



## 97TH GENERAL ASSEMBLY

### State of Illinois

### 2011 and 2012

### HB1870

by Rep. JoAnn D. Osmond

#### SYNOPSIS AS INTRODUCED:

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 5/531.14	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 in the provisions concerning coverage and limitations; definitions; Board of Directors of the Association; powers and duties of the Association; assessments; and miscellaneous provisions.

LRB097 08603 RPM 48730 b

1 AN ACT concerning insurance.

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 531.03, 531.05, 531.07, 531.08, 531.09, and  
6 531.14 as follows:

7 (215 ILCS 5/531.03) (from Ch. 73, par. 1065.80-3)

8 Sec. 531.03. Coverage and limitations.

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

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

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

20 (i) are residents; or

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

23 (A) the insurer that issued the policies or

1 contracts is domiciled in this State;

2 (B) the states in which the persons reside have  
3 associations similar to the Association created by  
4 this Article;

5 (C) the persons are not eligible for coverage  
6 by an association in any other state due to the  
7 fact that the insurer was not licensed in that  
8 state at the time specified in that state's  
9 guaranty association law.

10 (c) For unallocated annuity contracts specified in  
11 subsection (2), paragraphs (a) and (b) of this subsection  
12 (1) shall not apply and this Article shall (except as  
13 provided in paragraphs (e) and (f) of this subsection)  
14 provide coverage to:

15 (i) persons who are the owners of the unallocated  
16 annuity contracts if the contracts are issued to or in  
17 connection with a specific benefit plan whose plan  
18 sponsor has its principal place of business in this  
19 State; and

20 (ii) persons who are owners of unallocated annuity  
21 contracts issued to or in connection with government  
22 lotteries if the owners are residents.

23 (d) For structured settlement annuities specified in  
24 subsection (2), paragraphs (a) and (b) of this subsection  
25 (1) shall not apply and this Article shall (except as  
26 provided in paragraphs (e) and (f) of this subsection)

1 provide coverage to a person who is a payee under a  
2 structured settlement annuity (or beneficiary of a payee if  
3 the payee is deceased), if the payee:

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

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

8 (A) with regard to residency:

9 (I) the contract owner of the structured  
10 settlement annuity is a resident; or

11 (II) the contract owner of the structured  
12 settlement annuity is not a resident but the  
13 insurer that issued the structured settlement  
14 annuity is domiciled in this State and the  
15 state in which the contract owner resides has  
16 an association similar to the Association  
17 created by this Article; and

18 (B) neither the payee or beneficiary nor the  
19 contract owner is eligible for coverage by the  
20 association of the state in which the payee or  
21 contract owner resides.

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

23 (i) a person who is a payee or beneficiary of a  
24 contract owner resident of this State if the payee or  
25 beneficiary is afforded any coverage by the  
26 association of another state; or

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

4           (f) This Article is intended to provide coverage to a  
5           person who is a resident of this State and, in special  
6           circumstances, to a nonresident. In order to avoid  
7           duplicate coverage, if a person who would otherwise receive  
8           coverage under this Article is provided coverage under the  
9           laws of any other state, then the person shall not be  
10          provided coverage under this Article. In determining the  
11          application of the provisions of this paragraph in  
12          situations where a person could be covered by the  
13          association of more than one state, whether as an owner,  
14          payee, beneficiary, or assignee, this Article shall be  
15          construed in conjunction with other state laws to result in  
16          coverage by only one association.

17          (2)(a) This Article shall provide coverage to the persons  
18          specified in paragraph (1) of this Section for direct, (i)  
19          nongroup life, health, annuity and supplemental policies, or  
20          contracts, (ii) for certificates under direct group policies or  
21          contracts, (iii) for unallocated annuity contracts and (iv) for  
22          contracts to furnish health care services and subscription  
23          certificates for medical or health care services issued by  
24          persons licensed to transact insurance business in this State  
25          under the Illinois Insurance Code. Annuity contracts and  
26          certificates under group annuity contracts include but are not

1 limited to guaranteed investment contracts, deposit  
2 administration contracts, unallocated funding agreements,  
3 allocated funding agreements, structured settlement  
4 agreements, lottery contracts and any immediate or deferred  
5 annuity contracts.

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

7 (i) that portion of a policy or contract not guaranteed  
8 by the insurer, or under which the risk is borne by the  
9 policy or contract owner;

10 (ii) any such policy or contract or part thereof  
11 assumed by the impaired or insolvent insurer under a  
12 contract of reinsurance, other than reinsurance for which  
13 assumption certificates have been issued;

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

20 (A) averaged over the period of 4 years prior to  
21 the date on which the member insurer becomes an  
22 impaired or insolvent insurer under this Article,  
23 whichever is earlier, exceeds the rate of interest  
24 determined by subtracting 2 percentage points from  
25 Moody's Corporate Bond Yield Average averaged for that  
26 same 4-year period or for such lesser period if the

1 policy or contract was issued less than 4 years before  
2 the member insurer becomes an impaired or insolvent  
3 insurer under this Article, whichever is earlier; and

4 (B) on and after the date on which the member  
5 insurer becomes an impaired or insolvent insurer under  
6 this Article, whichever is earlier, exceeds the rate of  
7 interest determined by subtracting 3 percentage points  
8 from Moody's Corporate Bond Yield Average as most  
9 recently available;

10 (iv) any unallocated annuity contract issued to or in  
11 connection with a benefit plan protected under the federal  
12 Pension Benefit Guaranty Corporation, regardless of  
13 whether the federal Pension Benefit Guaranty Corporation  
14 has yet become liable to make any payments with respect to  
15 the benefit plan;

16 (v) any portion of any unallocated annuity contract  
17 which is not issued to or in connection with a specific  
18 employee, union or association of natural persons benefit  
19 plan or a government lottery;

20 (vi) an obligation that does not arise under the  
21 express written terms of the policy or contract issued by  
22 the insurer to the contract owner or policy owner,  
23 including without limitation:

24 (A) a claim based on marketing materials;

25 (B) a claim based on side letters, riders, or other  
26 documents that were issued by the insurer without

1 meeting applicable policy form filing or approval  
2 requirements;

3 (C) a misrepresentation of or regarding policy  
4 benefits;

5 (D) an extra-contractual claim; or

6 (E) a claim for penalties or consequential or  
7 incidental damages;

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

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

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

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



1 or other person under:

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

4 (B) a minimum premium group insurance plan;

5 (C) a stop-loss group insurance plan; or

6 (D) an administrative services only contract;

7 (xi) any portion of a policy or contract to the extent  
8 that it provides for:

9 (A) dividends or experience rating credits;

10 (B) voting rights; or

11 (C) payment of any fees or allowances to any  
12 person, including the policy or contract owner, in  
13 connection with the service to or administration of the  
14 policy or contract;

15 (xii) any policy or contract issued in this State by a  
16 member insurer at a time when it was not licensed or did  
17 not have a certificate of authority to issue the policy or  
18 contract in this State;

19 (xiii) any contractual agreement that establishes the  
20 member insurer's obligations to provide a book value  
21 accounting guaranty for defined contribution benefit plan  
22 participants by reference to a portfolio of assets that is  
23 owned by the benefit plan or its trustee, which in each  
24 case is not an affiliate of the member insurer;

25 (xiv) any portion of a policy or contract to the extent  
26 that it provides for interest or other changes in value to

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

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

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

21 (a) the contractual obligations for which the insurer  
22 is liable or would have been liable if it were not an  
23 impaired or insolvent insurer, or

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

26 (A) \$300,000 in life insurance death benefits, but

1 not more than \$100,000 in net cash surrender and net  
2 cash withdrawal values for life insurance;

3 (B) in health insurance benefits:

4 (I) \$100,000 for coverages not defined as  
5 disability insurance or basic hospital, medical,  
6 and surgical insurance or major medical insurance  
7 or long-term care insurance, including any net  
8 cash surrender and net cash withdrawal values;

9 (II) \$300,000 for disability insurance and  
10 \$300,000 for long-term care insurance as defined  
11 in Section 351A-1 of this Code; and

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

14 (C) \$250,000 in the present value of annuity  
15 benefits, including net cash surrender and net cash  
16 withdrawal values;

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

25 (iii) with respect to each payee of a structured  
26 settlement annuity or beneficiary or beneficiaries of the

1 payee if deceased, \$250,000 in present value annuity  
2 benefits, in the aggregate, including net cash surrender  
3 and net cash withdrawal values, if any; or

4 (iv) with respect to either (1) one contract owner  
5 provided coverage under subparagraph (ii) of paragraph (c)  
6 of subsection (1) of this Section or (2) one plan sponsor  
7 whose plans own directly or in trust one or more  
8 unallocated annuity contracts not included in subparagraph  
9 (ii) of paragraph (b) of this subsection, \$5,000,000 in  
10 benefits, irrespective of the number of contracts with  
11 respect to the contract owner or plan sponsor. However, in  
12 the case where one or more unallocated annuity contracts  
13 are covered contracts under this Article and are owned by a  
14 trust or other entity for the benefit of 2 or more plan  
15 sponsors, coverage shall be afforded by the Association if  
16 the largest interest in the trust or entity owning the  
17 contract or contracts is held by a plan sponsor whose  
18 principal place of business is in this State. In no event  
19 shall the Association be obligated to cover more than  
20 \$5,000,000 in benefits with respect to all these  
21 unallocated contracts.

22 In no event shall the Association be obligated to cover  
23 more than (1) an aggregate of \$300,000 in benefits with respect  
24 to any one life under subparagraphs (i), (ii), and (iii) of  
25 this paragraph (b) except with respect to benefits for basic  
26 hospital, medical, and surgical insurance and major medical

1 insurance under item (B) of subparagraph (i) of this paragraph  
2 (b), in which case the aggregate liability of the Association  
3 shall not exceed \$500,000 with respect to any one individual or  
4 (2) with respect to one owner of multiple nongroup policies of  
5 life insurance, whether the policy owner is an individual,  
6 firm, corporation, or other person and whether the persons  
7 insured are officers, managers, employees, or other persons,  
8 \$5,000,000 in benefits, regardless of the number of policies  
9 and contracts held by the owner.

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

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

1 policy or contract.

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

3 (215 ILCS 5/531.05) (from Ch. 73, par. 1065.80-5)

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

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

7 "Association" means the Illinois Life and Health Insurance  
8 Guaranty Association created under Section 531.06.

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

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

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

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

24 "Contractual obligation" means any obligation under a  
25 policy or contract or certificate under a group policy or

1 contract, or portion thereof for which coverage is provided  
2 under Section 531.03.

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

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

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

10 "Impaired insurer" means (A) a member insurer which, after  
11 the effective date of this amendatory Act of the 97th General  
12 Assembly ~~amendatory Act of the 96th General Assembly~~, is not an  
13 insolvent insurer, and is placed under an order of  
14 rehabilitation or conservation by a court of competent  
15 jurisdiction or (B) a member insurer deemed by the Director  
16 after the effective date of this amendatory Act of the 96th  
17 General Assembly to be potentially unable to fulfill its  
18 contractual obligations and not an insolvent insurer.

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

23 "Member insurer" means an insurer licensed or holding a  
24 certificate of authority to transact in this State any kind of  
25 insurance for which coverage is provided under Section 531.03  
26 of this Code and includes an insurer whose license or

1 certificate of authority in this State may have been suspended,  
2 revoked, not renewed, or voluntarily withdrawn or whose  
3 certificate of authority may have been suspended pursuant to  
4 Section 119 of this Code, but does not include:

5 (1) a hospital or medical service organization,  
6 whether profit or nonprofit;

7 (2) a health maintenance organization;

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

14 (4) a mandatory State pooling plan;

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

17 (6) an insurance exchange;

18 (7) an organization that is permitted to issue  
19 charitable gift annuities pursuant to Section 121-2.10 of  
20 this Code;

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

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

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

26 "Moody's Corporate Bond Yield Average" means the Monthly



1 Average Corporates as published by Moody's Investors Service,  
2 Inc., or any successor thereto.

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

12 "Person" means an individual, corporation, limited  
13 liability company, partnership, association, governmental body  
14 or entity, or voluntary organization.

15 "Plan sponsor" means:

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

18 (2) the employee organization in the case of a benefit  
19 plan established or maintained by an employee  
20 organization; or

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

1 "Premiums" mean amounts or considerations, by whatever  
2 name called, received on covered policies or contracts less  
3 returned premiums, considerations, and deposits and less  
4 dividends and experience credits.

5 "Premiums" does not include:

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

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

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

1           regardless of the number of policies or contracts held by  
2           the owner.

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

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

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

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

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

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

23           (F) in the case of a benefit plan sponsored by  
24           affiliated companies comprising a consolidated  
25           corporation, the state in which the holding company or  
26           controlling affiliate has its principal place of business

1 as determined using the above factors. However, in the case  
2 of a plan sponsor, if more than 50% of the participants in  
3 the benefit plan are employed in a single state, that state  
4 shall be deemed to be the principal place of business of  
5 the plan sponsor.

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

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

19 "Resident" means a person to whom a contractual obligation  
20 is owed and who resides in this State on the date of entry of a  
21 court order that determines a member insurer to be an impaired  
22 insurer or a court order that determines a member insurer to be  
23 an insolvent insurer. A person may be a resident of only one  
24 state, which in the case of a person other than a natural  
25 person shall be its principal place of business. Citizens of  
26 the United States that are either (i) residents of foreign

1 countries or (ii) residents of United States possessions,  
2 territories, or protectorates that do not have an association  
3 similar to the Association created by this Article, shall be  
4 deemed residents of the state of domicile of the insurer that  
5 issued the policies or contracts.

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

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

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

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

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

22 (215 ILCS 5/531.07) (from Ch. 73, par. 1065.80-7)

23 Sec. 531.07. Board of Directors.→ The board of directors  
24 of the Association consists of not less than 7 nor more than 11  
25 members serving terms as established in the plan of operation.

1 The insurer members ~~insurers~~ of the board are to be selected by  
2 member insurers subject to the approval of the Director. In  
3 addition, 2 persons who must be public representatives may be  
4 appointed by the Director to the board of directors. A public  
5 representative may not be an officer, director, or employee of  
6 an insurance company or any person engaged in the business of  
7 insurance. Vacancies on the board must be filled for the  
8 remaining period of the term in the manner described in the  
9 plan of operation.

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

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

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

18 (215 ILCS 5/531.08) (from Ch. 73, par. 1065.80-8)

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

20 (a) In addition to the powers and duties enumerated in  
21 other Sections of this Article:

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

1 that are approved by the Director:

2 (A) guarantee, assume, or reinsure or cause to be  
3 guaranteed, assumed, or reinsured, any or all of the  
4 policies or contracts of the impaired insurer; or

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

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

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

19 (B) provide benefits and coverages in accordance  
20 with the following provisions:

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

1 for claims incurred:

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

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

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

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



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

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

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

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

26 Alternative policies adopted by the Association shall be

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

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

14 Any alternative policy issued by the Association shall  
15 provide coverage of a type similar to that of the policy issued  
16 by the impaired or insolvent insurer, as determined by the  
17 Association.

18 (c) If the Association elects to reissue terminated  
19 coverage at a premium rate different from that charged under  
20 the terminated policy, the premium shall be set by the  
21 Association in accordance with the amount of insurance provided  
22 and the age and class of risk, subject to approval of the  
23 Director or by a court of competent jurisdiction.

24 (d) The Association's obligations with respect to coverage  
25 under any policy of the impaired or insolvent insurer or under  
26 any reissued or alternative policy shall cease on the date such

1 coverage or policy is replaced by another similar policy by the  
2 policyholder, the insured, or the Association.

3 (e) When proceeding under this Section with respect to any  
4 policy or contract carrying guaranteed minimum interest rates,  
5 the Association shall assure the payment or crediting of a rate  
6 of interest consistent with subparagraph (2)(b)(iii)(B) of  
7 Section 531.03.

8 (f) Nonpayment of premiums thirty-one days after the date  
9 required under the terms of any guaranteed, assumed,  
10 alternative or reissued policy or contract or substitute  
11 coverage shall terminate the Association's obligations under  
12 such policy or coverage under this Act with respect to such  
13 policy or coverage, except with respect to any claims incurred  
14 or any net cash surrender value which may be due in accordance  
15 with the provisions of this Act.

16 (g) Premiums due for coverage after entry of an order of  
17 liquidation of an insolvent insurer shall belong to and be  
18 payable at the direction of the Association, and the  
19 Association shall be liable for unearned premiums due to policy  
20 or contract owners arising after the entry of such order.

21 (h) In carrying out its duties under paragraph (2) ~~of~~  
22 ~~subsection (a)~~ of this Section, the Association may:

23 (1) subject to approval by a court ~~in this State,~~  
24 impose permanent policy or contract liens in connection  
25 with a guarantee, assumption, or reinsurance agreement if  
26 the Association finds that the amounts which can be

1           assessed under this Article are less than the amounts  
2           needed to assure full and prompt performance of the  
3           Association's duties under this Article or that the  
4           economic or financial conditions as they affect member  
5           insurers are sufficiently adverse to render the imposition  
6           of such permanent policy or contract liens to be in the  
7           public interest; or

8           (2) subject to approval by a court ~~in this State,~~  
9           impose temporary moratoriums or liens on payments of cash  
10          values and policy loans or any other right to withdraw  
11          funds held in conjunction with policies or contracts in  
12          addition to any contractual provisions for deferral of cash  
13          or policy loan value. In addition, in the event of a  
14          temporary moratorium or moratorium charge imposed by the  
15          receivership court on payment of cash values or policy  
16          loans or on any other right to withdraw funds held in  
17          conjunction with policies or contracts, out of the assets  
18          of the impaired or insolvent insurer, the Association may  
19          defer the payment of cash values, policy loans, or other  
20          rights by the Association for the period of the moratorium  
21          or moratorium charge imposed by the receivership court,  
22          except for claims covered by the Association to be paid in  
23          accordance with a hardship procedure established by the  
24          liquidator or rehabilitator and approved by the  
25          receivership court.

26          (i) There shall be no liability on the part of and no cause

1 of action shall arise against the Association or against any  
2 transferee from the Association in connection with the transfer  
3 by reinsurance or otherwise of all or any part of an impaired  
4 or insolvent insurer's business by reason of any action taken  
5 or any failure to take any action by the impaired or insolvent  
6 insurer at any time.

7 (j) If the Association fails to act within a reasonable  
8 period of time as provided in subsection (2) of this Section  
9 with respect to an insolvent insurer, the Director shall have  
10 the powers and duties of the Association under this Act with  
11 regard to such insolvent insurers.

12 (k) The Association or its designated representatives may  
13 render assistance and advice to the Director, upon his request,  
14 concerning rehabilitation, payment of claims, continuations of  
15 coverage, or the performance of other contractual obligations  
16 of any impaired or insolvent insurer.

17 (l) The Association shall have standing to appear or  
18 intervene before a court or agency in this State with  
19 jurisdiction over an impaired or insolvent insurer concerning  
20 which the Association is or may become obligated under this  
21 Article or with jurisdiction over any person or property  
22 against which the Association may have rights through  
23 subrogation or otherwise. Standing shall extend to all matters  
24 germane to the powers and duties of the Association, including,  
25 but not limited to, proposals for reinsuring, modifying, or  
26 guaranteeing the policies or contracts of the impaired or

1 insolvent insurer and the determination of the policies or  
2 contracts and contractual obligations. The Association shall  
3 also have the right to appear or intervene before a court or  
4 agency in another state with jurisdiction over an impaired or  
5 insolvent insurer for which the Association is or may become  
6 obligated or with jurisdiction over any person or property  
7 against whom the Association may have rights through  
8 subrogation or otherwise.

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

22 (2) The subrogation rights of the Association under this  
23 subsection have the same priority against the assets of the  
24 impaired or insolvent insurer as that possessed by the person  
25 entitled to receive benefits under this Article.

26 (3) In addition to paragraphs (1) and (2), the Association

1 shall have all common law rights of subrogation and any other  
2 equitable or legal remedy that would have been available to the  
3 impaired or insolvent insurer or owner, beneficiary, or payee  
4 of a policy or contract with respect to the policy or  
5 contracts, including without limitation, in the case of a  
6 structured settlement annuity, any rights of the owner,  
7 beneficiary, or payee of the annuity to the extent of benefits  
8 received pursuant to this Article, against a person originally  
9 or by succession responsible for the losses arising from the  
10 personal injury relating to the annuity or payment therefor,  
11 excepting any such person responsible solely by reason of  
12 serving as an assignee in respect of a qualified assignment  
13 under Internal Revenue Code Section 130.

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

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

1 (n) The Association may:

2 (1) Enter into such contracts as are necessary or  
3 proper to carry out the provisions and purposes of this  
4 Article.~~†~~

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

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

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

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

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

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



1 obligations of the impaired or insolvent insurer.

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

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

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

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

26 (p) A deposit in this State, held pursuant to law or

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

19 (q) The Board of Directors of the Association shall have  
20 discretion and may exercise reasonable business judgment to  
21 determine the means by which the Association is to provide the  
22 benefits of this Article in an economical and efficient manner.

23 (r) Where the Association has arranged or offered to  
24 provide the benefits of this Article to a covered person under  
25 a plan or arrangement that fulfills the Association's  
26 obligations under this Article, the person shall not be

1 entitled to benefits from the Association in addition to or  
2 other than those provided under the plan or arrangement.

3 (s) Venue in a suit against the Association arising under  
4 the Article shall be in Cook County. The Association shall not  
5 be required to give any appeal bond in an appeal that relates  
6 to a cause of action arising under this Article.

7 (t) The Association may join an organization of one or more  
8 other State associations of similar purposes to further the  
9 purposes and administer the powers and duties of the  
10 Association.

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

21 (1) in lieu of the index or other external reference  
22 provided for in the original policy or contract, the  
23 alternative policy or contract provides for (i) a fixed  
24 interest rate, or (ii) payment of dividends with minimum  
25 guarantees, or (iii) a different method for calculating  
26 interest or changes in value;

1           (2) there is no requirement for evidence of  
2           insurability, waiting period, or other exclusion that  
3           would not have applied under the replaced policy or  
4           contract; and

5           (3) the alternative policy or contract is  
6           substantially similar to the replaced policy or contract in  
7           all other material terms.

8           (Source: P.A. 96-1450, eff. 8-20-10; revised 9-16-10.)

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

10          Sec. 531.09. Assessments.

11          (1) For the purpose of providing the funds necessary to  
12          carry out the powers and duties of the Association, the board  
13          of directors shall assess the member insurers, separately for  
14          each account, at such times and for such amounts as the board  
15          finds necessary. Assessments shall be due not less than 30 days  
16          after written notice to the member insurers and shall accrue  
17          interest from the due date at such adjusted rate as is  
18          established under Section 6621 of Chapter 26 of the United  
19          States Code and such interest shall be compounded daily.

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

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

25                 (b) Class B assessments shall be made to the extent

1           necessary to carry out the powers and duties of the  
2           Association under Section 531.08 with regard to an impaired  
3           or insolvent domestic insurer or insolvent foreign or alien  
4           insurers.

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

14          (b) Class B assessments against member insurers for each  
15          account and subaccount shall be in the proportion that the  
16          premiums received on business in this State by each assessed  
17          member insurer on policies or contracts covered by each account  
18          or subaccount for the three most recent calendar years for  
19          which information is available preceding the year in which the  
20          insurer became impaired or insolvent, as the case may be, bears  
21          to such premiums received on business in this State for such  
22          calendar years by all assessed member insurers.

23          (c) Assessments for funds to meet the requirements of the  
24          Association with respect to an impaired or insolvent insurer  
25          shall not be made until necessary to implement the purposes of  
26          this Article. Classification of assessments under subsection

1 (2) and computations of assessments under this subsection shall  
2 be made with a reasonable degree of accuracy, recognizing that  
3 exact determinations may not always be possible.

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

16 (5) (a) (i) Subject to the provisions of subparagraph (ii)  
17 of this paragraph, the total of all assessments authorized by  
18 the Association with respect to a member insurer for each  
19 subaccount of the life insurance and annuity account and for  
20 the health account shall not in one calendar year exceed 2% of  
21 that member insurer's average annual premiums received in this  
22 State on the policies and contracts covered by the subaccount  
23 or account during the 3 calendar years preceding the year in  
24 which the insurer became an impaired or insolvent insurer.

25 (ii) If 2 or more assessments are authorized in one  
26 calendar year with respect to insurers that become impaired or

1 insolvent in different calendar years, the average annual  
2 premiums for purposes of the aggregate assessment percentage  
3 limitation referenced in subparagraph (a) of this paragraph  
4 shall be equal and limited to the higher of the 3-year average  
5 annual premiums for the applicable subaccount or account as  
6 calculated pursuant to this Section.

7 (iii) If the maximum assessment, together with the other  
8 assets of the Association in an account, does not provide in  
9 one year in either account an amount sufficient to carry out  
10 the responsibilities of the Association, the necessary  
11 additional funds shall be assessed as soon thereafter as  
12 permitted by this Article.

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

17 (c) If the maximum assessment for a subaccount of the life  
18 insurance and annuity account in one year does not provide an  
19 amount sufficient to carry out the responsibilities of the  
20 Association, then pursuant to paragraph (b) of subsection (3),  
21 the board shall assess the other subaccounts of the life and  
22 annuity account for the necessary additional amount, subject to  
23 the maximum stated in paragraph (a) of this subsection.

24 (6) The board may, by an equitable method as established in  
25 the plan of operation, refund to member insurers, in proportion  
26 to the contribution of each insurer to that account, the amount

1 by which the assets of the account exceed the amount the board  
2 finds is necessary to carry out during the coming year the  
3 obligations of the Association with regard to that account,  
4 including assets accruing from net realized gains and income  
5 from investments. A reasonable amount may be retained in any  
6 account to provide funds for the continuing expenses of the  
7 Association and for future losses.

8 (7) An assessment is deemed to occur on the date upon which  
9 the board votes such assessment. The board may defer calling  
10 the payment of the assessment or may call for payment in one or  
11 more installments.

12 (8) It is proper for any member insurer, in determining its  
13 premium rates and policyowner dividends as to any kind of  
14 insurance within the scope of this Article, to consider the  
15 amount reasonably necessary to meet its assessment obligations  
16 under this Article.

17 (9) The Association must issue to each insurer paying a  
18 Class B assessment under this Article a certificate of  
19 contribution, in a form acceptable to the Director, for the  
20 amount of the assessment so paid. All outstanding certificates  
21 are of equal dignity and priority without reference to amounts  
22 or dates of issue. A certificate of contribution may be shown  
23 by the insurer in its financial statement as an asset in such  
24 form and for such amount, if any, and period of time as the  
25 Director may approve, provided the insurer shall in any event  
26 at its option have the right to show a certificate of



1 contribution as an admitted asset at percentages of the  
2 original face amount for calendar years as follows:

3 100% for the calendar year after the year of issuance;

4 80% for the second calendar year after the year of  
5 issuance;

6 60% for the third calendar year after the year of issuance;

7 40% for the fourth calendar year after the year of  
8 issuance;

9 20% for the fifth calendar year after the year of issuance.

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

14 (Source: P.A. 95-86, eff. 9-25-07 (changed from 1-1-08 by P.A.  
15 95-632); 96-1450, eff. 8-20-10.)

16 (215 ILCS 5/531.14) (from Ch. 73, par. 1065.80-14)

17 Sec. 531.14. Miscellaneous Provisions.

18 (1) Nothing in this Article may be construed to reduce the  
19 liability for unpaid assessments of the insured of an impaired  
20 or insolvent insurer operating under a plan with assessment  
21 liability.

22 (2) Records must be kept of all negotiations and meetings  
23 in which the Association or its representatives are involved to  
24 discuss the activities of the Association in carrying out its  
25 powers and duties under Section 531.08. Records of such

1 negotiations or meetings may be made public only upon the  
2 termination of a liquidation, rehabilitation, or conservation  
3 proceeding involving the impaired or insolvent insurer, upon  
4 the termination of the impairment or insolvency of the insurer,  
5 or upon the order of a court of competent jurisdiction. Nothing  
6 in this paragraph (2) limits the duty of the Association to  
7 render a report of its activities under Section 531.15.

8 (3) For the purpose of carrying out its obligations under  
9 this Article, the Association is deemed to be a creditor of the  
10 impaired or insolvent insurer to the extent of assets  
11 attributable to covered policies reduced by any amounts to  
12 which the Association is entitled as subrogee (under paragraph  
13 (8) of Section 531.08). All assets of the impaired or insolvent  
14 insurer attributable to covered policies must be used to  
15 continue all covered policies and pay all contractual  
16 obligations of the impaired insurer as required by this  
17 Article. "Assets attributable to covered policies", as used in  
18 this paragraph (3), is that proportion of the assets which the  
19 reserves that should have been established for such policies  
20 bear to the reserve that should have been established for all  
21 policies of insurance written by the impaired or insolvent  
22 insurer.

23 (4) (a) Prior to the termination of any liquidation,  
24 rehabilitation, or conservation proceeding, the court may take  
25 into consideration the contributions of the respective  
26 parties, including the Association, the shareholders and

1 policyowners of the impaired or insolvent insurer, and any  
2 other party with a bona fide interest, in making an equitable  
3 distribution of the ownership rights of such impaired or  
4 insolvent insurer. In such a determination, consideration must  
5 be given to the welfare of the policyholders of the continuing  
6 or successor insurer.

7 (b) No distribution to stockholders, if any, of an impaired  
8 or insolvent insurer may be made until and unless the total  
9 amount of valid claims of the Association for funds expended,  
10 with interest, in carrying out its powers and duties under  
11 Section 531.08, with respect to such insurer have been fully  
12 recovered by the Association.

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

21 (b) No such dividend is recoverable if the insurer shows  
22 that when paid the distribution was lawful and reasonable, and  
23 that the insurer did not know and could not reasonably have  
24 known that the distribution might adversely affect the ability  
25 of the insurer to fulfill its contractual obligations.

26 (c) Any person who as an affiliate that controlled the

1 insurer at the time the distributions were paid is liable up to  
2 the amount of distributions he received. Any person who was an  
3 affiliate that controlled the insurer at the time the  
4 distributions were declared, is liable up to the amount of  
5 distributions he would have received if they had been paid  
6 immediately. If 2 persons are liable with respect to the same  
7 distributions, they are jointly and severally liable.

8 (d) The maximum amount recoverable under subsection (5) of  
9 this Section is the amount needed in excess of all other  
10 available assets of the insolvent insurer to pay the  
11 contractual obligations of the insolvent insurer.

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

17 (6) As a creditor of the impaired or insolvent insurer as  
18 established in subsection (3) of this Section and consistent  
19 with subsection (2) of Section 205 of this Code, the  
20 Association and other similar associations shall be entitled to  
21 receive a disbursement of assets out of the marshaled assets,  
22 from time to time as the assets become available to reimburse  
23 it, as a credit against contractual obligations under this  
24 Article. If the liquidator has not, within 120 days after a  
25 final determination of insolvency of an insurer by the  
26 receivership court, made an application to the court for the

1 approval of a proposal to disburse assets out of marshaled  
2 assets to guaranty associations having obligations because of  
3 the insolvency, then the Association shall be entitled to make  
4 application to the receivership court for approval of its own  
5 proposal to disburse these assets.

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