which the management of the overall
20 operations of the entity is directed; and

21 (F) in the case of a benefit plan sponsored by
22 affiliated companies comprising a consolidated
23 corporation, the state in which the holding company or
24 controlling affiliate has its principal place of business
25 as determined using the above factors.

26 However, in the case of a plan sponsor, if more than 50% of

1 the participants in the benefit plan are employed in a single
2 state, that state shall be deemed to be the principal place of
3 business of the plan sponsor.

4 The principal place of business of a plan sponsor of a
5 benefit plan described in paragraph (3) of the definition of
6 "plan sponsor" ~~this Section~~ shall be deemed to be the principal
7 place of business of the association, committee, joint board of
8 trustees, or other similar group of representatives of the
9 parties who establish or maintain the benefit plan that, in
10 lieu of a specific or clear designation of a principal place of
11 business, shall be deemed to be the principal place of business
12 of the employer or employee organization that has the largest
13 investment in the benefit plan in question.

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

17 "Resident" means a person to whom a contractual obligation
18 is owed and who resides in this State on the date of entry of a
19 court order that determines a member insurer to be an impaired
20 insurer or a court order that determines a member insurer to be
21 an insolvent insurer. A person may be a resident of only one
22 state, which in the case of a person other than a natural
23 person shall be its principal place of business. Citizens of
24 the United States that are either (i) residents of foreign
25 countries or (ii) residents of United States possessions,
26 territories, or protectorates that do not have an association

1 similar to the Association created by this Article, shall be
2 deemed residents of the state of domicile of the insurer that
3 issued the policies or contracts.

4 "Structured settlement annuity" means an annuity purchased
5 in order to fund periodic payments for a plaintiff or other
6 claimant in payment for or with respect to personal injury
7 suffered by the plaintiff or other claimant.

8 "State" means a state, the District of Columbia, Puerto
9 Rico, and a United States possession, territory, or
10 protectorate.

11 "Supplemental contract" means a written agreement entered
12 into for the distribution of proceeds under a life, health, or
13 annuity policy or a life, health, or annuity contract.

14 "Unallocated annuity contract" means any annuity contract
15 or group annuity certificate which is not issued to and owned
16 by an individual, except to the extent of any annuity benefits
17 guaranteed to an individual by an insurer under such contract
18 or certificate.

19 (Source: P.A. 96-1450, eff. 8-20-10.)

20 (215 ILCS 5/531.07) (from Ch. 73, par. 1065.80-7)

21 Sec. 531.07. Board of Directors.→ The board of directors
22 of the Association consists of not less than 7 nor more than 11
23 members serving terms as established in the plan of operation.
24 The insurer members ~~insurers~~ of the board are to be selected by
25 member insurers subject to the approval of the Director. In

1 addition, 2 persons who must be public representatives may be
2 appointed by the Director to the board of directors. A public
3 representative may not be an officer, director, or employee of
4 an insurance company or any person engaged in the business of
5 insurance. Vacancies on the board must be filled for the
6 remaining period of the term in the manner described in the
7 plan of operation.

8 In approving selections or in appointing members to the
9 board, the Director must consider, whether all member insurers
10 are fairly represented.

11 Members of the board may be reimbursed from the assets of
12 the Association for expenses incurred by them as members of the
13 board of directors but members of the board may not otherwise
14 be compensated by the Association for their services.

15 (Source: P.A. 96-1450, eff. 8-20-10.)

16 (215 ILCS 5/531.08) (from Ch. 73, par. 1065.80-8)

17 Sec. 531.08. Powers and duties of the Association.

18 ~~(a)~~ In addition to the powers and duties enumerated in
19 other Sections of this Article:

20 (1) If a member insurer is an impaired insurer, then
21 the Association may, in its discretion and subject to any
22 conditions imposed by the Association that do not impair
23 the contractual obligations of the impaired insurer and
24 that are approved by the Director:

25 (a) ~~(A)~~ guarantee, assume, or reinsure or cause to

1 be guaranteed, assumed, or reinsured, any or all of the
2 policies or contracts of the impaired insurer; or

3 (b) ~~(B)~~ provide such money, pledges, loans, notes,
4 guarantees, or other means as are proper to effectuate
5 paragraph (a) ~~(A)~~ and assure payment of the contractual
6 obligations of the impaired insurer pending action
7 under paragraph (a) ~~(A)~~.

8 (2) If a member insurer is an insolvent insurer, then
9 the Association shall, in its discretion, either:

10 (a) ~~(A)~~ guaranty, assume, or reinsure or cause to
11 be guaranteed, assumed, or reinsured the policies or
12 contracts of the insolvent insurer or assure payment of
13 the contractual obligations of the insolvent insurer
14 and provide money, pledges, loans, notes, guarantees,
15 or other means reasonably necessary to discharge the
16 Association's duties; or

17 (b) ~~(B)~~ provide benefits and coverages in
18 accordance with the following provisions:

19 (i) with respect to life and health insurance
20 policies and annuities, ensure payment of benefits
21 for premiums identical to the premiums and
22 benefits (except for terms of conversion and
23 renewability) that would have been payable under
24 the policies or contracts of the insolvent insurer
25 for claims incurred:

26 (A) ~~(a)~~ with respect to group policies and

1 contracts, not later than the earlier of the
2 next renewal date under those policies or
3 contracts or 45 days, but in no event less than
4 30 days, after the date on which the
5 Association becomes obligated with respect to
6 the policies and contracts;

7 (B) ~~(b)~~ with respect to nongroup policies,
8 contracts, and annuities not later than the
9 earlier of the next renewal date (if any) under
10 the policies or contracts or one year, but in
11 no event less than 30 days, from the date on
12 which the Association becomes obligated with
13 respect to the policies or contracts;

14 (ii) make diligent efforts to provide all
15 known insureds or annuitants (for nongroup
16 policies and contracts), or group policy owners
17 with respect to group policies and contracts, 30
18 days notice of the termination (pursuant to
19 subparagraph (i) of this paragraph (b) ~~(B)~~) of the
20 benefits provided;

21 (iii) with respect to nongroup life and health
22 insurance policies and annuities covered by the
23 Association, make available to each known insured
24 or annuitant, or owner if other than the insured or
25 annuitant, and with respect to an individual
26 formerly insured or formerly an annuitant under a

1 group policy who is not eligible for replacement
2 group coverage, make available substitute coverage
3 on an individual basis in accordance with the
4 provisions of subparagraph (iv) ~~paragraph (3)~~, if
5 the insureds or annuitants had a right under law or
6 the terminated policy or annuity to convert
7 coverage to individual coverage or to continue an
8 individual policy or annuity in force until a
9 specified age or for a specified time, during which
10 the insurer had no right unilaterally to make
11 changes in any provision of the policy or annuity
12 or had a right only to make changes in premium by
13 class.

14 (iv) ~~(b)~~ In providing the substitute coverage
15 required under subparagraph (iii) of this
16 subsection (2), ~~of paragraph (B) of item (2) of~~
17 ~~subsection (a) of this Section~~, the Association
18 may offer either to reissue the terminated
19 coverage or to issue an alternative policy.

20 Alternative or reissued policies shall be
21 offered without requiring evidence of
22 insurability, and shall not provide for any
23 waiting period or exclusion that would not have
24 applied under the terminated policy.

25 The Association may reinsure any alternative
26 or reissued policy.

1 Alternative policies adopted by the
2 Association shall be subject to the approval of the
3 Director. The Association may adopt alternative
4 policies of various types for future insurance
5 without regard to any particular impairment or
6 insolvency.

7 (v) Alternative policies shall contain at
8 least the minimum statutory provisions required in
9 this State and provide benefits that shall not be
10 unreasonable in relation to the premium charged.
11 The Association shall set the premium in
12 accordance with a table of rates which it shall
13 adopt. The premium shall reflect the amount of
14 insurance to be provided and the age and class of
15 risk of each insured, but shall not reflect any
16 changes in the health of the insured after the
17 original policy was last underwritten.

18 Any alternative policy issued by the
19 Association shall provide coverage of a type
20 similar to that of the policy issued by the
21 impaired or insolvent insurer, as determined by
22 the Association.

23 (vi) ~~(e)~~ If the Association elects to reissue
24 terminated coverage at a premium rate different
25 from that charged under the terminated policy, the
26 premium shall be set by the Association in

1 accordance with the amount of insurance provided
2 and the age and class of risk, subject to approval
3 of the Director or by a court of competent
4 jurisdiction.

5 (vii) ~~(d)~~ The Association's obligations with
6 respect to coverage under any policy of the
7 impaired or insolvent insurer or under any
8 reissued or alternative policy shall cease on the
9 date such coverage or policy is replaced by another
10 similar policy by the policyholder, the insured,
11 or the Association.

12 (viii) ~~(e)~~ When proceeding under this Section
13 with respect to any policy or contract carrying
14 guaranteed minimum interest rates, the Association
15 shall assure the payment or crediting of a rate of
16 interest consistent with subparagraph
17 (2) (b) (iii) ~~(B)~~ of Section 531.03.

18 (3) ~~(f)~~ Nonpayment of premiums thirty-one days after
19 the date required under the terms of any guaranteed,
20 assumed, alternative or reissued policy or contract or
21 substitute coverage shall terminate the Association's
22 obligations under such policy or coverage under this Act
23 with respect to such policy or coverage, except with
24 respect to any claims incurred or any net cash surrender
25 value which may be due in accordance with the provisions of
26 this Act.

1 (4) ~~(g)~~ Premiums due for coverage after entry of an
2 order of liquidation of an insolvent insurer shall belong
3 to and be payable at the direction of the Association, and
4 the Association shall be liable for unearned premiums due
5 to policy or contract owners arising after the entry of
6 such order.

7 (5) ~~(h)~~ In carrying out its duties under subsection
8 ~~paragraph~~ (2) ~~of subsection (a)~~ of this Section, the
9 Association may:

10 (a) ~~(1)~~ subject to approval by a court ~~in this~~
11 ~~State~~, impose permanent policy or contract liens in
12 connection with a guarantee, assumption, or
13 reinsurance agreement if the Association finds that
14 the amounts which can be assessed under this Article
15 are less than the amounts needed to assure full and
16 prompt performance of the Association's duties under
17 this Article or that the economic or financial
18 conditions as they affect member insurers are
19 sufficiently adverse to render the imposition of such
20 permanent policy or contract liens to be in the public
21 interest; or

22 (b) ~~(2)~~ subject to approval by a court ~~in this~~
23 ~~State~~, impose temporary moratoriums or liens on
24 payments of cash values and policy loans or any other
25 right to withdraw funds held in conjunction with
26 policies or contracts in addition to any contractual

1 provisions for deferral of cash or policy loan value.
2 In addition, in the event of a temporary moratorium or
3 moratorium charge imposed by the receivership court on
4 payment of cash values or policy loans or on any other
5 right to withdraw funds held in conjunction with
6 policies or contracts, out of the assets of the
7 impaired or insolvent insurer, the Association may
8 defer the payment of cash values, policy loans, or
9 other rights by the Association for the period of the
10 moratorium or moratorium charge imposed by the
11 receivership court, except for claims covered by the
12 Association to be paid in accordance with a hardship
13 procedure established by the liquidator or
14 rehabilitator and approved by the receivership court.

15 (6) ~~(i)~~ There shall be no liability on the part of and
16 no cause of action shall arise against the Association or
17 against any transferee from the Association in connection
18 with the transfer by reinsurance or otherwise of all or any
19 part of an impaired or insolvent insurer's business by
20 reason of any action taken or any failure to take any
21 action by the impaired or insolvent insurer at any time.

22 (7) ~~(j)~~ If the Association fails to act within a
23 reasonable period of time as provided in subsection (2) of
24 this Section with respect to an insolvent insurer, the
25 Director shall have the powers and duties of the
26 Association under this Act with regard to such insolvent

1 insurers.

2 (8) ~~(*)~~ The Association or its designated
3 representatives may render assistance and advice to the
4 Director, upon his request, concerning rehabilitation,
5 payment of claims, continuations of coverage, or the
6 performance of other contractual obligations of any
7 impaired or insolvent insurer.

8 (9) ~~(1)~~ The Association shall have standing to appear
9 or intervene before a court or agency in this State with
10 jurisdiction over an impaired or insolvent insurer
11 concerning which the Association is or may become obligated
12 under this Article or with jurisdiction over any person or
13 property against which the Association may have rights
14 through subrogation or otherwise. Standing shall extend to
15 all matters germane to the powers and duties of the
16 Association, including, but not limited to, proposals for
17 reinsuring, modifying, or guaranteeing the policies or
18 contracts of the impaired or insolvent insurer and the
19 determination of the policies or contracts and contractual
20 obligations. The Association shall also have the right to
21 appear or intervene before a court or agency in another
22 state with jurisdiction over an impaired or insolvent
23 insurer for which the Association is or may become
24 obligated or with jurisdiction over any person or property
25 against whom the Association may have rights through
26 subrogation or otherwise.

1 (10) (a) ~~(m) (1)~~ A person receiving benefits under this
2 Article shall be deemed to have assigned the rights under
3 and any causes of action against any person for losses
4 arising under, resulting from, or otherwise relating to the
5 covered policy or contract to the Association to the extent
6 of the benefits received because of this Article, whether
7 the benefits are payments of or on account of contractual
8 obligations, continuation of coverage, or provision of
9 substitute or alternative coverages. The Association may
10 require an assignment to it of such rights and cause of
11 action by any payee, policy, or contract owner,
12 beneficiary, insured, or annuitant as a condition
13 precedent to the receipt of any right or benefits conferred
14 by this Article upon the person.

15 (b) ~~(2)~~ The subrogation rights of the Association
16 under this subsection have the same priority against the
17 assets of the impaired or insolvent insurer as that
18 possessed by the person entitled to receive benefits under
19 this Article.

20 (c) ~~(3)~~ In addition to paragraphs (a) ~~(1)~~ and (b) ~~(2)~~,
21 the Association shall have all common law rights of
22 subrogation and any other equitable or legal remedy that
23 would have been available to the impaired or insolvent
24 insurer or owner, beneficiary, or payee of a policy or
25 contract with respect to the policy or contracts, including
26 without limitation, in the case of a structured settlement

1 annuity, any rights of the owner, beneficiary, or payee of
2 the annuity to the extent of benefits received pursuant to
3 this Article, against a person originally or by succession
4 responsible for the losses arising from the personal injury
5 relating to the annuity or payment therefor, excepting any
6 such person responsible solely by reason of serving as an
7 assignee in respect of a qualified assignment under
8 Internal Revenue Code Section 130.

9 (d) ~~(4)~~ If the preceding provisions of this subsection
10 (10) ~~(1)~~ are invalid or ineffective with respect to any
11 person or claim for any reason, then the amount payable by
12 the Association with respect to the related covered
13 obligations shall be reduced by the amount realized by any
14 other person with respect to the person or claim that is
15 attributable to the policies, or portion thereof, covered
16 by the Association.

17 (e) ~~(5)~~ If the Association has provided benefits with
18 respect to a covered obligation and a person recovers
19 amounts as to which the Association has rights as described
20 in the preceding paragraphs of this subsection (10), then
21 the person shall pay to the Association the portion of the
22 recovery attributable to the policies, or portion thereof,
23 covered by the Association.

24 (11) ~~(n)~~ The Association may:

25 (a) ~~(1)~~ Enter into such contracts as are necessary
26 or proper to carry out the provisions and purposes of

1 this Article.

2 (b) ~~(2)~~ Sue or be sued, including taking any legal
3 actions necessary or proper for recovery of any unpaid
4 assessments under Section 531.09. The Association
5 shall not be liable for punitive or exemplary damages.

6 (c) ~~(3)~~ Borrow money to effect the purposes of
7 this Article. Any notes or other evidence of
8 indebtedness of the Association not in default are
9 legal investments for domestic insurers and may be
10 carried as admitted assets.

11 (d) ~~(4)~~ Employ or retain such persons as are
12 necessary to handle the financial transactions of the
13 Association, and to perform such other functions as
14 become necessary or proper under this Article.

15 (e) ~~(5)~~ Negotiate and contract with any
16 liquidator, rehabilitator, conservator, or ancillary
17 receiver to carry out the powers and duties of the
18 Association.

19 (f) ~~(6)~~ Take such legal action as may be necessary
20 to avoid payment of improper claims.

21 (g) ~~(7)~~ Exercise, for the purposes of this Article
22 and to the extent approved by the Director, the powers
23 of a domestic life or health insurer, but in no case
24 may the Association issue insurance policies or
25 annuity contracts other than those issued to perform
26 the contractual obligations of the impaired or

1 insolvent insurer.

2 (h) ~~(8)~~ Exercise all the rights of the Director
3 under Section 193(4) of this Code with respect to
4 covered policies after the association becomes
5 obligated by statute.

6 (i) ~~(9)~~ Request information from a person seeking
7 coverage from the Association in order to aid the
8 Association in determining its obligations under this
9 Article with respect to the person, and the person
10 shall promptly comply with the request.

11 (j) ~~(10)~~ Take other necessary or appropriate
12 action to discharge its duties and obligations under
13 this Article or to exercise its powers under this
14 Article.

15 (12) ~~(e)~~ With respect to covered policies for which
16 the Association becomes obligated after an entry of an
17 order of liquidation or rehabilitation, the Association
18 may elect to succeed to the rights of the insolvent insurer
19 arising after the date of the order of liquidation or
20 rehabilitation under any contract of reinsurance to which
21 the insolvent insurer was a party, to the extent that such
22 contract provides coverage for losses occurring after the
23 date of the order of liquidation or rehabilitation. As a
24 condition to making this election, the Association must pay
25 all unpaid premiums due under the contract for coverage
26 relating to periods before and after the date of the order

1 of liquidation or rehabilitation.

2 (13) ~~(p)~~ A deposit in this State, held pursuant to law
3 or required by the Director for the benefit of creditors,
4 including policy owners, not turned over to the domiciliary
5 liquidator upon the entry of a final order of liquidation
6 or order approving a rehabilitation plan of an insurer
7 domiciled in this State or in a reciprocal state, pursuant
8 to Article XIII 1/2 of this Code, shall be promptly paid to
9 the Association. The Association shall be entitled to
10 retain a portion of any amount so paid to it equal to the
11 percentage determined by dividing the aggregate amount of
12 policy owners' claims related to that insolvency for which
13 the Association has provided statutory benefits by the
14 aggregate amount of all policy owners' claims in this State
15 related to that insolvency and shall remit to the
16 domiciliary receiver the amount so paid to the Association
17 less the amount retained pursuant to this subsection ~~(13)~~.
18 Any amount so paid to the Association and retained by it
19 shall be treated as a distribution of estate assets
20 pursuant to applicable State receivership law dealing with
21 early access disbursements.

22 (14) ~~(q)~~ The Board of Directors of the Association
23 shall have discretion and may exercise reasonable business
24 judgment to determine the means by which the Association is
25 to provide the benefits of this Article in an economical
26 and efficient manner.

1 (15) ~~(r)~~ Where the Association has arranged or offered
2 to provide the benefits of this Article to a covered person
3 under a plan or arrangement that fulfills the Association's
4 obligations under this Article, the person shall not be
5 entitled to benefits from the Association in addition to or
6 other than those provided under the plan or arrangement.

7 (16) ~~(s)~~ Venue in a suit against the Association
8 arising under the Article shall be in Cook County. The
9 Association shall not be required to give any appeal bond
10 in an appeal that relates to a cause of action arising
11 under this Article.

12 (17) ~~(t)~~ The Association may join an organization of
13 one or more other State associations of similar purposes to
14 further the purposes and administer the powers and duties
15 of the Association.

16 (18) ~~(u)~~ In carrying out its duties in connection with
17 guaranteeing, assuming, or reinsuring policies or
18 contracts under subsections (1) or (2), the Association
19 may, subject to approval of the receivership court, issue
20 substitute coverage for a policy or contract that provides
21 an interest rate, crediting rate, or similar factor
22 determined by use of an index or other external reference
23 stated in the policy or contract employed in calculating
24 returns or changes in value by issuing an alternative
25 policy or contract in accordance with the following
26 provisions:

1 (a) ~~(1)~~ in lieu of the index or other external
2 reference provided for in the original policy or
3 contract, the alternative policy or contract provides
4 for (i) a fixed interest rate, or (ii) payment of
5 dividends with minimum guarantees, or (iii) a
6 different method for calculating interest or changes
7 in value;

8 (b) ~~(2)~~ there is no requirement for evidence of
9 insurability, waiting period, or other exclusion that
10 would not have applied under the replaced policy or
11 contract; and

12 (c) ~~(3)~~ the alternative policy or contract is
13 substantially similar to the replaced policy or
14 contract in all other material terms.

15 (Source: P.A. 96-1450, eff. 8-20-10; 97-333, eff. 8-12-11.)

16 (215 ILCS 5/531.09) (from Ch. 73, par. 1065.80-9)

17 Sec. 531.09. Assessments.

18 (1) For the purpose of providing the funds necessary to
19 carry out the powers and duties of the Association, the board
20 of directors shall assess the member insurers, separately for
21 each account, at such times and for such amounts as the board
22 finds necessary. Assessments shall be due not less than 30 days
23 after written notice to the member insurers and shall accrue
24 interest from the due date at such adjusted rate as is
25 established under Section 6621 of Chapter 26 of the United

1 States Code and such interest shall be compounded daily.

2 (2) There shall be 2 classes of assessments, as follows:

3 (a) Class A assessments shall be made for the purpose
4 of meeting administrative costs and other general expenses
5 and examinations conducted under the authority of the
6 Director under subsection (5) of Section 531.12.

7 (b) Class B assessments shall be made to the extent
8 necessary to carry out the powers and duties of the
9 Association under Section 531.08 with regard to an impaired
10 or insolvent domestic insurer or insolvent foreign or alien
11 insurers.

12 (3) (a) The amount of any Class A assessment shall be
13 determined at the discretion of the board of directors and such
14 assessments shall be authorized and called on a non-pro rata
15 basis. The amount of any Class B assessment shall be allocated
16 for assessment purposes among the accounts and subaccounts
17 pursuant to an allocation formula which may be based on the
18 premiums or reserves of the impaired or insolvent insurer or
19 any other standard deemed by the board in its sole discretion
20 as being fair and reasonable under the circumstances.

21 (b) Class B assessments against member insurers for each
22 account and subaccount shall be in the proportion that the
23 premiums received on business in this State by each assessed
24 member insurer on policies or contracts covered by each account
25 or subaccount for the three most recent calendar years for
26 which information is available preceding the year in which the

1 insurer became impaired or insolvent, as the case may be, bears
2 to such premiums received on business in this State for such
3 calendar years by all assessed member insurers.

4 (c) Assessments for funds to meet the requirements of the
5 Association with respect to an impaired or insolvent insurer
6 shall not be made until necessary to implement the purposes of
7 this Article. Classification of assessments under subsection
8 (2) and computations of assessments under this subsection shall
9 be made with a reasonable degree of accuracy, recognizing that
10 exact determinations may not always be possible.

11 (4) The Association may abate or defer, in whole or in
12 part, the assessment of a member insurer if, in the opinion of
13 the board, payment of the assessment would endanger the ability
14 of the member insurer to fulfill its contractual obligations.
15 In the event an assessment against a member insurer is abated
16 or deferred in whole or in part the amount by which the
17 assessment is abated or deferred may be assessed against the
18 other member insurers in a manner consistent with the basis for
19 assessments set forth in this Section. Once the conditions that
20 caused a deferral have been removed or rectified, the member
21 insurer shall pay all assessments that were deferred pursuant
22 to a repayment plan approved by the Association.

23 (5) (a) (i) Subject to the provisions of subparagraph (ii)
24 of this paragraph, the total of all assessments authorized by
25 the Association with respect to a member insurer for each
26 subaccount of the life insurance and annuity account and for

1 the health account shall not in one calendar year exceed 2% of
2 that member insurer's average annual premiums received in this
3 State on the policies and contracts covered by the subaccount
4 or account during the 3 calendar years preceding the year in
5 which the insurer became an impaired or insolvent insurer.

6 (ii) If 2 or more assessments are authorized in one
7 calendar year with respect to insurers that become impaired or
8 insolvent in different calendar years, the average annual
9 premiums for purposes of the aggregate assessment percentage
10 limitation referenced in subparagraph (a) of this paragraph
11 shall be equal and limited to the higher of the 3-year average
12 annual premiums for the applicable subaccount or account as
13 calculated pursuant to this Section.

14 (iii) If the maximum assessment, together with the other
15 assets of the Association in an account, does not provide in
16 one year in either account an amount sufficient to carry out
17 the responsibilities of the Association, the necessary
18 additional funds shall be assessed as soon thereafter as
19 permitted by this Article.

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

24 (c) If the maximum assessment for a subaccount of the life
25 insurance and annuity account in one year does not provide an
26 amount sufficient to carry out the responsibilities of the

1 Association, then pursuant to paragraph (b) of subsection (3),
2 the board shall assess the other subaccounts of the life and
3 annuity account for the necessary additional amount, subject to
4 the maximum stated in paragraph (a) of this subsection.

5 (6) The board may, by an equitable method as established in
6 the plan of operation, refund to member insurers, in proportion
7 to the contribution of each insurer to that account, the amount
8 by which the assets of the account exceed the amount the board
9 finds is necessary to carry out during the coming year the
10 obligations of the Association with regard to that account,
11 including assets accruing from net realized gains and income
12 from investments. A reasonable amount may be retained in any
13 account to provide funds for the continuing expenses of the
14 Association and for future losses.

15 (7) An assessment is deemed to occur on the date upon which
16 the board votes such assessment. The board may defer calling
17 the payment of the assessment or may call for payment in one or
18 more installments.

19 (8) It is proper for any member insurer, in determining its
20 premium rates and policyowner dividends as to any kind of
21 insurance within the scope of this Article, to consider the
22 amount reasonably necessary to meet its assessment obligations
23 under this Article.

24 (9) The Association must issue to each insurer paying a
25 Class B assessment under this Article a certificate of
26 contribution, in a form acceptable to the Director, for the

1 amount of the assessment so paid. All outstanding certificates
2 are of equal dignity and priority without reference to amounts
3 or dates of issue. A certificate of contribution may be shown
4 by the insurer in its financial statement as an asset in such
5 form and for such amount, if any, and period of time as the
6 Director may approve, provided the insurer shall in any event
7 at its option have the right to show a certificate of
8 contribution as an admitted asset at percentages of the
9 original face amount for calendar years as follows:

10 100% for the calendar year after the year of issuance;

11 80% for the second calendar year after the year of
12 issuance;

13 60% for the third calendar year after the year of issuance;

14 40% for the fourth calendar year after the year of
15 issuance;

16 20% for the fifth calendar year after the year of issuance.

17 (10) The Association may request information of member
18 insurers in order to aid in the exercise of its power under
19 this Section and member insurers shall promptly comply with a
20 request.

21 (Source: P.A. 95-86, eff. 9-25-07 (changed from 1-1-08 by P.A.
22 95-632); 96-1450, eff. 8-20-10.)

23 (215 ILCS 5/531.10) (from Ch. 73, par. 1065.80-10)

24 Sec. 531.10. Plan of Operation.†

25 (1)(a) The Association must submit to the Director a plan

1 of operation and any amendments thereto necessary or suitable
2 to assure the fair, reasonable, and equitable administration of
3 the Association. The plan of operation and any amendments
4 thereto become effective upon approval in writing by the
5 Director.

6 (b) If the Association fails to submit a suitable plan of
7 operation within 180 days following the effective date of this
8 Article or if at any time thereafter the Association fails to
9 submit suitable amendments to the plan, the Director may, after
10 notice and hearing, adopt and promulgate such reasonable rules
11 as are necessary or advisable to effectuate the provisions of
12 this Article. Such rules are in force until modified by the
13 Director or superseded by a plan submitted by the Association
14 and approved by the Director.

15 (2) All member insurers must comply with the plan of
16 operation.

17 (3) The plan of operation must, in addition to requirements
18 enumerated elsewhere in this Article:

19 (a) Establish procedures for handling the assets of the
20 Association;

21 (b) Establish the amount and method of reimbursing
22 members of the board of directors under Section 531.07;

23 (c) Establish regular places and times for meetings of
24 the board of directors;

25 (d) Establish procedures for records to be kept of all
26 financial transactions of the Association, its agents, and

1 the board of directors;

2 (e) Establish the procedures whereby selections for
3 the board of directors will be made and submitted to the
4 Director;

5 (f) Establish any additional procedures for
6 assessments under Section 531.09; and

7 (g) Contain additional provisions necessary or proper
8 for the execution of the powers and duties of the
9 Association.

10 (4) The plan of operation shall establish a procedure for
11 protest by any member insurer of assessments made by the
12 Association pursuant to Section 531.09. Such procedures shall
13 require that:

14 (a) a member insurer that wishes to protest all or part
15 of an assessment shall pay when due the full amount of the
16 assessment as set forth in the notice provided by the
17 Association. The payment shall be available to meet
18 Association obligations during the pendency of the protest
19 or any subsequent appeal. Payment shall be accompanied by a
20 statement in writing that the payment is made under protest
21 and setting forth a brief statement of the grounds for the
22 protest;

23 (b) within 30 days following the payment of an
24 assessment under protest by any protesting member insurer,
25 the Association must notify the member insurer in writing
26 of its determination with respect to the protest unless the

1 Association notifies the member that additional time is
2 required to resolve the issues raised by the protest;

3 (c) in the event the Association determines that the
4 protesting member insurer is entitled to a refund, such
5 refund shall be made within 30 days following the date upon
6 which the Association makes its determination;

7 (d) the decision of the Association with respect to a
8 protest may be appealed to the Director pursuant to Section
9 531.11(3);

10 (e) in the alternative to rendering a decision with
11 respect to any protest based on a question regarding the
12 assessment base, the Association may refer such protests to
13 the Director for final decision, with or without a
14 recommendation from the Association; and

15 (f) interest on any refund due a protesting member
16 insurer shall be paid at the rate actually earned by the
17 Association.

18 (5) The plan of operation may provide that any or all
19 powers and duties of the Association, except those under
20 paragraph (c) of subsection (11) ~~(10)~~ of Section 531.08 and
21 Section 531.09 are delegated to a corporation, association or
22 other organization which performs or will perform functions
23 similar to those of this Association, or its equivalent, in 2
24 or more states. Such a corporation, association or organization
25 shall be reimbursed for any payments made on behalf of the
26 Association and shall be paid for its performance of any

1 function of the Association. A delegation under this subsection
2 shall take effect only with the approval of both the Board of
3 Directors and the Director, and may be made only to a
4 corporation, association or organization which extends
5 protection not substantially less favorable and effective than
6 that provided by this Act.

7 (Source: P.A. 96-1450, eff. 8-20-10.)

8 (215 ILCS 5/531.14) (from Ch. 73, par. 1065.80-14)

9 Sec. 531.14. Miscellaneous Provisions.

10 (1) Nothing in this Article may be construed to reduce the
11 liability for unpaid assessments of the insured of an impaired
12 or insolvent insurer operating under a plan with assessment
13 liability.

14 (2) Records must be kept of all negotiations and meetings
15 in which the Association or its representatives are involved to
16 discuss the activities of the Association in carrying out its
17 powers and duties under Section 531.08. Records of such
18 negotiations or meetings may be made public only upon the
19 termination of a liquidation, rehabilitation, or conservation
20 proceeding involving the impaired or insolvent insurer, upon
21 the termination of the impairment or insolvency of the insurer,
22 or upon the order of a court of competent jurisdiction. Nothing
23 in this paragraph (2) limits the duty of the Association to
24 render a report of its activities under Section 531.15.

25 (3) For the purpose of carrying out its obligations under

1 this Article, the Association is deemed to be a creditor of the
2 impaired or insolvent insurer to the extent of assets
3 attributable to covered policies reduced by any amounts to
4 which the Association is entitled as subrogee (under subsection
5 (10) ~~paragraph (8)~~ of Section 531.08). All assets of the
6 impaired or insolvent insurer attributable to covered policies
7 must be used to continue all covered policies and pay all
8 contractual obligations of the impaired insurer as required by
9 this Article. "Assets attributable to covered policies", as
10 used in this paragraph (3), is that proportion of the assets
11 which the reserves that should have been established for such
12 policies bear to the reserve that should have been established
13 for all policies of insurance written by the impaired or
14 insolvent insurer.

15 (4) (a) Prior to the termination of any liquidation,
16 rehabilitation, or conservation proceeding, the court may take
17 into consideration the contributions of the respective
18 parties, including the Association, the shareholders and
19 policyowners of the impaired or insolvent insurer, and any
20 other party with a bona fide interest, in making an equitable
21 distribution of the ownership rights of such impaired or
22 insolvent insurer. In such a determination, consideration must
23 be given to the welfare of the policyholders of the continuing
24 or successor insurer.

25 (b) No distribution to stockholders, if any, of an impaired
26 or insolvent insurer may be made until and unless the total

1 amount of valid claims of the Association for funds expended
2 with interest in carrying out its powers and duties under
3 Section 531.08, with respect to such insurer have been fully
4 recovered by the Association.

5 (5) (a) If an order for liquidation or rehabilitation of an
6 insurer domiciled in this State has been entered, the receiver
7 appointed under such order has a right to recover on behalf of
8 the insurer, from any affiliate that controlled it, the amount
9 of distributions, other than stock dividends paid by the
10 insurer on its capital stock, made at any time during the 5
11 years preceding the petition for liquidation or rehabilitation
12 subject to the limitations of paragraphs (b) to (d).

13 (b) No such dividend is recoverable if the insurer shows
14 that when paid the distribution was lawful and reasonable, and
15 that the insurer did not know and could not reasonably have
16 known that the distribution might adversely affect the ability
17 of the insurer to fulfill its contractual obligations.

18 (c) Any person who as an affiliate that controlled the
19 insurer at the time the distributions were paid is liable up to
20 the amount of distributions he received. Any person who was an
21 affiliate that controlled the insurer at the time the
22 distributions were declared, is liable up to the amount of
23 distributions he would have received if they had been paid
24 immediately. If 2 persons are liable with respect to the same
25 distributions, they are jointly and severally liable.

26 (d) The maximum amount recoverable under subsection (5) of

1 this Section is the amount needed in excess of all other
2 available assets of the insolvent insurer to pay the
3 contractual obligations of the insolvent insurer.

4 (e) If any person liable under paragraph (c) of subsection
5 (5) of this Section is insolvent, all its affiliates that
6 controlled it at the time the dividend was paid are jointly and
7 severally liable for any resulting deficiency in the amount
8 recovered from the insolvent affiliate.

9 (6) As a creditor of the impaired or insolvent insurer as
10 established in subsection (3) of this Section and consistent
11 with subsection (2) of Section 205 of this Code, the
12 Association and other similar associations shall be entitled to
13 receive a disbursement of assets out of the marshaled assets,
14 from time to time as the assets become available to reimburse
15 it, as a credit against contractual obligations under this
16 Article. If the liquidator has not, within 120 days after a
17 final determination of insolvency of an insurer by the
18 receivership court, made an application to the court for the
19 approval of a proposal to disburse assets out of marshaled
20 assets to guaranty associations having obligations because of
21 the insolvency, then the Association shall be entitled to make
22 application to the receivership court for approval of its own
23 proposal to disburse these assets.

24 (Source: P.A. 96-1450, eff. 8-20-10.)

25 Section 99. Effective date. This Act takes effect upon
26 becoming law.