



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB4443

Introduced 1/30/2012, by Rep. Frank J. Mautino

SYNOPSIS AS INTRODUCED:

215 ILCS 5/245.21	from Ch. 73, par. 857.21
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
215 ILCS 125/6-14	from Ch. 111 1/2, par. 1418.14

Amends the Illinois Insurance Code in the Article concerning the Illinois Life and Health Insurance Guaranty Association. In provisions related to separate accounts, provides that the assets of any separate account equal to the reserves and other contract liabilities with respect to the account may not be charged with liabilities arising out of any other business the company may conduct, except with approval of the Director under conditions as to investments and other matters as the Director may prescribe. Further amends the Illinois Insurance Code in the Article concerning the Illinois Life and Health Insurance Guaranty Association. Changes 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. Amends the Health Maintenance Organization Act. Provides that no distribution to stockholders, if any, of an impaired or insolvent organization may be made until and unless the total amount of valid claims of the Association for funds expended in carrying out its powers and duties, with interest, (rather than merely the funds expended) with respect to such organization have been fully recovered by the Association.

LRB097 16285 RPM 61439 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 245.21, 531.03, 531.05, 531.07, 531.08,
6 531.09, and 531.14 as follows:

7 (215 ILCS 5/245.21) (from Ch. 73, par. 857.21)

8 Sec. 245.21. Establishment of separate accounts by
9 domestic companies organized to do a life, annuity, or accident
10 and health insurance business. A domestic company, including
11 for the purposes of this Article all domestic fraternal benefit
12 societies, may, for authorized classes of insurance, establish
13 one or more separate accounts, and may allocate thereto amounts
14 (including without limitation proceeds applied under optional
15 modes of settlement or under dividend options) to provide for
16 life, annuity, or accident and health insurance (and benefits
17 incidental thereto), payable in fixed or variable amounts or
18 both, subject to the following:

19 (1) The income, gains and losses, realized or unrealized,
20 from assets allocated to a separate account must be credited to
21 or charged against the account, without regard to other income,
22 gains or losses of the company.

23 (2) Except as may be provided with respect to reserves for

1 guaranteed benefits and funds referred to in paragraph (3) of
2 this Section (i) amounts allocated to any separate account and
3 accumulations thereon may be invested and reinvested without
4 regard to any requirements or limitations of Part 2 or Part 3
5 of Article VIII of this Code and (ii) the investments in any
6 separate account or accounts may not be taken into account in
7 applying the investment limitations otherwise applicable to
8 the investments of the company.

9 (3) Except with the approval of the Director and under the
10 conditions as to investments and other matters as the Director
11 may prescribe, that must recognize the guaranteed nature of the
12 benefits provided, reserves for (i) benefits guaranteed as to
13 dollar amount and duration and (ii) funds guaranteed as to
14 principal amount or stated rate of interest may not be
15 maintained in a separate account.

16 (4) Unless otherwise approved by the Director, assets
17 allocated to a separate account must be valued at their market
18 value on the date of valuation, or if there is no readily
19 available market, then as provided in the contract or the rules
20 or other written agreement applicable to the separate account.
21 Unless otherwise approved by the Director, the portion, if any,
22 of the assets of the separate account equal to the company's
23 reserve liability with regard to the guaranteed benefits and
24 funds referred to in paragraph (3) of this Section must be
25 valued in accordance with the rules otherwise applicable to the
26 company's assets.

1 (5) Amounts allocated to a separate account under this
2 Article are owned by the company, and the company may not be,
3 nor hold itself out to be, a trustee with respect to those
4 amounts. The assets of any separate account equal to the
5 reserves and other contract liabilities with respect to the
6 account may not be charged with liabilities arising out of any
7 other business the company may conduct, except with approval of
8 the Director under conditions as to investments and other
9 matters as the Director may prescribe.

10 (6) No sale, exchange or other transfer of assets may be
11 made by a company between any of its separate accounts or
12 between any other investment account and one or more of its
13 separate accounts unless, in case of a transfer into a separate
14 account, the transfer is made solely to establish the account
15 or to support the operation of the contracts with respect to
16 the separate account to which the transfer is made, and unless
17 the transfer, whether into or from a separate account, is made
18 (i) by a transfer of cash, or (ii) by a transfer of securities
19 having a readily determinable market value, if the transfer of
20 securities is approved by the Director. The Director may
21 approve other transfers among those accounts if, in his or her
22 opinion, the transfers would not be inequitable.

23 (7) To the extent a company considers it necessary to
24 comply with any applicable federal or state laws, the company,
25 with respect to any separate account, including without
26 limitation any separate account which is a management

1 investment company or a unit investment trust, may provide for
2 persons having an interest therein appropriate voting and other
3 rights and special procedures for the conduct of the business
4 of the account, including without limitation special rights and
5 procedures relating to investment policy, investment advisory
6 services, selection of independent public accountants, and the
7 selection of a committee, the members of which need not be
8 otherwise affiliated with the company, to manage the business
9 of the account.

10 (Source: P.A. 90-381, eff. 8-14-97; 90-418, eff. 8-15-97;
11 90-655, eff. 7-30-98.)

12 (215 ILCS 5/531.03) (from Ch. 73, par. 1065.80-3)

13 Sec. 531.03. Coverage and limitations.

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

16 (a) to persons who, regardless of where they reside
17 (except for non-resident certificate holders under group
18 policies or contracts), are the beneficiaries, assignees
19 or payees of the persons covered under subparagraph (1) (b),
20 and

21 (b) to persons who are owners of or certificate holders
22 under the policies or contracts (other than unallocated
23 annuity contracts and structured settlement annuities) and
24 in each case who:

25 (i) are residents; or

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

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

5 (B) the states in which the persons reside have
6 associations similar to the Association created by
7 this Article;

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

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

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

23 (ii) persons who are owners of unallocated annuity
24 contracts issued to or in connection with government
25 lotteries if the owners are residents.

26 (d) For structured settlement annuities specified in

1 subsection (2), paragraphs (a) and (b) of this subsection
2 (1) shall not apply and this Article shall (except as
3 provided in paragraphs (e) and (f) of this subsection)
4 provide coverage to a person who is a payee under a
5 structured settlement annuity (or beneficiary of a payee if
6 the payee is deceased), if the payee:

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

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

11 (A) with regard to residency:

12 (I) the contract owner of the structured
13 settlement annuity is a resident; or

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

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

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

26 (i) a person who is a payee or beneficiary of a

1 contract owner resident of this State if the payee or
2 beneficiary is afforded any coverage by the
3 association of another state; or

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

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

20 (2)(a) This Article shall provide coverage to the persons
21 specified in paragraph (1) of this Section for direct, (i)
22 nongroup life, health, annuity and supplemental policies, or
23 contracts, (ii) for certificates under direct group policies or
24 contracts, (iii) for unallocated annuity contracts and (iv) for
25 contracts to furnish health care services and subscription
26 certificates for medical or health care services issued by

1 persons licensed to transact insurance business in this State
2 under the Illinois Insurance Code. Annuity contracts and
3 certificates under group annuity contracts include but are not
4 limited to guaranteed investment contracts, deposit
5 administration contracts, unallocated funding agreements,
6 allocated funding agreements, structured settlement
7 agreements, lottery contracts and any immediate or deferred
8 annuity contracts.

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

10 (i) that portion of a policy or contract not guaranteed
11 by the insurer, or under which the risk is borne by the
12 policy or contract owner;

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

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

23 (A) averaged over the period of 4 years prior to
24 the date on which the member insurer becomes an
25 impaired or insolvent insurer under this Article,
26 whichever is earlier, exceeds the rate of interest

1 determined by subtracting 2 percentage points from
2 Moody's Corporate Bond Yield Average averaged for that
3 same 4-year period or for such lesser period if the
4 policy or contract was issued less than 4 years before
5 the member insurer becomes an impaired or insolvent
6 insurer under this Article, whichever is earlier; and

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

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

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

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

- 1 (A) a claim based on marketing materials;
- 2 (B) a claim based on side letters, riders, or other
3 documents that were issued by the insurer without
4 meeting applicable policy form filing or approval
5 requirements;
- 6 (C) a misrepresentation of or regarding policy
7 benefits;
- 8 (D) an extra-contractual claim; or
- 9 (E) a claim for penalties or consequential or
10 incidental damages;
- 11 (vii) any stop-loss insurance, as defined in clause (b)
12 of Class 1 or clause (a) of Class 2 of Section 4, and
13 further defined in subsection (d) of Section 352;
- 14 (viii) any policy or contract providing any hospital,
15 medical, prescription drug, or other health care benefits
16 pursuant to Part C or Part D of Subchapter XVIII, Chapter 7
17 of Title 42 of the United States Code (commonly known as
18 Medicare Part C & D) or any regulations issued pursuant
19 thereto;
- 20 (ix) any portion of a policy or contract to the extent
21 that the assessments required by Section 531.09 of this
22 Code with respect to the policy or contract are preempted
23 or otherwise not permitted by federal or State law;
- 24 (x) any portion of a policy or contract issued to a
25 plan or program of an employer, association, or other
26 person to provide life, health, or annuity benefits to its

1 employees, members, or others to the extent that the plan
2 or program is self-funded or uninsured, including, but not
3 limited to, benefits payable by an employer, association,
4 or other person under:

5 (A) a multiple employer welfare arrangement as
6 defined in 29 U.S.C. Section 1002 ~~29 U.S.C. Section~~
7 ~~1144~~;

8 (B) a minimum premium group insurance plan;

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

10 (D) an administrative services only contract;

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

13 (A) dividends or experience rating credits;

14 (B) voting rights; or

15 (C) payment of any fees or allowances to any
16 person, including the policy or contract owner, in
17 connection with the service to or administration of the
18 policy or contract;

19 (xii) any policy or contract issued in this State by a
20 member insurer at a time when it was not licensed or did
21 not have a certificate of authority to issue the policy or
22 contract in this State;

23 (xiii) any contractual agreement that establishes the
24 member insurer's obligations to provide a book value
25 accounting guaranty for defined contribution benefit plan
26 participants by reference to a portfolio of assets that is

1 owned by the benefit plan or its trustee, which in each
2 case is not an affiliate of the member insurer;

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

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

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

25 (a) the contractual obligations for which the insurer
26 is liable or would have been liable if it were not an

1 impaired or insolvent insurer, or

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

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

7 (B) in health insurance benefits:

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

13 (II) \$300,000 for disability insurance and
14 \$300,000 for long-term care insurance ~~as defined~~
15 ~~in Section 351A-1 of this Code;~~ and

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

18 (C) \$250,000 in the present value of annuity
19 benefits, including net cash surrender and net cash
20 withdrawal values;

21 (ii) with respect to each individual participating in a
22 governmental retirement benefit plan established under
23 Sections 401, 403(b), or 457 of the U.S. Internal Revenue
24 Code covered by an unallocated annuity contract or the
25 beneficiaries of each such individual if deceased, in the
26 aggregate, \$250,000 in present value annuity benefits,

1 including net cash surrender and net cash withdrawal
2 values;

3 (iii) with respect to each payee of a structured
4 settlement annuity or beneficiary or beneficiaries of the
5 payee if deceased, \$250,000 in present value annuity
6 benefits, in the aggregate, including net cash surrender
7 and net cash withdrawal values, if any; or

8 (iv) with respect to either (1) one contract owner
9 provided coverage under subparagraph (ii) of paragraph (c)
10 of subsection (1) of this Section or (2) one plan sponsor
11 whose plans own directly or in trust one or more
12 unallocated annuity contracts not included in subparagraph
13 (ii) of paragraph (b) of this subsection, \$5,000,000 in
14 benefits, irrespective of the number of contracts with
15 respect to the contract owner or plan sponsor. However, in
16 the case where one or more unallocated annuity contracts
17 are covered contracts under this Article and are owned by a
18 trust or other entity for the benefit of 2 or more plan
19 sponsors, coverage shall be afforded by the Association if
20 the largest interest in the trust or entity owning the
21 contract or contracts is held by a plan sponsor whose
22 principal place of business is in this State. In no event
23 shall the Association be obligated to cover more than
24 \$5,000,000 in benefits with respect to all these
25 unallocated contracts.

26 (3.1) Notwithstanding the provisions of subsection (3), in

1 ~~In~~ no event shall the Association be obligated to cover more
2 than (1) an aggregate of \$300,000 in benefits with respect to
3 any one life under subparagraphs (i), (ii), and (iii) of ~~this~~
4 paragraph (b) of subsection (3) except with respect to benefits
5 for basic hospital, medical, and surgical insurance and major
6 medical insurance under item (B) of subparagraph (i) of ~~this~~
7 paragraph (b) of subsection (3), in which case the aggregate
8 liability of the Association shall not exceed \$500,000 with
9 respect to any one individual or (2) with respect to one owner
10 of multiple nongroup policies of life insurance, whether the
11 policy owner is an individual, firm, corporation, or other
12 person and whether the persons insured are officers, managers,
13 employees, or other persons, \$5,000,000 in benefits,
14 regardless of the number of policies and contracts held by the
15 owner.

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

26 (4) In performing its obligations to provide coverage under

1 Section 531.08 of this Code, the Association shall not be
2 required to guarantee, assume, reinsure, or perform or cause to
3 be guaranteed, assumed, reinsured, or performed the
4 contractual obligations of the insolvent or impaired insurer
5 under a covered policy or contract that do not materially
6 affect the economic values or economic benefits of the covered
7 policy or contract.

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

9 (215 ILCS 5/531.05) (from Ch. 73, par. 1065.80-5)

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

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

13 "Association" means the Illinois Life and Health Insurance
14 Guaranty Association created under Section 531.06.

15 "Authorized assessment" or the term "authorized" when used
16 in the context of assessments means a resolution by the Board
17 of Directors has been passed whereby an assessment shall be
18 called immediately or in the future from member insurers for a
19 specified amount. An assessment is authorized when the
20 resolution is passed.

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

23 "Called assessment" or the term "called" when used in the
24 context of assessments means that a notice has been issued by
25 the Association to member insurers requiring that an authorized

1 assessment be paid within the time frame set forth within the
2 notice. An authorized assessment becomes a called assessment
3 when notice is mailed by the Association to member insurers.

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

5 "Contractual obligation" means any obligation under a
6 policy or contract or certificate under a group policy or
7 contract, or portion thereof for which coverage is provided
8 under Section 531.03.

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

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

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

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

24 "Insolvent insurer" means a member insurer that, after the
25 effective date of this amendatory Act of the 96th General
26 Assembly, is placed under a final order of liquidation by a

1 court of competent jurisdiction with a finding of insolvency.

2 "Member insurer" means an insurer licensed or holding a
3 certificate of authority to transact in this State any kind of
4 insurance for which coverage is provided under Section 531.03
5 of this Code and includes an insurer whose license or
6 certificate of authority in this State may have been suspended,
7 revoked, not renewed, or voluntarily withdrawn or whose
8 certificate of authority may have been suspended pursuant to
9 Section 119 of this Code, but does not include:

10 (1) a hospital or medical service organization,
11 whether profit or nonprofit;

12 (2) a health maintenance organization;

13 (3) any burial society organized under Article XIX of
14 this Code, any fraternal benefit society organized under
15 Article XVII of this Code, any mutual benefit association
16 organized under Article XVIII of this Code, and any foreign
17 fraternal benefit society licensed under Article VI of this
18 Code ~~or a fraternal benefit society;~~

19 (4) a mandatory State pooling plan;

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

22 (6) an insurance exchange;

23 (7) an organization that is permitted to issue
24 charitable gift annuities pursuant to Section 121-2.10 of
25 this Code;

26 (8) any health services plan corporation established

1 pursuant to the Voluntary Health Services Plans Act;

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

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

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

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

17 "Person" means an individual, corporation, limited
18 liability company, partnership, association, governmental body
19 or entity, or voluntary organization.

20 "Plan sponsor" means:

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

23 (2) the employee organization in the case of a benefit
24 plan established or maintained by an employee
25 organization; or

26 (3) in a case of a benefit plan established or

1 maintained by 2 or more employers or jointly by one or more
2 employers and one or more employee organizations, the
3 association, committee, joint board of trustees, or other
4 similar group of representatives of the parties who
5 establish or maintain the benefit plan.

6 "Premiums" mean amounts or considerations, by whatever
7 name called, received on covered policies or contracts less
8 returned premiums, considerations, and deposits and less
9 dividends and experience credits.

10 "Premiums" does not include:

11 (A) amounts or considerations received for policies or
12 contracts or for the portions of policies or contracts for
13 which coverage is not provided under Section 531.03 of this
14 Code except that assessable premium shall not be reduced on
15 account of the provisions of subparagraph (iii) of
16 paragraph (b) of subsection (2) ~~(a)~~ of Section 531.03 of
17 this Code relating to interest limitations and the
18 provisions of paragraph (b) of subsection (3), subsection
19 (3.1), or subsection (3.2) of Section 531.03 relating to
20 limitations with respect to one individual, one
21 participant, and one contract owner;

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

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

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

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

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

20 (C) the state in which the board of directors (or
21 similar governing person or persons) of the entity conducts
22 the majority of its meetings;

23 (D) the state in which the executive or management
24 committee of the board of directors (or similar governing
25 person or persons) of the entity conducts the majority of
26 its meetings;

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

3 (F) in the case of a benefit plan sponsored by
4 affiliated companies comprising a consolidated
5 corporation, the state in which the holding company or
6 controlling affiliate has its principal place of business
7 as determined using the above factors.

8 However, in the case of a plan sponsor, if more than 50% of
9 the participants in the benefit plan are employed in a single
10 state, that state shall be deemed to be the principal place of
11 business of the plan sponsor.

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

22 "Receivership court" means the court in the insolvent or
23 impaired insurer's state having jurisdiction over the
24 conservation, rehabilitation, or liquidation of the insurer.

25 "Resident" means a person to whom a contractual obligation
26 is owed and who resides in this State on the date of entry of a

1 court order that determines a member insurer to be an impaired
2 insurer or a court order that determines a member insurer to be
3 an insolvent insurer. A person may be a resident of only one
4 state, which in the case of a person other than a natural
5 person shall be its principal place of business. Citizens of
6 the United States that are either (i) residents of foreign
7 countries or (ii) residents of United States possessions,
8 territories, or protectorates that do not have an association
9 similar to the Association created by this Article, shall be
10 deemed residents of the state of domicile of the insurer that
11 issued the policies or contracts.

12 "Structured settlement annuity" means an annuity purchased
13 in order to fund periodic payments for a plaintiff or other
14 claimant in payment for or with respect to personal injury
15 suffered by the plaintiff or other claimant.

16 "State" means a state, the District of Columbia, Puerto
17 Rico, and a United States possession, territory, or
18 protectorate.

19 "Supplemental contract" means a written agreement entered
20 into for the distribution of proceeds under a life, health, or
21 annuity policy or a life, health, or annuity contract.

22 "Unallocated annuity contract" means any annuity contract
23 or group annuity certificate which is not issued to and owned
24 by an individual, except to the extent of any annuity benefits
25 guaranteed to an individual by an insurer under such contract
26 or certificate.

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

2 (215 ILCS 5/531.07) (from Ch. 73, par. 1065.80-7)

3 Sec. 531.07. Board of Directors.† The board of directors
4 of the Association consists of not less than 7 nor more than 11
5 members serving terms as established in the plan of operation.
6 The insurer members ~~insurers~~ of the board are to be selected by
7 member insurers subject to the approval of the Director. In
8 addition, 2 persons who must be public representatives may be
9 appointed by the Director to the board of directors. A public
10 representative may not be an officer, director, or employee of
11 an insurance company or any person engaged in the business of
12 insurance. Vacancies on the board must be filled for the
13 remaining period of the term in the manner described in the
14 plan of operation.

15 In approving selections or in appointing members to the
16 board, the Director must consider, whether all member insurers
17 are fairly represented.

18 Members of the board may be reimbursed from the assets of
19 the Association for expenses incurred by them as members of the
20 board of directors but members of the board may not otherwise
21 be compensated by the Association for their services.

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

23 (215 ILCS 5/531.08) (from Ch. 73, par. 1065.80-8)

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

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

3 (1) If a member insurer is an impaired insurer, then
4 the Association may, in its discretion and subject to any
5 conditions imposed by the Association that do not impair
6 the contractual obligations of the impaired insurer and
7 that are approved by the Director:

8 (a) ~~(A)~~ guarantee, assume, or reinsure or cause to
9 be guaranteed, assumed, or reinsured, any or all of the
10 policies or contracts of the impaired insurer; or

11 (b) ~~(B)~~ provide such money, pledges, loans, notes,
12 guarantees, or other means as are proper to effectuate
13 paragraph (a) ~~(A)~~ and assure payment of the contractual
14 obligations of the impaired insurer pending action
15 under paragraph (a) ~~(A)~~.

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

18 (a) ~~(A)~~ guaranty, assume, or reinsure or cause to
19 be guaranteed, assumed, or reinsured the policies or
20 contracts of the insolvent insurer or assure payment of
21 the contractual obligations of the insolvent insurer
22 and provide money, pledges, loans, notes, guarantees,
23 or other means reasonably necessary to discharge the
24 Association's duties; or

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

1 (i) with respect to life and health insurance
2 policies and annuities, ensure payment of benefits
3 for premiums identical to the premiums and
4 benefits (except for terms of conversion and
5 renewability) that would have been payable under
6 the policies or contracts of the insolvent insurer
7 for claims incurred:

8 (A) ~~(a)~~ with respect to group policies and
9 contracts, not later than the earlier of the
10 next renewal date under those policies or
11 contracts or 45 days, but in no event less than
12 30 days, after the date on which the
13 Association becomes obligated with respect to
14 the policies and contracts;

15 (B) ~~(b)~~ with respect to nongroup policies,
16 contracts, and annuities not later than the
17 earlier of the next renewal date (if any) under
18 the policies or contracts or one year, but in
19 no event less than 30 days, from the date on
20 which the Association becomes obligated with
21 respect to the policies or contracts;

22 (ii) make diligent efforts to provide all
23 known insureds or annuitants (for nongroup
24 policies and contracts), or group policy owners
25 with respect to group policies and contracts, 30
26 days notice of the termination (pursuant to

1 subparagraph (i) of this paragraph (b) ~~(B)~~ of the
2 benefits provided;

3 (iii) with respect to nongroup life and health
4 insurance policies and annuities covered by the
5 Association, make available to each known insured
6 or annuitant, or owner if other than the insured or
7 annuitant, and with respect to an individual
8 formerly insured or formerly an annuitant under a
9 group policy who is not eligible for replacement
10 group coverage, make available substitute coverage
11 on an individual basis in accordance with the
12 provisions of paragraph (iv) ~~(3)~~, if the insureds
13 or annuitants had a right under law or the
14 terminated policy or annuity to convert coverage
15 to individual coverage or to continue an
16 individual policy or annuity in force until a
17 specified age or for a specified time, during which
18 the insurer had no right unilaterally to make
19 changes in any provision of the policy or annuity
20 or had a right only to make changes in premium by
21 class.

22 (iv) ~~(b)~~ In providing the substitute coverage
23 required under subparagraph (iii), ~~of paragraph~~
24 ~~(B) of item (2) of subsection (a) of this Section,~~
25 the Association may offer either to reissue the
26 terminated coverage or to issue an alternative

1 policy.

2 Alternative or reissued policies shall be
3 offered without requiring evidence of
4 insurability, and shall not provide for any
5 waiting period or exclusion that would not have
6 applied under the terminated policy.

7 The Association may reinsure any alternative
8 or reissued policy.

9 Alternative policies adopted by the
10 Association shall be subject to the approval of the
11 Director. The Association may adopt alternative
12 policies of various types for future insurance
13 without regard to any particular impairment or
14 insolvency.

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

26 Any alternative policy issued by the

1 Association shall provide coverage of a type
2 similar to that of the policy issued by the
3 impaired or insolvent insurer, as determined by
4 the Association.

5 (vi) ~~(e)~~ If the Association elects to reissue
6 terminated coverage at a premium rate different
7 from that charged under the terminated policy, the
8 premium shall be set by the Association in
9 accordance with the amount of insurance provided
10 and the age and class of risk, subject to approval
11 of the Director or by a court of competent
12 jurisdiction.

13 (vii) ~~(d)~~ The Association's obligations with
14 respect to coverage under any policy of the
15 impaired or insolvent insurer or under any
16 reissued or alternative policy shall cease on the
17 date such coverage or policy is replaced by another
18 similar policy by the policyholder, the insured,
19 or the Association.

20 (viii) ~~(e)~~ When proceeding under this Section
21 with respect to any policy or contract carrying
22 guaranteed minimum interest rates, the Association
23 shall assure the payment or crediting of a rate of
24 interest consistent with subparagraph
25 (2) (b) (iii) ~~(B)~~ of Section 531.03.

26 (3) ~~(f)~~ Nonpayment of premiums thirty-one days after

1 the date required under the terms of any guaranteed,
2 assumed, alternative or reissued policy or contract or
3 substitute coverage shall terminate the Association's
4 obligations under such policy or coverage under this Act
5 with respect to such policy or coverage, except with
6 respect to any claims incurred or any net cash surrender
7 value which may be due in accordance with the provisions of
8 this Act.

9 (4) ~~(g)~~ Premiums due for coverage after entry of an
10 order of liquidation of an insolvent insurer shall belong
11 to and be payable at the direction of the Association, and
12 the Association shall be liable for unearned premiums due
13 to policy or contract owners arising after the entry of
14 such order.

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

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

1 permanent policy or contract liens to be in the public
2 interest; or

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

22 (6) ~~(i)~~ There shall be no liability on the part of and
23 no cause of action shall arise against the Association or
24 against any transferee from the Association in connection
25 with the transfer by reinsurance or otherwise of all or any
26 part of an impaired or insolvent insurer's business by

1 reason of any action taken or any failure to take any
2 action by the impaired or insolvent insurer at any time.

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

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

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

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

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

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

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

16 (d) ~~(4)~~ If the preceding provisions of this subsection
17 (10) ~~(1)~~ are invalid or ineffective with respect to any
18 person or claim for any reason, then the amount payable by
19 the Association with respect to the related covered
20 obligations shall be reduced by the amount realized by any
21 other person with respect to the person or claim that is
22 attributable to the policies, or portion thereof, covered
23 by the Association.

24 (e) ~~(5)~~ If the Association has provided benefits with
25 respect to a covered obligation and a person recovers
26 amounts as to which the Association has rights as described

1 in the preceding paragraphs of this subsection (10), then
2 the person shall pay to the Association the portion of the
3 recovery attributable to the policies, or portion thereof,
4 covered by the Association.

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

6 (a) ~~(1)~~ Enter into such contracts as are necessary
7 or proper to carry out the provisions and purposes of
8 this Article.

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

13 (c) ~~(3)~~ Borrow money to effect the purposes of
14 this Article. Any notes or other evidence of
15 indebtedness of the Association not in default are
16 legal investments for domestic insurers and may be
17 carried as admitted assets.

18 (d) ~~(4)~~ Employ or retain such persons as are
19 necessary to handle the financial transactions of the
20 Association, and to perform such other functions as
21 become necessary or proper under this Article.

22 (e) ~~(5)~~ Negotiate and contract with any
23 liquidator, rehabilitator, conservator, or ancillary
24 receiver to carry out the powers and duties of the
25 Association.

26 (f) ~~(6)~~ Take such legal action as may be necessary

1 to avoid payment of improper claims.

2 (g) ~~(7)~~ Exercise, for the purposes of this Article
3 and to the extent approved by the Director, the powers
4 of a domestic life or health insurer, but in no case
5 may the Association issue insurance policies or
6 annuity contracts other than those issued to perform
7 the contractual obligations of the impaired or
8 insolvent insurer.

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

13 (i) ~~(9)~~ Request information from a person seeking
14 coverage from the Association in order to aid the
15 Association in determining its obligations under this
16 Article with respect to the person, and the person
17 shall promptly comply with the request.

18 (j) ~~(10)~~ Take other necessary or appropriate
19 action to discharge its duties and obligations under
20 this Article or to exercise its powers under this
21 Article.

22 (12) ~~(e)~~ With respect to covered policies for which
23 the Association becomes obligated after an entry of an
24 order of liquidation or rehabilitation, the Association
25 may elect to succeed to the rights of the insolvent insurer
26 arising after the date of the order of liquidation or

1 rehabilitation under any contract of reinsurance to which
2 the insolvent insurer was a party, to the extent that such
3 contract provides coverage for losses occurring after the
4 date of the order of liquidation or rehabilitation. As a
5 condition to making this election, the Association must pay
6 all unpaid premiums due under the contract for coverage
7 relating to periods before and after the date of the order
8 of liquidation or rehabilitation.

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

1 pursuant to applicable State receivership law dealing with
2 early access disbursements.

3 (14) ~~(g)~~ The Board of Directors of the Association
4 shall have discretion and may exercise reasonable business
5 judgment to determine the means by which the Association is
6 to provide the benefits of this Article in an economical
7 and efficient manner.

8 (15) ~~(r)~~ Where the Association has arranged or offered
9 to provide the benefits of this Article to a covered person
10 under a plan or arrangement that fulfills the Association's
11 obligations under this Article, the person shall not be
12 entitled to benefits from the Association in addition to or
13 other than those provided under the plan or arrangement.

14 (16) ~~(s)~~ Venue in a suit against the Association
15 arising under the Article shall be in Cook County. The
16 Association shall not be required to give any appeal bond
17 in an appeal that relates to a cause of action arising
18 under this Article.

19 (17) ~~(t)~~ The Association may join an organization of
20 one or more other State associations of similar purposes to
21 further the purposes and administer the powers and duties
22 of the Association.

23 (18) ~~(u)~~ In carrying out its duties in connection with
24 guaranteeing, assuming, or reinsuring policies or
25 contracts under subsections (1) or (2), the Association
26 may, subject to approval of the receivership court, issue

1 substitute coverage for a policy or contract that provides
2 an interest rate, crediting rate, or similar factor
3 determined by use of an index or other external reference
4 stated in the policy or contract employed in calculating
5 returns or changes in value by issuing an alternative
6 policy or contract in accordance with the following
7 provisions:

8 (a) ~~(1)~~ in lieu of the index or other external
9 reference provided for in the original policy or
10 contract, the alternative policy or contract provides
11 for (i) a fixed interest rate, or (ii) payment of
12 dividends with minimum guarantees, or (iii) a
13 different method for calculating interest or changes
14 in value;

15 (b) ~~(2)~~ there is no requirement for evidence of
16 insurability, waiting period, or other exclusion that
17 would not have applied under the replaced policy or
18 contract; and

19 (c) ~~(3)~~ the alternative policy or contract is
20 substantially similar to the replaced policy or
21 contract in all other material terms.

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

23 (215 ILCS 5/531.09) (from Ch. 73, par. 1065.80-9)

24 Sec. 531.09. Assessments.

25 (1) For the purpose of providing the funds necessary to

1 carry out the powers and duties of the Association, the board
2 of directors shall assess the member insurers, separately for
3 each account, at such times and for such amounts as the board
4 finds necessary. Assessments shall be due not less than 30 days
5 after written notice to the member insurers and shall accrue
6 interest from the due date at such adjusted rate as is
7 established under Section 6621 of Chapter 26 of the United
8 States Code and such interest shall be compounded daily.

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

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

14 (b) Class B assessments shall be made to the extent
15 necessary to carry out the powers and duties of the
16 Association under Section 531.08 with regard to an impaired
17 or insolvent domestic insurer or insolvent foreign or alien
18 insurers.

19 (3)(a) The amount of any Class A assessment shall be
20 determined at the discretion of the board of directors and such
21 assessments shall be authorized and called on a non-pro rata
22 basis. The amount of any Class B assessment shall be allocated
23 for assessment purposes among the accounts and subaccounts
24 pursuant to an allocation formula which may be based on the
25 premiums or reserves of the impaired or insolvent insurer or
26 any other standard deemed by the board in its sole discretion

1 as being fair and reasonable under the circumstances.

2 (b) Class B assessments against member insurers for each
3 account and subaccount shall be in the proportion that the
4 premiums received on business in this State by each assessed
5 member insurer on policies or contracts covered by each account
6 or subaccount for the three most recent calendar years for
7 which information is available preceding the year in which the
8 insurer became impaired or insolvent, as the case may be, bears
9 to such premiums received on business in this State for such
10 calendar years by all assessed member insurers.

11 (c) Assessments for funds to meet the requirements of the
12 Association with respect to an impaired or insolvent insurer
13 shall not be made until necessary to implement the purposes of
14 this Article. Classification of assessments under subsection
15 (2) and computations of assessments under this subsection shall
16 be made with a reasonable degree of accuracy, recognizing that
17 exact determinations may not always be possible.

18 (4) The Association may abate or defer, in whole or in
19 part, the assessment of a member insurer if, in the opinion of
20 the board, payment of the assessment would endanger the ability
21 of the member insurer to fulfill its contractual obligations.
22 In the event an assessment against a member insurer is abated
23 or deferred in whole or in part the amount by which the
24 assessment is abated or deferred may be assessed against the
25 other member insurers in a manner consistent with the basis for
26 assessments set forth in this Section. Once the conditions that

1 caused a deferral have been removed or rectified, the member
2 insurer shall pay all assessments that were deferred pursuant
3 to a repayment plan approved by the Association.

4 (5) (a) (i) Subject to the provisions of subparagraph (ii)
5 of this paragraph, the total of all assessments authorized by
6 the Association with respect to a member insurer for each
7 subaccount of the life insurance and annuity account and for
8 the health account shall not in one calendar year exceed 2% of
9 that member insurer's average annual premiums received in this
10 State on the policies and contracts covered by the subaccount
11 or account during the 3 calendar years preceding the year in
12 which the insurer became an impaired or insolvent insurer.

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

21 (iii) If the maximum assessment, together with the other
22 assets of the Association in an account, does not provide in
23 one year in either account an amount sufficient to carry out
24 the responsibilities of the Association, the necessary
25 additional funds shall be assessed as soon thereafter as
26 permitted by this Article.

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

5 (c) If the maximum assessment for a subaccount of the life
6 insurance and annuity account in one year does not provide an
7 amount sufficient to carry out the responsibilities of the
8 Association, then pursuant to paragraph (b) of subsection (3),
9 the board shall assess the other subaccounts of the life and
10 annuity account for the necessary additional amount, subject to
11 the maximum stated in paragraph (a) of this subsection.

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

22 (7) An assessment is deemed to occur on the date upon which
23 the board votes such assessment. The board may defer calling
24 the payment of the assessment or may call for payment in one or
25 more installments.

26 (8) It is proper for any member insurer, in determining its

1 premium rates and policyowner dividends as to any kind of
2 insurance within the scope of this Article, to consider the
3 amount reasonably necessary to meet its assessment obligations
4 under this Article.

5 (9) The Association must issue to each insurer paying a
6 Class B assessment under this Article a certificate of
7 contribution, in a form acceptable to the Director, for the
8 amount of the assessment so paid. All outstanding certificates
9 are of equal dignity and priority without reference to amounts
10 or dates of issue. A certificate of contribution may be shown
11 by the insurer in its financial statement as an asset in such
12 form and for such amount, if any, and period of time as the
13 Director may approve, provided the insurer shall in any event
14 at its option have the right to show a certificate of
15 contribution as an admitted asset at percentages of the
16 original face amount for calendar years as follows:

17 100% for the calendar year after the year of issuance;

18 80% for the second calendar year after the year of
19 issuance;

20 60% for the third calendar year after the year of issuance;

21 40% for the fourth calendar year after the year of
22 issuance;

23 20% for the fifth calendar year after the year of issuance.

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

1 request.

2 (Source: P.A. 95-86, eff. 9-25-07 (changed from 1-1-08 by P.A.
3 95-632); 96-1450, eff. 8-20-10.)

4 (215 ILCS 5/531.14) (from Ch. 73, par. 1065.80-14)

5 Sec. 531.14. Miscellaneous Provisions.

6 (1) Nothing in this Article may be construed to reduce the
7 liability for unpaid assessments of the insured of an impaired
8 or insolvent insurer operating under a plan with assessment
9 liability.

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

21 (3) For the purpose of carrying out its obligations under
22 this Article, the Association is deemed to be a creditor of the
23 impaired or insolvent insurer to the extent of assets
24 attributable to covered policies reduced by any amounts to
25 which the Association is entitled as subrogee (under paragraph

1 (10) ~~(8)~~ of Section 531.08). All assets of the impaired or
2 insolvent insurer attributable to covered policies must be used
3 to continue all covered policies and pay all contractual
4 obligations of the impaired insurer as required by this
5 Article. "Assets attributable to covered policies", as used in
6 this paragraph (3), is that proportion of the assets which the
7 reserves that should have been established for such policies
8 bear to the reserve that should have been established for all
9 policies of insurance written by the impaired or insolvent
10 insurer.

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

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

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

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

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

22 (d) The maximum amount recoverable under subsection (5) of
23 this Section is the amount needed in excess of all other
24 available assets of the insolvent insurer to pay the
25 contractual obligations of the insolvent insurer.

26 (e) If any person liable under paragraph (c) of subsection

1 (5) of this Section is insolvent, all its affiliates that
2 controlled it at the time the dividend was paid are jointly and
3 severally liable for any resulting deficiency in the amount
4 recovered from the insolvent affiliate.

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

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

21 Section 10. The Health Maintenance Organization Act is
22 amended by changing Section 6-14 as follows:

23 (215 ILCS 125/6-14) (from Ch. 111 1/2, par. 1418.14)

24 Sec. 6-14. Miscellaneous Provisions. (1) Records must be

1 kept of all negotiations and meetings in which the Association
2 or its representatives are involved to discuss the activities
3 of the Association in carrying out its powers and duties under
4 Section 6-8. Records of such negotiations or meetings may be
5 made public only upon the termination of a liquidation,
6 rehabilitation, or conservation proceeding involving the
7 impaired or insolvent organization, upon the termination of the
8 impairment or insolvency of the organization, or upon the order
9 of a court of competent jurisdiction. Nothing in this
10 subsection (1) limits the duty of the Association to submit a
11 report of its activities under Section 6-15.

12 (2) For the purpose of carrying out its obligations under
13 this Article, the Association is deemed to be a creditor of the
14 impaired or insolvent organization to the extent of assets
15 attributable to covered health care plan certificates reduced
16 by any amounts to which the Association is entitled as subrogee
17 (under subsection (7) of Section 6-8). All assets of the
18 impaired or insolvent organization attributable to covered
19 health care plan certificates must be used to continue all
20 covered health care plan certificates and pay all contractual
21 obligations of the impaired organization as required by this
22 Article. "Assets attributable to covered health care plan
23 certificates", as used in this subsection (2), is that
24 proportion of the assets which the reserves that should have
25 been established for such health care plan certificates bear to
26 the reserve that should have been established for all health

1 care plan certificates of the impaired or insolvent
2 organization.

3 (3) (a) Prior to the termination of any liquidation,
4 rehabilitation, or conservation proceeding, the court may take
5 into consideration the contributions of the respective
6 parties, including the Association, the shareholders of the
7 impaired or insolvent organization, and any other party with a
8 bona fide interest, in making an equitable distribution of the
9 ownership rights of such impaired or insolvent organization. In
10 such a determination, consideration must be given to the
11 welfare of the enrollees of the continuing or successor
12 organization.

13 (b) No distribution to stockholders, if any, of an impaired
14 or insolvent organization may be made until and unless the
15 total amount of valid claims of the Association for funds
16 expended in carrying out its powers and duties under Section
17 6-8, with interest, with respect to such organization have been
18 fully recovered by the Association.

19 (4) (a) If an order for liquidation or rehabilitation of an
20 organization domiciled in this State has been entered, the
21 receiver appointed under such order has a right to recover on
22 behalf of the organization, from any affiliate that controlled
23 it, the amount of distributions, other than stock dividends
24 paid by the organization on its capital stock, made at any time
25 during the 5 years preceding the petition for liquidation or
26 rehabilitation subject to the limitations of paragraphs (b) to

1 (d).

2 (b) No such distribution is recoverable if the organization
3 shows that when paid the distribution was lawful and
4 reasonable, and that the organization did not know and could
5 not reasonably have known that the distribution might adversely
6 affect the ability of the organization to fulfill its
7 contractual obligations.

8 (c) Any person who was an affiliate that controlled the
9 organization at the time the distributions were paid is liable
10 up to the amount of distributions he received. Any person who
11 was an affiliate that controlled the organization at the time
12 the distributions were declared, is liable up to the amount of
13 distributions he would have received if they had been paid
14 immediately. If 2 persons are liable with respect to the same
15 distributions, they are jointly and severally liable.

16 (d) The maximum amount recoverable under subsection (4) of
17 this Section is the amount needed in excess of all other
18 available assets of the insolvent organization to pay the
19 contractual obligations of the insolvent organization.

20 (e) If any person liable under paragraph (c) of subsection
21 (4) of this Section is insolvent, all its affiliates that
22 controlled it at the time the distribution was paid are jointly
23 and severally liable for any resulting deficiency in the amount
24 recovered from the insolvent affiliate.

25 (Source: P.A. 86-620.)