

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 531.02, 531.03, 531.04, 531.05, 531.06,
6 531.07, 531.08, 531.09, 531.10, 531.11, 531.12, 531.14,
7 531.15, 531.17, and 531.19, and adding Section 531.02a as
8 follows:

9 (215 ILCS 5/531.02) (from Ch. 73, par. 1065.80-2)

10 Sec. 531.02. Purpose. The purpose of this Article is to
11 protect, subject to certain limitations, the persons
12 specified in paragraph (1) of Section 531.03 against failure
13 in the performance of contractual obligations, under life and
14 ~~or~~ health insurance policies, and annuity contracts and
15 ~~health---or---medical---care---service---contracts~~ specified in
16 paragraph (2) of Section 531.03, due to the impairment or
17 insolvency of the insurer issuing such policies or contracts.
18 To provide this protection, (1) an association of insurers is
19 created to enable the guaranty of payment of benefits and of
20 continuation of coverages as limited by this Article, (2)
21 members of the Association are subject to assessment to
22 provide funds to carry out the purpose of this Article, and
23 (3) the Association is authorized to assist the Director, in
24 the prescribed manner, in the detection and prevention of
25 insurer impairments or insolvencies.

26 (Source: P.A. 86-753.)

27 (215 ILCS 5/531.02a new)

28 Sec. 513.02a. Restrictions on recoveries by health care
29 providers. In the event of the insolvency of a member
30 insurer, no provider of health care services shall seek to

1 recover any amount from any insured until a final
 2 determination has been made as to the Association's liability
 3 for such services (including the resolution of any dispute or
 4 litigation resulting therefrom).

5 In the event that a provider seeks to recover any such
 6 amount before a final determination of the Association's
 7 liability (or the resolution of any dispute or litigation
 8 resulting therefrom) has been made, the provider shall be
 9 liable for all reasonable costs and attorney fees incurred by
 10 the Director and the Association in enforcing this provision
 11 or any court orders related thereto.

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
 20 (1)(b), and

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

27 (i) are residents ~~of-this-State,~~ or

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

30 (A) the insurer ~~insurers~~ that ~~which~~
 31 issued such policies or contracts is are
 32 domiciled in this State;

33 (B) the states in which such persons

1 reside have associations similar to the
 2 association created by this Article such
 3 insurers-never-held-a-license-or-certificate-of
 4 authority-in-the-states-in-which--such--persons
 5 reside; and

6 (C) the persons are not eligible for
 7 coverage by an association in any other state
 8 due to the fact that the insurer was not
 9 licensed in the state at the time specified in
 10 the state's guaranty association law. such
 11 states--have--associations---similar---to---the
 12 association-created-by-this-Act;-and

13 ~~(D)--such--persons--are--not--eligible-for~~
 14 ~~coverage-by-such-associations-~~

15 (c) For unallocated annuity contracts specified in
 16 paragraph (2) of this Section, subparagraphs (a) and (b)
 17 of this paragraph shall not apply, and this Article shall
 18 (except as provided in subparagraphs (e) and (f) of this
 19 paragraph) provide coverage to:

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

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

28 (d) For structured settlement annuities specified
 29 in paragraph (2) of this Section, subparagraphs (a) and
 30 (b) of this paragraph shall not apply, and this Article
 31 shall (except as provided in subparagraphs (e) and (f) of
 32 this paragraph) provide coverage to a person who is a
 33 payee under a structured settlement annuity (or
 34 beneficiary of a payee if the payee is deceased), if the

1 payee:

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

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

6 (A)(1) the contract owner of the
7 structured settlement annuity is a resident, or

8 (II) the contract owner of the structured
9 settlement annuity is not a resident, but

10 the insurer that issued the structured
11 settlement annuity is domiciled in this State;

12 and

13 the state in which the contract owner
14 resides has an association similar to the

15 association created by this Article; and

16 (B) neither the payee (or beneficiary)
17 nor the contract owner is eligible for coverage

18 by the association of the state in which the
19 payee or contract owner resides.

20 (e) This Article shall not provide coverage for:

21 (i) a person who is a payee (or beneficiary)
22 of a contract owner resident of this State, if the

23 payee (or beneficiary) is afforded any coverage by
24 the association of another state, or

25 (ii) a person covered under subparagraph (c)
26 of this paragraph, if any coverage is provided by

27 the association of another state to or through the
28 trustee who is the contract owner.

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

31 circumstances, to a nonresident. In order to avoid
32 duplicate coverage, if a person who would otherwise

33 receive coverage under this Article is provided coverage
34 under the laws of any other state, the person shall not

1 be provided coverage under this Article. In determining
 2 the application of the provisions of this paragraph in
 3 situations where a person could be covered by the
 4 association of more than one state, whether as an owner,
 5 payee, beneficiary, or assignee, this Article shall be
 6 construed in conjunction with other state laws to result
 7 in coverage by only one association.

8 (2)(a) Except as otherwise provided, this Article shall
 9 provide coverage to the persons specified in paragraph (1) of
 10 this Section for direct, (i) individual or other nongroup
 11 life, health, and annuity and--supplemental policies, or
 12 contracts, and supplemental contracts to any of these, (ii)
 13 for certificates under direct group policies or contracts,
 14 (iii) and for unallocated annuity contracts, in each case
 15 issued by member insurers. "Annuity contracts" and
 16 "certificates under group annuity contracts" shall have the
 17 meaning set forth in subdivision (2) of Section 531.05 and
 18 ~~(iv) for contracts to furnish health care services and~~
 19 ~~subscription certificates for medical or health care services~~
 20 ~~issued by persons licensed to transact insurance business in~~
 21 ~~this State under the Illinois Insurance Code. Annuity~~
 22 ~~contracts and certificates under group annuity contracts~~
 23 ~~include but are not limited to guaranteed investment~~
 24 ~~contracts, deposit administration contracts, unallocated~~
 25 ~~funding agreements, allocated funding agreements, structured~~
 26 ~~settlement agreements, lottery contracts and any immediate or~~
 27 ~~deferred annuity contracts.~~

28 (b) This Article shall not provide coverage for:
 29 (i) any that portion or provision part of such
 30 policies or contracts not guaranteed by the insurer, or
 31 under which the risk is borne by the policy or contract
 32 owner policyholder; provided however, that nothing in
 33 this subparagraph (2)(b)(i) shall make this Article
 34 inapplicable to assessment life and accident and health

1 insurance policies or contracts; or

2 (ii) any such policy or contract or part thereof
3 assumed by the impaired or insolvent insurer under a
4 contract of reinsurance, unless ~~other--than--reinsurancee~~
5 ~~for--which~~ assumption certificates have been issued
6 pursuant to the reinsurance policy or contract by the
7 impaired or insolvent insurer; or

8 (iii) any interest rate, crediting rate, or similar
9 factor employed in calculating returns or changes in
10 value (whether or not determined by use of an index or
11 other external reference stated in the policy or
12 contract), and any portion of a policy or contract to the
13 extent that it is based on such a rate or factor, that
14 ~~any--portion--of--a--policy--or--contract--to--the--extent--such~~
15 ~~portion--represents--an--accrued--value--that--the--rate--of~~
16 ~~interest--on--which--it--is--accrued~~

17 (A) averaged over the period of 4 ~~four~~ years
18 prior to the date on which the Association becomes
19 obligated with respect to such policy or contract,
20 exceeds a rate of interest determined by subtracting
21 2 ~~two~~ percentage points from Moody's Corporate Bond
22 Yield Average averaged for that same 4 ~~four~~ year
23 period or for such lesser period if the policy or
24 contract was issued less than 4 ~~four~~ years before
25 the Association became obligated; and

26 (B) on and after the date on which the
27 Association becomes obligated with respect to such
28 policy or contract, exceeds the rate of interest
29 determined by subtracting 3 ~~three~~ percentage points
30 from Moody's Corporate Bond Yield Average on a
31 month-to-month basis ~~as-most-recently-available;~~ or

32 (iv) any provision or portion of a policy or
33 contract issued to a plan or program of an employer,
34 association, or other person to provide life, health, or

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

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

7 (B) a minimum premium group insurance plan;

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

12 (D) an administrative services only contract;
13 or

14 (E) a cost-plus contract; or

15 (v) any provision or portion of a policy or
16 contract to the extent that it provides:

17 (A) dividends or experience rating credits
18 which, in each case, were not paid or credited as of
19 the date of impairment or insolvency, whichever is
20 earlier;

21 (B) voting rights;

22 (C) obligations to report to the policy owner
23 or contract owner more frequently than annually;

24 (D) payment of any fees or allowances to any
25 person, including the policy or contract owner, in
26 connection with the service to or administration of
27 the policy or contract; or

28 (E) other nonmonetary obligations; or

29 (vi) ~~(iv)~~ any unallocated annuity contract issued
30 to or in connection with a an-employee benefit plan the
31 beneficiaries of which are protected by protected-under
32 the federal Pension Benefit Guaranty Corporation law,
33 regardless of whether the federal Pension Benefit
34 Guaranty Corporation has yet become liable to make any

1 payments with respect to the benefit plan; or

2 (vii) (v) any portion of any unallocated annuity
3 contract which is not issued to or in connection with a
4 specific employee, union or association of natural
5 persons benefit plan or a government lottery; or

6 (viii) (vi) any policy or contract or portion
7 thereof issued by any burial society organized under
8 Article XIX of this Code Act, any fraternal benefit
9 society organized under Article XVII of this Code Act,
10 any mutual benefit association organized under Article
11 XVIII of this Code Act, and any foreign fraternal benefit
12 society licensed under Article VI of this Code Act; or

13 (ix) (vii) any policy or contract or portion
14 thereof issued by any health maintenance organization
15 established pursuant to the Health Maintenance
16 Organization Act including any health maintenance
17 organization business of a member insurer; or

18 (x) (viii) any policy or contract or portion
19 thereof issued by any health services plan corporation
20 established pursuant to the Voluntary Health Services
21 Plans Act; or

22 ~~(ix) --(blank) -- or~~

23 (xi) (x) any policy or contract or portion thereof
24 issued by any dental service plan corporation established
25 pursuant to the Dental Service Plan Act; or

26 ~~(xi) --any--step-loss-insurance,--as-defined-in- clause~~
27 ~~(b)-of-Class-1-or- clause-(a)-of-Class-2-of-Section-4,--and~~
28 ~~further-defined-in-subsection-(d)-of-Section-352;--or~~

29 (xii) any that portion ~~or-part~~ of a variable life
30 insurance or variable annuity policy or contract not
31 guaranteed by an insurer; or.

32 (xiii) any policy or contract or portion thereof to
33 the extent that assessments with respect to such policy
34 or contract or portion thereof are prohibited or

1 preempted by federal or state law; or

2 (xiv) any obligation that does not arise under the
3 express written terms of the policy or contract issued by
4 the insurer to the contract owner or policy owner,
5 including without limitation:

6 (A) claims based on marketing materials;

7 (B) claims based on side letters, riders, or
8 other documents that were issued by the insurer
9 without meeting applicable policy or contract form
10 filing or approval requirements;

11 (C) misrepresentations of or regarding policy
12 or contract benefits;

13 (D) extra-contractual claims;

14 (E) a claim for penalties or consequential or
15 incidental damages; or

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

22 (xvi) any portion of a policy or contract that, on
23 the date the Association becomes obligated, exceeds in
24 value the maximum benefit levels specified in paragraph
25 (3)(b) of this Section; or

26 (xvii) any portion of a policy or contract to the
27 extent it provides for interest or other changes in value
28 to be determined by the use of an index or other external
29 reference stated in the policy or contract, but which
30 have not been credited to the policy or contract, or as
31 to which the policy or contract owner's rights are
32 subject to forfeiture, as of the date the member insurer
33 becomes an impaired or insolvent insurer under this
34 Article, whichever is earlier. If a policy's or

1 contract's interest or changes in value are credited less
 2 frequently than annually, then for purposes of
 3 determining the values that have been credited and are
 4 not subject to forfeiture under this subdivision
 5 531.03(2)(b)(xvii), the interest or change in value
 6 determined by using the procedures defined in the policy
 7 or contract shall be credited as if the contractual date
 8 of crediting interest or changing values was the date of
 9 impairment or insolvency, whichever is earlier, and shall
 10 not be subject to forfeiture; or

11 (xviii) a policy or contract issued in this State
 12 by a member insurer at a time when it was not licensed or
 13 did not have a certificate of authority to issue the
 14 policy or contract in this State.

15 (3) The benefits that ~~for~~--which the Association may
 16 become obligated to cover ~~liable~~ shall in no event exceed the
 17 lesser of:

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

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

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

26 (B) \$300,000 in health insurance benefits,
 27 including any net cash surrender and net cash
 28 withdrawal values;

29 (C) \$100,000 in the present value of annuity
 30 benefits, including net cash surrender and net cash
 31 withdrawal values;

32 (ii) with respect to each individual participating
 33 in a governmental retirement benefit plan established
 34 under Section 401, 403(b) or 457 of the United States

1 U.S. Internal Revenue Code covered by an unallocated
 2 annuity contract or the beneficiaries of each such
 3 individual if deceased, in the aggregate, \$100,000 in
 4 present value annuity benefits, including net cash
 5 surrender and net cash withdrawal values; provided,
 6 however, that in no event shall the Association be liable
 7 to expend more than \$300,000 in the aggregate with
 8 respect to any one individual under subparagraph (1) and
 9 this subparagraph;

10 (iii) with respect to each payee of a structured
 11 settlement annuity contract (or the beneficiary or
 12 beneficiaries of the payee if deceased), \$100,000 in the
 13 present value of annuity benefits, in the aggregate
 14 including net cash surrender and net cash withdrawal
 15 values;

16 (iv) provided, however, that in no event shall the
 17 Association be liable to expend more than \$300,000 in the
 18 aggregate with respect any one life under subparagraphs
 19 (3)(b)(i), (ii), and (iii).

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

27 (vi) ~~(iii)~~ with respect to either (i) one contract
 28 owner provided coverage under subparagraph (1)(c)(ii) of
 29 this Section; or (ii) any one plan sponsor whose plans
 30 own directly or in trust one or more contract-holder
 31 covered-by-any unallocated annuity contracts contract not
 32 included in subparagraph (3)(b)(ii) of this Section
 33 above, \$5,000,000 in benefits, irrespective of the number
 34 of such contracts held by that contract owner or plan

1 sponsor; holder; provided, however, that in the case
2 where one or more unallocated annuity contracts not
3 included in subparagraph (3)(b)(ii) of this Section are
4 covered contracts under this Article and are owned by a
5 trust or other entity for the benefit of 2 or more plan
6 sponsors, coverage shall be afforded by the Association
7 if the largest interest in the trust or entity owning the
8 contract or contracts is held by a plan sponsor whose
9 principal place of business is in this State and in no
10 event shall the Association be obligated to cover more
11 than \$5,000,000 in benefits with respect to all these
12 unallocated contracts; and provided further that where
13 one or more unallocated annuity contracts not included in
14 subparagraph (3)(b)(ii) of this Section are owned by a
15 benefit plan, or the trustee of a benefit plan, with
16 fewer than 50 participants, the Association shall not be
17 liable for an amount that in the aggregate is greater
18 than \$100,000 times the number of individuals who are
19 participants in the benefit plan.

20 (vii) The limitations set forth in this paragraph
21 (3) are limitations on the coverage for which the
22 Association is obligated before taking into account
23 either its subrogation and assignment rights or the
24 extent to which such coverage could be provided out of
25 the assets of the impaired or insolvent insurer
26 attributable to covered policies or contracts. The costs
27 of the Association's obligations under this Article may
28 be met by the use of assets attributable to covered
29 policies or contracts or reimbursed to the Association
30 pursuant to its subrogation and assignment rights.

31 (4) In performing its obligations to provide coverage
32 under Section 531.08 of this Article, the Association shall
33 not be required to guarantee, assume, reinsure, or perform,
34 or cause to be guaranteed, assumed, reinsured, or performed,

1 the contractual obligations of the insolvent or impaired
2 insurer under a covered policy or contract that do not
3 materially affect the economic values or economic benefits of
4 the covered policy or contract.

5 (Source: P.A. 90-177, eff. 7-23-97; 91-357, eff. 7-29-99.)

6 (215 ILCS 5/531.04) (from Ch. 73, par. 1065.80-4)

7 Sec. 531.04. Construction.} This Article is to be
8 ~~liberally~~ construed to effect the purpose established under
9 Section 531.02 ~~which--constitutes--an--aid--and--guide---~~ to
10 ~~interpretation.~~

11 (Source: P.A. 81-899.)

12 (215 ILCS 5/531.05) (from Ch. 73, par. 1065.80-5)

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

14 (1) "Account" means either of the 2 3 accounts created
15 under Section 531.06.

16 (2) "Annuity contracts" and "certificates under group
17 annuity contracts" include but are not limited to guaranteed
18 investment contracts, deposit administration contracts,
19 unallocated funding agreements, allocated funding agreements,
20 structured settlement annuities, annuities issued to or in
21 connection with government lotteries, and any immediate or
22 deferred annuity contracts.

23 (3) (2) "Association" means the Illinois Life and Health
24 Insurance Guaranty Association created under Section 531.06.

25 ~~(3)--"Director"--means--the-Director-of-Insurance-of-this~~
26 ~~State.~~

27 (4) "Authorized assessment" or the term "authorized"
28 when used in the context of assessments means a resolution by
29 the board of directors has been passed whereby an assessment
30 may be called immediately or in the future from member
31 insurers for a specified amount. An assessment is authorized
32 when the resolution is passed or, where the terms of the

1 resolution specify an effective date, on such effective date.

2 (5) "Benefit plan" means a plan for the provision of
3 pension, severance, health, or other benefits sponsored by
4 one or more specific employers, unions, or associations of
5 natural persons.

6 (6) "Board" or "board of directors" means the board of
7 directors of the Association.

8 (7) "Called assessment" or the term "called" when used
9 in the context of assessments means that a notice has been
10 issued by the Association to member insurers requiring that
11 all or part of an authorized assessment be paid at such time
12 and subject to such conditions as are set forth within the
13 notice. An authorized assessment becomes a called assessment
14 when notice is mailed by the Association to member insurers.

15 (8) "Certificates under group annuity contracts" is
16 defined in paragraph (2) of this Section.

17 (9) (4) "Contractual obligation" means any obligation
18 under a policy or contract or certificate under a group
19 policy or contract, or portion thereof for which coverage is
20 provided under Section 531.03.

21 (10) (5) "Covered person" means any person who is
22 entitled to the protection of the Association as described in
23 Section 531.02.

24 (11) (6) "Covered policy" means any policy or contract
25 or portion of a policy or contract for which coverage is
26 provided within--the--scope--of--this--Article under Section
27 531.03.

28 (12) "Director" means the Director of Insurance of this
29 State.

30 (13) "Extra-contractual claim" includes, for example,
31 claims relating to bad faith in the payment or adjudication
32 of claims, claims for punitive or exemplary damages or
33 attorney's fees and costs, and claims for breaches of
34 statutory or fiduciary duty.

1 (14) (7) "Impaired insurer" means a member insurer
 2 determined deemed by the Director in a written notice to the
 3 Association after the effective date of this Article to be
 4 potentially unable to fulfill its contractual obligations and
 5 not an insolvent insurer.

6 (15) (8) "Insolvent insurer" means (a) a member insurer
 7 that is found to be either-at-the-time-the-policy-was--issued
 8 or--when-the-insured-event-occurred,--or-any-company-which-has
 9 acquired-such-direct--policy--obligations--through--purchase,
 10 merger,--consolidation,--reinsurance-or-otherwise,--whether-or
 11 not-such-acquiring-company-held-a-certificate-of-authority-to
 12 transact-insurance-in-this-State-at-the-time-such-policy--was
 13 issued--or--when--the-insured-event-occurred;--and-(b)-becomes
 14 insolvent, and is placed under a final order of liquidation,
 15 rehabilitation, or conservation by a court of competent
 16 jurisdiction.

17 (16) (9) "Member insurer" means any person licensed or
 18 that who holds a certificate of authority to transact in this
 19 State any kind of insurance business to which this Article
 20 applies under Section 531.03. For purposes of this Article
 21 "member insurer" includes any person whose certificate of
 22 authority may have been suspended pursuant to Section 119,
 23 revoked, voluntarily withdrawn, or not renewed subsequent to
 24 the date on which a member insurer became an impaired insurer
 25 or an insolvent insurer, whichever is earlier. "Member
 26 insurer" does not include any of the following:-

- 27 (a) a mandatory State pooling plan;
- 28 (b) an insurance exchange;
- 29 (c) an organization (other than an insurer
 30 authorized to transact business in this State) issuing
 31 charitable gift annuities; or
- 32 (d) any entity similar to any of the above.

33 (17) (10) "Moody's Corporate Bond Yield Average" means
 34 the Monthly Average Corporates as published by Moody's

1 Investors Service, Inc., or any successor thereto.

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

12 (19) "Person" means any individual, corporation, trust,
13 limited liability company, partnership, association,
14 governmental body or entity, or voluntary organization.

15 (20) "Plan sponsor" means:

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

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

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

27 (21) ~~(11)~~ "Premiums" means direct gross insurance
28 premiums, or subscriptions, or and-annuity considerations (by
29 whatever name called) received on covered policies or
30 contracts, less returned return premiums, and considerations,
31 and deposits thereon and less dividends and experience
32 credits paid or credited to policy or contract owners
33 policyholders on such direct business. "Premiums" do not
34 include premiums and considerations on contracts between

1 insurers and reinsurers. "Premiums" do not include any
 2 amounts or considerations received for any policies or
 3 contracts or for the portions of any policies or contracts
 4 for which coverage is not provided under paragraph (2) of
 5 Section 531.03 except that assessable premium shall not be
 6 reduced on account of subparagraph (2)(b)(iii) of Section
 7 531.03 relating to interest limitations and subparagraph
 8 (3)(b) of Section 531.03 relating to limitations with respect
 9 to any one life, any one individual, any one participant, and
 10 any one policy or contract owner. ~~contract holder; provided~~
 11 that "Premiums" shall not include:

12 (a) any premiums in excess of \$5,000,000 five
 13 million--dollars on any unallocated annuity contract not
 14 issued under a governmental retirement benefit plan (or
 15 its trustee) established under Sections 401, 403(b) or
 16 457 of the United States Internal Revenue Code; or

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

25 (12) ~~"Person" means any individual, corporation,~~
 26 ~~partnership, association or voluntary organization.~~

27 (22) "Principal place of business" of a plan sponsor or
 28 a person other than a natural person means the single state
 29 in which the natural persons who establish policy for the
 30 direction, control, and coordination of the operations of the
 31 entity as a whole primarily exercise that function,
 32 determined by the Association in its reasonable judgment by
 33 considering the following factors:

34 (a) the state in which the primary executive and

1 administrative headquarters of the entity are located;

2 (b) the state in which the principal office of the
3 chief executive officer of the entity is located;

4 (c) the state in which the board of directors (or
5 similar governing person or persons) of the entity
6 conducts the majority of its meetings;

7 (d) the state in which the executive or management
8 committee of the board of directors (or similar governing
9 person or persons) of the entity conducts the majority of
10 its meetings;

11 (e) the state from which the management of the
12 overall operations of the entity is directed; and

13 (f) in the case of a benefit plan sponsored by
14 affiliated companies comprising a consolidated
15 corporation, the state in which the holding company or
16 controlling affiliate has its principal place of business
17 as determined using the above factors.

18 However, in the case of a plan sponsor, if more than 50%
19 of the participants in the benefit plan are employed in a
20 single state, that state shall be deemed to be the principal
21 place of business of the plan sponsor; except that the
22 principal place of business of a plan sponsor of a benefit
23 plan described in paragraph (20)(c) of this Section shall be
24 deemed to be the principal place of business of the
25 association, committee, joint board of trustees, or other
26 similar group of representatives of the parties who establish
27 or maintain the benefit plan; provided, however, that in the
28 absence of a specific or clear designation of such a
29 principal place of business, the principal place of business
30 shall be deemed to be the principal place of business of the
31 employer or employee organization that has the largest
32 investment in the benefit plan in question.

33 (23) "Receivership court" means the court in the
34 insolvent or impaired insurer's state of domicile having

1 jurisdiction over the conservation, rehabilitation, or
2 liquidation of the insurer.

3 (24) (13) "Resident" means any person to whom a
4 contractual obligation is owed and, except in the case of a
5 contract owner of an unallocated annuity contract issued to a
6 benefit plan or trustee of a benefit plan, who resides in
7 this State on the date the Director determines a member
8 insurer to be an impaired insurer or a court order determines
9 a member insurer to be an insolvent insurer, whichever occurs
10 first. In the case of an unallocated annuity contract issued
11 to a benefit plan, or the trustee of a benefit plan, the
12 contract owner shall be a "resident" of the state in which
13 the principal place of business of the plan sponsor was
14 located on such date at-the-time-the-insurer-is-determined-to
15 be-impaired-or-insolvent-and-to-whom-contractual--obligations
16 are-owed. A person may be a resident of only one state which,
17 in the case of a person other than a natural person, shall be
18 its principal place of business. Citizens of the United
19 States that are either (i) residents of foreign countries or
20 (ii) residents of United States possessions, territories, or
21 protectorates that do not have an association similar to the
22 Association shall be deemed residents of the state of
23 domicile of the insurer that issued the policies or
24 contracts.

25 (25) "State" means a state, the District of Columbia,
26 Puerto Rico, and a United States possession, territory, or
27 protectorate.

28 (26) "Structured settlement annuity contract" means an
29 annuity contract purchased in order to fund periodic payments
30 for a plaintiff or other claimant in payment for or with
31 respect to personal injury suffered by the plaintiff or other
32 claimant.

33 (27) "Subaccount" means any of the 3 subaccounts of the
34 life insurance and annuity account created under subdivision

1 (1) of 531.06.

2 (28) (14) "Supplemental contract" means any written
3 agreement entered into for the distribution of proceeds under
4 a life, health, or annuity policy or contract p̄ceeds.

5 (29) (15) "Unallocated annuity contract" means any
6 annuity contract or group annuity certificate which is not
7 issued to and owned by an individual, except to the extent of
8 any annuity benefits guaranteed to an individual by an
9 insurer under such contract or certificate.

10 (Source: P.A. 86-753.)

11 (215 ILCS 5/531.06) (from Ch. 73, par. 1065.80-6)

12 Sec. 531.06. Creation of the Association. There is
13 created a non-profit legal entity to be known as the Illinois
14 Life and Health Insurance Guaranty Association. All member
15 insurers are and must remain members of the Association as a
16 condition of their authority to transact insurance in this
17 State. The Association must perform its functions under the
18 plan of operation established and approved under Section
19 531.10 and must exercise its powers through a board of
20 directors established under Section 531.07. For purposes of
21 administration and assessment, the Association must maintain
22 2 accounts:

23 (1) The life insurance and annuity account which
24 includes the following subaccounts:

25 (a) Life insurance account;

26 (b) Annuity account which shall include annuity
27 contracts owned by a governmental retirement plan (or its
28 trustee) established under Section 401, 403(b), or 457 of the
29 United States Internal Revenue Code, but shall otherwise
30 exclude unallocated annuity contracts; and

31 (c) Unallocated annuity account which shall exclude
32 contracts owned by a governmental retirement benefit plan (or
33 its trustee) established under Section 401, 403(b), or 457 of

1 ~~the United States Internal Revenue Code include-contracts~~
2 ~~qualified-under-Section-403(b)-of-the-United--State--Internal~~
3 ~~Revenue-Code.~~

4 (2) The health insurance account.

5 The Association shall be supervised by the Director and
6 is subject to the applicable provisions of the Illinois
7 Insurance Code.

8 (Source: P.A. 86-753.)

9 (215 ILCS 5/531.07) (from Ch. 73, par. 1065.80-7)

10 Sec. 531.07. Board of Directors.} The board of
11 directors of the Association consists of not less than 5 nor
12 more than 9 members serving terms as established in the plan
13 of operation. The members of the board are to be selected by
14 member insurers subject to the approval of the Director.
15 Vacancies on the board must be filled for the remaining
16 period of the term in the manner described in the plan of
17 operation. To select the initial board of directors, and
18 initially organize the Association, the Director must give
19 notice to all member insurers of the time and place of the
20 organizational meeting. In determining voting rights at the
21 organizational meeting each member insurer is entitled to one
22 vote in person or by proxy. If the board of directors is not
23 selected within 60 days after notice of the organizational
24 meeting, the Director may appoint the initial members.

25 In approving selections or in appointing members to the
26 board, the Director must consider, whether all member
27 insurers are fairly represented.

28 Members of the board may be reimbursed from the assets of
29 the Association for expenses incurred by them as members of
30 the board of directors but members of the board may not
31 otherwise be compensated by the Association for their
32 services.

33 (Source: P.A. 81-899.)

1 (215 ILCS 5/531.08) (from Ch. 73, par. 1065.80-8)

2 Sec. 531.08. Powers and duties of the Association. In
3 addition to the powers and duties enumerated in other
4 Sections of this Article:

5 (1) If an a-domestic insurer is an impaired insurer, the
6 Association may, in its discretion and subject to any
7 conditions imposed by the Association other than those which
8 impair the contractual obligations of the impaired insurer,
9 and approval approved by the ~~impaired--insurer--and--the~~
10 Director:

11 (a) Guarantee, assume, or reinsure, or cause to be
12 guaranteed, assumed, or reinsured, any or all of the covered
13 policies of covered persons of the impaired insurer;

14 (b) Provide such monies, pledges, notes, guarantees, or
15 other means as are proper to effectuate subparagraph
16 paragraph (1)(a), and assure payment of the contractual
17 obligations of the impaired insurer pending action under
18 subparagraph paragraph (1)(a).;

19 ~~(c) Loan money to the impaired insurer;~~

20 (2) If an a-domestic, foreign, or alien insurer is an
21 insolvent insurer, the Association shall, in its discretion,
22 either ~~subject to the approval of the Director;~~

23 (a)(i) Guarantee, assume, or reinsure or cause to be
24 guaranteed, assumed, or reinsured the covered policies of
25 covered persons of the insolvent insurer; or

26 (ii) Otherwise assure Assure payment of the contractual
27 obligations of the insolvent insurer to covered persons; and

28 (iii) Provide such monies, pledges, loans, notes,
29 guaranties, or other means as are reasonably necessary to
30 discharge such duties under subparagraphs (2)(a)(i) and
31 (2)(a)(ii); or

32 (b) Provide ~~with respect to only life and health~~
33 ~~insurance policies,~~ provide benefits and coverages in
34 accordance with Section 531.08(3).

1 (c) Provided however that this paragraph subsection (2)
 2 shall not apply when the Director has determined that the
 3 foreign or alien insurer's insurers domiciliary jurisdiction
 4 or state of entry provides, by statute, protection
 5 substantially similar to that provided by this Article for
 6 residents of this State and such protection will be provided
 7 in a timely manner.

8 (3) When proceeding under subparagraph (2)(b) of this
 9 Section the Association shall, with respect to only life and
 10 health insurance policies and annuity contracts:

11 (a) assure payment of benefits for premiums identical to
 12 the premiums and benefits (except for terms of conversion and
 13 renewability) that would have been payable under the policies
 14 or contracts of the insolvent insurer, for claims incurred:

15 (i) with respect to group policies and contracts, not
 16 later than the earlier of the next renewal date under such
 17 policies or contracts or 60 sixty days, but in no event less
 18 than 30 thirty days, after the date on which the Association
 19 becomes obligated with respect to such policies and
 20 contracts;

21 (ii) with respect to individual and other non-group
 22 policies and contracts, not later than the earlier of the
 23 next renewal date (if any) under such policies or contracts
 24 or one year, but in no event less than 30 thirty days, from
 25 the date on which the Association becomes obligated with
 26 respect to such policies or contracts;

27 (b) make diligent efforts to provide all known policy
 28 and contract owners 30 insureds-or-group-policyholders--with
 29 respect---to---group--policies--thirty days notice of the
 30 termination (pursuant to subparagraph (3)(a)) of the benefits
 31 provided; and

32 (c) with respect to individual and other non-group life
 33 and health policies and annuity contracts covered by the
 34 Association, make available to each known insured, or owner

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

15 (d)(i) In providing the substitute coverage required
16 under subparagraph (3)(c) of this Section, the Association
17 may offer either to reissue the terminated coverage or to
18 issue an alternative policy or contract.

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

24 (iii) The Association may cause reinsure any alternative
25 or reissued policy or contract to be assumed or reinsured.

26 (e)(i) Alternative policies or contracts adopted by the
27 Association shall be subject to the approval of either (A)
28 the Director or (B) the domiciliary commissioner and the
29 receivership court. The Association may adopt alternative
30 policies or contracts of various types for future issuance
31 insurance without regard to any particular impairment or
32 insolvency.

33 (ii) Alternative policies or contracts shall contain at
34 least the minimum statutory provisions required in this State

1 and provide benefits that shall not be unreasonable in
 2 relation to the premium charged. The Association shall set
 3 the premium in accordance with a table of rates which it
 4 shall adopt. The premium shall reflect the amount of
 5 insurance to be provided and the age and class of risk of
 6 each insured, but shall not reflect any changes in the health
 7 of the insured after the original policy was last
 8 underwritten.

9 (iii) Any alternative policy or contract issued by the
 10 Association shall provide coverage of a type similar to that
 11 of the policy or contract issued by the impaired or insolvent
 12 insurer, as determined by the Association.

13 (f) If the Association elects to reissue terminated
 14 coverage at a premium rate different from that charged under
 15 the terminated policy or contract, the premium shall be set
 16 by the Association in accordance with the amount of insurance
 17 provided and the age and class of risk, subject to approval
 18 of either (A) the Director or (B) the domiciliary
 19 commissioner and the receivership court ~~by--a--court--of~~
 20 ~~competent-jurisdiction.~~

21 (g) The Association's obligations with respect to
 22 coverage under any policy or contract of the impaired or
 23 insolvent insurer or under any reissued or alternative policy
 24 or contract shall cease on the date such coverage or policy
 25 or contract is replaced by another similar policy or contract
 26 by the policy owner ~~policyholder~~, the insured, or the
 27 Association.

28 (4) When proceeding under subparagraph (2)(b) of this
 29 Section with respect to any policy or contract carrying
 30 guaranteed minimum interest rates, the Association shall
 31 assure the payment or crediting of a rate of interest
 32 consistent with subparagraph (2)(b)(iii) ~~(2)(b)(iii)(B)~~ of
 33 Section 531.03.

34 (5) Nonpayment of premiums 31 ~~thirty-one~~ days after the

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

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

15 (7) The protection provided by this Article shall not
 16 apply when any guaranty protection is provided to residents
 17 of this State by the laws of the domiciliary state or
 18 jurisdiction of the impaired or insolvent insurer other than
 19 this State.

20 (8) (7)(a) In carrying out its duties under paragraph
 21 subsection (2) of this Section, the Association may permanent
 22 policy-liens,-or-contract-liens,-may-be-imposed-in-connection
 23 with--any--guarantee,-assumption-or-reinsurance-agreement,-if
 24 the-court:

25 (a) (i) subject to approval by the receivership court or
 26 a court of competent jurisdiction is this State, impose
 27 permanent policy or contract liens in connection with a
 28 guarantee, assumption, or reinsurance agreement, if the
 29 Association finds that the amounts which can be assessed
 30 under this Article Aet are less than the amounts needed to
 31 assure full and prompt performance of the insolvent insurer's
 32 contractual obligations, or that the economic or financial
 33 conditions as they affect member insurers are sufficiently
 34 adverse to render the imposition of policy or contract liens,

1 to be in the public interest; and

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

23 ~~(ii)--Approves-the--specific--policy--liens--or--contract~~
24 ~~liens-to-be-used.~~

25 ~~(b)--Before--being--obligated--under--subsection--(2)--the~~
26 ~~Association-may--request--that--there--be--imposed--temporary~~
27 ~~moratoriums--or--liens--on-payments-of-cash-values-and-policy~~
28 ~~loans-in-addition-to-any-contractual-provisions-for--deferral~~
29 ~~of-cash-or-policy-loan-values,--and-such-temporary-moratoriums~~
30 ~~and-liens-may-be-imposed-if-they-are-approved-by-the-court.~~

31 (9) A deposit in this State, held pursuant to law or
32 required by the Director for the benefit of creditors,
33 including policy and contract owners, not turned over to the
34 domiciliary liquidator upon the entry of a final order of

1 liquidation or order approving a rehabilitation plan of an
2 insurer domiciled in this State or in a reciprocal state
3 shall be promptly paid to the Association. The Association
4 (i) shall be entitled to retain a portion of any amount so
5 paid to it equal to the percentage determined by dividing the
6 aggregate amount of policy and contract owners' claims
7 related to that insolvency for which the Association has
8 provided statutory benefits by the aggregate amount of all
9 policy and contract owners' claims in this State related to
10 that insolvency and (ii) shall remit to the domiciliary
11 receiver the amount so paid to the Association, less the
12 amount retained pursuant to clause (i). Any amount so paid to
13 the Association and retained by it pursuant to clause (i)
14 shall be treated as a distribution of estate assets pursuant
15 to subsection (2) of Section 205 of this Code or similar
16 provision of the state of domicile of the impaired or
17 insolvent insurer.

18 (10) The Association may fulfill its obligations under
19 paragraph (2) of this Section by providing benefits in
20 connection with policies or contracts of the insolvent
21 insurer whose terms have been modified pursuant to an order
22 of the receivership court or a court of competent
23 jurisdiction in this State, provided that the economic values
24 and economic benefits of such modified policies or contracts,
25 after the Association has acted to fulfill its obligations,
26 are not materially less than the economic values and economic
27 benefits that covered persons would have received after the
28 Association had acted to fulfill its obligations if the terms
29 of such policies or contracts had not been modified. In
30 determining what economic values and economic benefits
31 covered persons would have received after the Association had
32 acted to fulfill its obligations if the terms of the
33 insolvent insurer's policies or contracts had not been
34 modified, the Association shall take into account (i) the

1 coverage limitations set forth in paragraphs (2) and (3) of
2 Section 531.03, (ii) any substitute coverage that the
3 Association would have provided pursuant to paragraphs (3)
4 and (22) of this Section, and (iii) any permanent policy or
5 contract liens and any temporary moratoriums that would have
6 been necessary under paragraph (8) of this Section but for
7 the modifications in terms approved by the court.

8 (11) (8) There shall be no liability on the part of and
9 no cause of action shall arise against the Association or
10 against any transferee from the Association in connection
11 with the transfer by reinsurance or otherwise of all or any
12 part of an impaired or insolvent insurer's business by reason
13 of any action taken or any failure to take any action by the
14 impaired or insolvent insurer at any time.

15 (12) (9) If the Association fails to act within a
16 reasonable period of time with respect to an insolvent
17 insurer as provided in paragraph subsection (2) of this
18 Section with-respect-to-an-insolvent--insurer, the Director
19 may assume shall--have the powers and duties of the
20 Association under this Article Act with regard to the such
21 insolvent insurer insurers.

22 (13) (10) The Association or its designated
23 representatives may render assistance and advice to the
24 Director, upon his or her request, concerning rehabilitation,
25 payment of claims, continuations of coverage, or the
26 performance of other contractual obligations of any impaired
27 or insolvent insurer.

28 (14) The Association has standing to appear or intervene
29 before any court or agency with jurisdiction over an impaired
30 or insolvent insurer concerning which the Association is or
31 may become obligated under this Article, or with jurisdiction
32 over any person or property against whom or which the
33 Association may have rights through subrogation or otherwise.
34 Such standing extends to all matters germane to the powers

1 and duties of the Association including, but not limited to,
 2 proposals for reinsuring, modifying, or guaranteeing the
 3 policies or contracts of the impaired or insolvent insurer
 4 and the determination of the policies or contracts and
 5 contractual obligations (11)--The-Assoeiation-has-standing-to
 6 appear-before-any-court-concerning-all-matters-germane-to-the
 7 powers-and-duties-of--the--Assoeiation,--including,--but--not
 8 limited--to,--proposals--for--reinsuring--or-guaranteeing-the
 9 covered-policies-of-the-impaired-or-insolvent-insurer-and-the
 10 determination--of--the--covered--policies---and---contractual
 11 obligations.

12 (15) (12) (a) Any person receiving benefits under this
 13 Article is deemed to have assigned the rights under, and any
 14 causes of action against any person for losses arising under,
 15 resulting from, or otherwise relating to the covered policy
 16 or contract to the Association to the extent of the benefits
 17 received because of this Article whether the benefits are
 18 payments of contractual obligations, or continuation of
 19 coverage, or provision of substitute coverages. The
 20 Association may require an assignment to it of such rights
 21 and causes of action by any payee, policy or contract owner,
 22 beneficiary, insured, certificateholder, or annuitant as a
 23 condition precedent to the receipt of any rights or benefits
 24 conferred by this Article upon such person. The Association
 25 is subrogated to these rights against the assets of any
 26 insolvent insurer.

27 (b) The subrogation rights of the Association under this
 28 subsection have the same priority against the assets of the
 29 insolvent insurer as that possessed by the person entitled to
 30 receive benefits under this Article. The Association's
 31 subrogation rights against the assets of the insolvent
 32 insurer shall not be reduced by any recoveries from persons
 33 other than the estate of the insolvent insurer obtained by
 34 the Association pursuant to assignment rights provided under

1 this subsection, except that the Association's subrogation
2 rights against the assets of the insolvent insurer with
3 respect to a covered policy or contract shall be deemed
4 fulfilled where any and all such recoveries from third
5 parties with respect to the covered policy or contract,
6 together with any distributions of estate assets with respect
7 to the covered policy or contract, have made the Association
8 whole, after accounting for any and all legal fees and
9 expenses (including interest) incurred by the Association in
10 achieving such recoveries.

11 (c) In addition to the rights set forth in subparagraphs
12 (15)(a) and (b) of this Section, the Association has all
13 common law rights of subrogation and any other equitable or
14 legal remedy that would have been available to the impaired
15 or insolvent insurer or owner, beneficiary, or payee of a
16 policy or contract with respect to the policy or contract
17 (including without limitation, in the case of a structured
18 settlement annuity contract, any rights of the owner,
19 beneficiary, or payee of the annuity contract, to the extent
20 of benefits received pursuant to this Article, against a
21 person originally or by succession responsible for the losses
22 arising from the personal injury relating to the annuity
23 contract or payment therefor), excepting any such person
24 responsible by reason of serving as an assignee in respect of
25 a qualified assignment under United States Internal Revenue
26 Code Section 130.

27 (d) If subparagraph (a), (b), or (c) of this paragraph
28 is invalid or ineffective with respect to any person or claim
29 for any reason, the amount payable by the Association with
30 respect to the related covered obligations shall be reduced
31 by the amount realized by any other person with respect to
32 the person or claim that is attributable to the policies and
33 contracts (or portion thereof) covered by the Association.

34 (e) If the Association has provided benefits with

1 respect to a covered obligation and a person recovers amounts
2 as to which the Association has rights as described in
3 subparagraph (a), (b), (c) or (d) of this paragraph, the
4 person shall pay to the Association the portion of the
5 recovery attributable to the policies and contracts (or
6 portion thereof) covered by the Association.

7 (16) (13) In addition to the rights and powers elsewhere
8 in this Article, the Association may do any of the following:

9 (a) Enter into such contracts as are necessary or proper
10 to carry out the provisions and purposes of this Article.;

11 (b) Sue or be sued, including taking any legal actions
12 necessary or proper for recovery of any unpaid assessments
13 under Section 531.09 and to settle any litigation, any
14 threatened or potential litigation, and any claims or
15 potential claims by or against the Association. The
16 Association shall not be liable for punitive or exemplary
17 damages.;

18 (c) Borrow money to effect the purposes of this Article.
19 Any notes or other evidence of indebtedness of the
20 Association not in default are legal investments for domestic
21 insurers and may be carried as admitted assets.

22 (d) Employ or retain such persons as are necessary or
23 appropriate to handle the financial transactions of the
24 Association, and to perform such other functions as become
25 necessary or proper under this Article.

26 (e) Negotiate and contract with any liquidator,
27 rehabilitator, conservator, or ancillary receiver to carry
28 out the powers and duties of the Association.

29 (f) Take such legal action as may be necessary or
30 appropriate to avoid or recover payment of improper claims.

31 (g) Exercise, for the purposes of this Article and to
32 the extent approved by the Director, the powers of a domestic
33 life or health insurer, but in no case may the Association
34 issue insurance policies or annuity contracts other than

1 those issued to perform the contractual obligations of the
2 impaired or insolvent insurer.

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

6 (i) 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 respect
9 to the person. The person shall promptly comply with the
10 request as a condition precedent to the receipt of any right
11 or benefit conferred by this Article.

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

15 (17)(a) At any time within one year after the date on
16 which the Association becomes responsible for the obligations
17 of a member insurer (the coverage date), the Association may
18 elect to succeed to the rights and obligations of the member
19 insurer that accrue on or after the coverage date and that
20 relate to policies and contracts covered (in whole or in
21 part) by the Association under any one or more indemnity
22 reinsurance agreements entered into by the member insurer as
23 a ceding insurer and selected by the Association. However,
24 the Association may not exercise an election with respect to
25 a reinsurance agreement if the receiver, rehabilitator, or
26 liquidator of the member insurer has previously and expressly
27 disaffirmed the reinsurance agreement. The election shall be
28 effected by a notice to the receiver, rehabilitator, or
29 liquidator and to the affected reinsurers. If the Association
30 makes an election, subparagraphs (i) through (iv) of this
31 paragraph shall apply with respect to the agreements selected
32 by the Association:

33 (i) The Association shall be responsible for all unpaid
34 premiums due under the agreements (for periods both before

1 and after the coverage date) and shall be responsible for the
2 performance of all other obligations to be performed after
3 the coverage date, in each case which relate to policies and
4 contracts covered (in whole or in part) by the Association.
5 The Association may charge policies and contracts covered in
6 part by the Association, through reasonable allocation
7 methods, the costs for reinsurance in excess of the
8 obligations of the Association.

9 (ii) The Association shall be entitled to any amounts
10 payable by the reinsurer under the agreements with respect to
11 losses or events that occur in periods after the coverage
12 date and that relate to policies and contracts covered by the
13 Association (in whole or in part), provided that, upon
14 receipt of any such amounts, the Association shall be obliged
15 to pay to the beneficiary under the policy or contract on
16 account of which the amounts were paid a portion of the
17 amount equal to the excess of:

18 (A) the amount received by the Association over

19 (B) the benefits paid by the Association on account
20 of the policy or contract less the retention of the
21 impaired or insolvent member insurer applicable to the
22 loss or event.

23 (iii) Within 30 days following the Association's
24 election, the Association and each indemnity reinsurer shall
25 calculate the net balance due to or from the Association
26 under each reinsurance agreement as of the date of the
27 Association's election, giving full credit to all items paid
28 by either the member insurer (or its receiver, rehabilitator,
29 or liquidator) or the indemnity reinsurer during the period
30 between the coverage date and the date of the Association's
31 election. Either the Association or indemnity reinsurer shall
32 pay the net balance due the other within 5 days after the
33 completion of the calculation. If the receiver,
34 rehabilitator, or liquidator has received any amounts due the

1 Association pursuant to subparagraph (17)(a)(ii), the
2 receiver, rehabilitator, or liquidator shall remit the same
3 to the Association as promptly as practicable.

4 (iv) If the Association, within 60 days of the election,
5 pays the premiums due for periods both before and after the
6 coverage date that relate to policies and contracts covered
7 by the Association (in whole or in part), the reinsurer shall
8 not be entitled to terminate the reinsurance agreements
9 insofar as such agreements relate to policies and contracts
10 covered by the Association (in whole or in part) and shall
11 not be entitled to set off any unpaid premium due for periods
12 prior to the coverage date against amounts due the
13 Association.

14 (b) In the event the Association transfers its
15 obligations to another insurer, and if the Association and
16 the other insurer agree, the other insurer shall succeed to
17 the rights and obligations of the Association under
18 subparagraph (17)(a) of this Section effective as of the date
19 agreed upon by the Association and the other insurer and
20 regardless of whether the Association has made the election
21 referred to in subparagraph (17)(a) provided that:

22 (i) the indemnity reinsurance agreements shall
23 automatically terminate for new reinsurance unless the
24 indemnity reinsurer and the other insurer agree to the
25 contrary;

26 (ii) the obligations described in the proviso to
27 subparagraph (17)(a)(ii) of this Section shall no longer
28 apply on and after the date the indemnity reinsurance
29 agreement is transferred to the third party insurer; and

30 (iii) this subparagraph (17)(b) shall not apply if the
31 Association has previously expressly determined in writing
32 that it will not exercise the election referred to in
33 subparagraph (17)(a) of this Section.

34 (c) The provisions of this paragraph (17) shall

1 supersede the provisions of any law of this State or of any
 2 affected reinsurance agreement that provides for or requires
 3 any payment of reinsurance proceeds, on account of losses or
 4 events that occur in periods after the coverage date, to the
 5 receiver, liquidator, or rehabilitator of the insolvent
 6 member insurer. The receiver, rehabilitator, or liquidator
 7 shall remain entitled to any amounts payable by the reinsurer
 8 under the reinsurance agreement with respect to losses or
 9 events that occur in periods prior to the coverage date
 10 (subject to applicable setoff provisions).

11 (d) Except as otherwise expressly provided in this
 12 paragraph (17), nothing herein shall alter or modify the
 13 terms and conditions of the indemnity reinsurance agreements
 14 of the insolvent member insurer. Nothing herein shall
 15 abrogate or limit any rights of any reinsurer to claim that
 16 it is entitled to rescind a reinsurance agreement.

17 Nothing herein shall give a policy or contract owner or
 18 beneficiary an independent cause of action against an
 19 indemnity reinsurer that is not otherwise set forth in the
 20 indemnity reinsurance agreement. (14)--With--respect--to
 21 covered-policies-for-which-the-Association-becomes--obligated
 22 after--an-entry-of-an-order-of-liquidation-or-rehabilitation,
 23 the-Association-may-elect-to-succeed-to--the--rights--of--the
 24 insolvent--insurer--arising--after--the--date-of-the-order-of
 25 liquidation--or--rehabilitation---under---any---contract---of
 26 reinsurance--to--which--the-insolvent-insurer-was-a-party,-to
 27 the-extent-that-such-contract-provides--coverage--for--losses
 28 occurring--after--the--date--of--the--order-of-liquidation-or
 29 rehabilitation.--As-a-condition-to-making-this-election,-the
 30 Association--must--pay--premiums--for--coverage--relating--to
 31 periods--after--the--date--of--the--order--of--liquidation-or
 32 rehabilitation.

33 (18) The Association may join an organization of one or
 34 more other state associations of similar purposes to further

1 the purposes and administer the powers and duties of the
2 Association.

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

8 (20) Where the Association has arranged or offered to
9 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 (21) Venue in a suit against the Association arising
15 under this Article shall be in Cook County. The Association
16 shall not be required to give an appeal bond in any case or
17 proceeding that arises from or is based in whole or in part
18 on claims or other rights asserted under this Article.

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

29 (a) in lieu of the index or other external reference
30 provided for in the original policy or contract, the
31 alternative policy or contract provides for (i) a fixed
32 interest rate, (ii) payment of dividends with minimum
33 guarantees, or (iii) a different method for calculating
34 interest or changes in value;

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

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

7 (Source: P.A. 86-753.)

8 (215 ILCS 5/531.09) (from Ch. 73, par. 1065.80-9)

9 Sec. 531.09. Assessments.

10 (1) For the purpose of providing the funds necessary to
11 carry out the powers and duties of the Association, the board
12 of directors shall assess the member insurers, separately for
13 each account and subaccount, at such times and for such
14 amounts as the board finds necessary. Assessments shall be
15 due not less than 30 days after written notice to the member
16 insurers and shall accrue interest from the due date the rate
17 of 10% per annum at such adjusted rate as is established
18 under Section 6621 of Chapter 26 of the United States Code
19 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 authorized and called
22 made for the purpose of meeting administrative costs and
23 other general expenses and examinations conducted under the
24 authority of the Director under subsection (5) of Section
25 531.12. Class A assessments may be authorized and called
26 whether or not related to a particular impaired or insolvent
27 insurer.

28 (b) Class B assessments shall be authorized and called
29 made to the extent necessary to carry out the powers and
30 duties of the Association under Section 531.08 with regard to
31 an impaired or an insolvent domestic insurer or insolvent
32 foreign or alien insurers.

33 (3) (a) The amount of any Class A assessment shall be

1 determined by the board of directors Board and may be
2 authorized and called made on a pro-rata or non-pro rata
3 basis. With respect to any pro rata Class A assessment, the
4 board may provide that no member insurer shall be assessed
5 less than \$100 as its share of such assessment,
6 notwithstanding that such assessment is pro rata. The board
7 may provide that any pro rata assessment shall be credited
8 against future Class B assessments. The total of all non-pro
9 rata such assessments shall be in an amount determined by the
10 board, but shall not exceed \$500 \$200 per company in any one
11 calendar year. The amount of any Class B assessment shall be
12 allocated for assessment purposes among the accounts and
13 subaccounts pursuant to an allocation formula which may be
14 based on the premiums or reserves of the impaired or
15 insolvent insurer or any other standard deemed by the board
16 in its sole discretion as being fair and reasonable under the
17 circumstances.

18 (b) Class B assessments against member insurers for each
19 account and subaccount shall be in the proportion that the
20 premiums received on business in this State by each assessed
21 member insurer on policies or contracts covered by each
22 account or subaccount for the three most recent calendar
23 years for which information is available preceding the year
24 in which the insurer became impaired or insolvent, as the
25 case may be, bears to such premiums received on business in
26 this State for such calendar years by all assessed member
27 insurers. To the extent that any federal or state law
28 prohibits or preempts the Association from making assessments
29 on the basis of any such premiums, assessments under this
30 subparagraph shall be made on the basis of all such premiums
31 not subject to any prohibitions or preemption, and the
32 assessment method set forth in this subparagraph shall not be
33 rendered invalid by any such prohibitions or preemption.

34 (c) Assessments for funds to meet the requirements of

1 the Association with respect to an impaired or insolvent
2 insurer shall not be authorized or called made until the
3 board in its judgment determines that such authorization or
4 call is necessary to implement the purposes of this Article.
5 When in the judgment of the board an assessment will be
6 necessary to implement the purposes of this Article, the
7 board may authorize a future assessment, to become effective
8 after a member insurer has become an impaired or insolvent
9 insurer, and such assessment shall not be invalid because the
10 member insurer was not an impaired or insolvent insurer at
11 the time the board authorized such future assessment.
12 Classification of assessments under paragraph subsection (2)
13 of this Section and computations of assessments under this
14 paragraph (3) subsection shall be made with a reasonable
15 degree of accuracy, recognizing that exact determinations may
16 not always be possible. The Association shall notify each
17 member insurer of its anticipated pro rata share of an
18 authorized assessment not yet called within 180 days after
19 the assessment is authorized.

20 (4) The Association may abate or defer, in whole or in
21 part, the assessment of a member insurer if, in the opinion
22 of the board, payment of the assessment would endanger the
23 ability of the member insurer to fulfill its contractual
24 obligations. In the event an assessment against a member
25 insurer is abated or deferred, in whole or in part, because
26 of the limitations set forth in this paragraph (4), the
27 amount by which such assessment is abated or deferred, may be
28 assessed against the other member insurers in a manner
29 consistent with the basis for assessments set forth in this
30 Section 531.09. Once the conditions that caused a deferral
31 have been removed or rectified, the member insurer shall pay
32 all assessments that were deferred pursuant to a repayment
33 plan approved by the Association The---total---of---all
34 assessments--upon--a--member-insurer-for-the-life-and-annuity

1 account-and-for-each-subaccount-thereunder-may-not-in-any-one
2 calendar-year-exceed-2%-and-for-the-health-account-may-not-in
3 any-one-calendar-year-exceed-2%-of-such-insurer's-average
4 premiums-received-in-this-State-on-the-policies-and-contracts
5 covered-by-the-account-or-subaccount-during-the-three
6 calendar-years-preceding-the-year-in-which-the-insurer-became
7 an-impaired-or-insolvent-insurer.---If-a-one-percent
8 assessment-for-any-subaccount-of-the-life-and-annuity-account
9 in-any-one-year-does-not-provide-an-amount-sufficient-to
10 carry-out-the-responsibilities-of-the-Association, then
11 pursuant-to-subsection-3(b), the-board-shall-access-all
12 subaccounts-of-the-life-and-annuity-account-for-the-necessary
13 additional-amount, subject-to-the-maximum-stated-in-this
14 subsection.

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

25 (ii) If 2 or more assessments are authorized in one
26 calendar year with respect to insurers that become impaired
27 insurers or insolvent insurers in different calendar years,
28 the average annual premiums for purposes of the aggregate
29 assessment percentage limitation referenced in subparagraph
30 (5)(a)(i) of this Section shall be equal and limited to the
31 higher of the 3-year average annual premiums for the
32 applicable subaccount or account as calculated pursuant to
33 this Section. In-the-event-an-assessment-against-a-member
34 insurer-is-abated, or-deferred, in-whole-or-in-part, because

1 of--the--limitations--set--forth--in--subsection--(4)--of--this
 2 Section--the--amount--by--which--such--assessment--is--abated--or
 3 deferred,--may--be--assessed--against--the--other--member--insurers
 4 in--a--manner--consistent--with--the--basis--for--assessments--set
 5 forth--in--this--Section.

6 (iii) If funds available from assessments, investment
 7 income, recoveries of estate assets, or other recoveries are
 8 insufficient to the--maximum--assessment,--together--with--the
 9 other--assets--of--the--Association--in--either--account,--does--not
 10 provide in any one year in either account an amount
 11 sufficient to carry out the responsibilities of the
 12 Association, the necessary additional funds may be assessed
 13 as soon thereafter as permitted by this Article.

14 (iv) If the maximum assessment for any subaccount of the
 15 life and annuity account in any one year does not provide an
 16 amount sufficient to carry out the responsibilities of the
 17 Association, then pursuant to subparagraph (3)(b) of this
 18 Section 531.09, the board shall access all subaccounts of the
 19 life and annuity account for the necessary additional amount,
 20 subject to the maximum stated in this paragraph (5).

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

25 (7) (6) The board may, by an equitable method as
 26 established in the plan of operation, refund to member
 27 insurers, in proportion to the contribution of each insurer
 28 to that account, the amount by which the assets of the
 29 account exceed the amount the board finds is necessary to
 30 carry out during--the--coming--year the obligations of the
 31 Association with regard to that account, including assets
 32 accruing from assignment, subrogation, net realized gains,
 33 and income from investments. A reasonable amount may be
 34 retained in any account to provide funds for the continuing

1 expenses of the Association and for future claims losses--if
2 refunds-are-impraetieal.

3 (8) (7) Unless otherwise determined by the board
4 pursuant to subdivision 531.09(3)(c), an assessment is deemed
5 to occur on the date upon which the board votes such
6 assessment. The board may defer calling the payment of the
7 assessment or may call for payment in one or more
8 installments.

9 (9) (8) It is proper for any member insurer, in
10 determining its premium rates and policyowner dividends as to
11 any kind of insurance within the scope of this Article, to
12 consider the amount reasonably necessary to meet its
13 assessment obligations under this Article.

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

- 27 100% for the calendar year after the year of issuance;
- 28 80% for the second calendar year after the year of
29 issuance;
- 30 60% for the third calendar year after the year of
31 issuance;
- 32 40% for the fourth calendar year after the year of
33 issuance;
- 34 20% for the fifth calendar year after the year of

1 issuance.

2 (11) The Association may request information from member
3 insurers in order to aid in the exercise of its power under
4 Section 531.09 and member insurers shall promptly comply with
5 such a request.

6 (Source: P.A. 86-753.)

7 (215 ILCS 5/531.10) (from Ch. 73, par. 1065.80-10)
8 Sec. 531.10. Plan of Operation.}

9 (1) (a) The Association must submit to the Director a
10 plan of operation and any amendments thereto necessary or
11 suitable to assure the fair, reasonable, and equitable
12 administration of the Association. The plan of operation and
13 any amendments thereto become effective upon approval in
14 writing by the Director.

15 (b) If the Association fails to submit a suitable plan
16 of operation within 180 days following the effective date of
17 this Article or if at any time thereafter the Association
18 fails to submit suitable amendments to the plan, the Director
19 may, after notice and hearing, adopt and promulgate such
20 reasonable rules as are necessary or advisable to effectuate
21 the provisions of this Article. Such rules are in force until
22 modified by the Director or superseded by a plan submitted by
23 the Association and approved by the Director.

24 (2) All member insurers must comply with the plan of
25 operation.

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

28 (a) Establish procedures for handling the assets of the
29 Association;

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

32 (c) Establish regular places and times for meetings,
33 including telephone conference calls, of the board of

1 directors;

2 (d) Establish procedures for records to be kept of all
3 financial transactions of the Association, its agents, and
4 the board of directors;

5 (e) Establish the procedures whereby selections for the
6 board of directors will be made and submitted to the
7 Director;

8 (f) Establish any additional procedures for assessments
9 under Section 531.09; and

10 (g) Contain additional provisions necessary or proper
11 for the execution of the powers and duties of the
12 Association.

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

17 (a) Any member insurer that wishes to protest all or any
18 part of an assessment for any year shall first pay the full
19 amount of the assessment as set forth in the notice provided
20 by the Association. The payment shall be available and may
21 be used to meet Association obligations during the pendency
22 of the protest and any subsequent appeal. Such payments
23 shall be accompanied by a statement in writing that the
24 payment is made under protest, setting forth a brief
25 statement of the ground for the protest. ~~The Association~~
26 ~~shall hold such payments in a separate interest-bearing~~
27 ~~account.~~

28 (b) Within 60 30 days following the payment of an
29 assessment under protest by any protesting member insurer,
30 the Association must notify the member insurer in writing of
31 its final decision determination with respect to the protest
32 unless the Association notifies the member that additional
33 time is required to resolve the issues raised by the protest.

34 (c) Within 30 days after a final decision has been made,

1 the Association shall notify the protesting member insurer in
2 writing of that final decision. ~~In the event the Association~~
3 ~~determines that the protesting member insurer is entitled to~~
4 ~~a refund, such refund shall be made within 30 days following~~
5 ~~the date upon which the Association makes its determination.~~

6 (d) The final decision of the Association with respect
7 to a protest may be appealed to the Director pursuant to
8 Section 531.11(3).

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

14 (f) In the event the Association determines, or on
15 appeal of the Association's decision it is determined, that
16 the protesting member insurer is entitled to a refund of all
17 or a portion of the amount paid under protest, such refund
18 shall be made to the protesting member insurer. Interest on
19 any refund due a protesting member insurer shall be paid at
20 the rate actually earned by the Association. ~~Interest on any~~
21 ~~refund due a protesting member insurer shall be paid at the~~
22 ~~rate actually earned by the Association on the separate~~
23 ~~account.~~

24 (5) The plan of operation may provide that any or all
25 powers and duties of the Association, except those under
26 ~~paragraph (e) of subsection (10)~~ subdivision (16)(c) of
27 Section 531.08 and Section 531.09 are delegated to a
28 corporation, association or other organization which
29 performs or will perform functions similar to those of this
30 Association, or its equivalent, in 2 or more states. Such a
31 corporation, association or organization shall be reimbursed
32 for any payments made on behalf of the Association and shall
33 be paid for its performance of any function of the
34 Association. A delegation under this subsection shall take

1 effect only with the approval of both the board of directors
2 and the Director, and may be made only to a corporation,
3 association or organization which extends protection not
4 substantially less favorable and effective than that provided
5 by this Article Act.

6 (Source: P.A. 84-1035.)

7 (215 ILCS 5/531.11) (from Ch. 73, par. 1065.80-11)

8 Sec. 531.11. Duties and powers of the Director. In
9 addition to the duties and powers enumerated elsewhere in
10 this Article:

11 (1) The Director must:

12 (a) Upon request of the board of directors, provide
13 the Association with a statement of the premiums in the
14 appropriate accounts for each member insurer.

15 (b) notify the board of directors of the existence
16 of an impaired or insolvent insurer not later than 3 days
17 after a determination of impairment or insolvency is made
18 or when the Director receives notice of impairment or
19 insolvency.

20 (c) give notice to an impaired insurer as required
21 by Sections 34 or 60. Notice to the impaired insurer
22 shall constitute notice to its shareholders, if any.

23 (d) In any liquidation or rehabilitation proceeding
24 involving a domestic insurer, be appointed as the
25 liquidator or rehabilitator. If a foreign or alien
26 member insurer is subject to a liquidation proceeding in
27 its domiciliary jurisdiction or state of entry, the
28 Director shall be appointed conservator.

29 (2) The Director may suspend or revoke, after notice and
30 hearing, the certificate of authority to transact insurance
31 in this State of any member insurer which fails to pay an
32 assessment when due or fails to comply with the plan of
33 operation. As an alternative the Director may levy a

1 forfeiture on any member insurer which fails to pay an
2 assessment when due. Such forfeiture may not exceed 5% of
3 the unpaid assessment per month, but no forfeiture may be
4 less than \$100 per month.

5 (3) Any final decision or action of the board of
6 directors or the Association may be appealed to the Director
7 by any member insurer or any other person adversely affected
8 by such action if such appeal is taken within 30 days of the
9 decision or action being appealed. Any final action or order
10 of the Director is subject to judicial review in a court of
11 competent jurisdiction. An action or order of the Director
12 may be final and subject to judicial review even if the
13 aggrieved party seeking judicial review has not sought
14 reconsideration or rehearing by the Director.

15 (4) The liquidator, rehabilitator, or conservator of any
16 impaired insurer may notify all interested persons of the
17 effect of this Article.

18 (Source: P.A. 89-97, eff. 7-7-95.)

19 (215 ILCS 5/531.12) (from Ch. 73, par. 1065.80-12)

20 Sec. 531.12. Prevention of Insolvencies. To aid in the
21 detection and prevention of insurer insolvencies or
22 impairments:

23 (1) It shall be the duty of the Director:

24 (a) To notify the commissioners of all other states,
25 territories of the United States, and the District of
26 Columbia when he or she takes any of the following actions
27 against a member insurer:

28 (i) revocation of license;

29 (ii) suspension of license;

30 (iii) makes any formal order except for an order issued
31 pursuant to Article XII 1/2 of this Code that such company
32 restrict its premium writing, obtain additional contributions
33 to surplus, withdraw from the State, reinsure all or any part

1 of its business, or increase capital, surplus or any other
2 account for the security of policyholders or creditors.

3 ~~Such notice shall be transmitted to all commissioners~~
4 ~~within 30 days following the action taken or the date on~~
5 ~~which the action occurs.~~

6 (b) To report to the board of directors when he or she
7 has taken any of the actions set forth in subparagraph (a) of
8 this paragraph or has received a report from any other
9 commissioner indicating that any such action has been taken
10 in another state. Such report to the board of directors
11 shall contain all significant details of the action taken or
12 the report received from another commissioner.

13 (2) The Director may seek the advice and recommendations
14 of the board of directors concerning any matter affecting the
15 Director's his duties and responsibilities regarding the
16 financial condition of member companies and companies seeking
17 admission to transact insurance business in this State.

18 (3) The board of directors may, upon majority vote, make
19 reports and recommendations to the Director upon any matter
20 germane to the liquidation, rehabilitation or conservation of
21 any member insurer. Such reports and recommendations shall
22 not be considered public documents.

23 (4) The board of directors may, upon majority vote, make
24 recommendations to the Director for the detection and
25 prevention of insurer insolvencies.

26 (5) The board of directors may ~~shall~~, at the conclusion
27 of any insurer insolvency in which the Association was
28 obligated to pay covered claims prepare a report to the
29 Director containing such information as it may have in its
30 possession bearing on the history and causes of such
31 insolvency. The board shall cooperate with the boards of
32 directors of guaranty associations in other states in
33 preparing a report on the history and causes for insolvency
34 of a particular insurer, and may adopt by reference any

1 report prepared by such other associations.

2 (Source: P.A. 86-753.)

3 (215 ILCS 5/531.14) (from Ch. 73, par. 1065.80-14)

4 Sec. 531.14. Miscellaneous Provisions.) (1) Nothing in
5 this Article may be construed to reduce the liability for
6 unpaid assessments of the insured of an impaired or insolvent
7 insurer operating under a plan with assessment liability.

8 (2) No member insurer may voluntarily withdraw from this
9 State or liquidate its property, business, and affairs, and
10 no such voluntary withdrawal or voluntary liquidation shall
11 be effective, until such member insurer has paid all
12 authorized assessments, whether called or uncalled, for which
13 it is liable under this Article.

14 (3) (2) Records must be kept of all meetings of the
15 board of directors negotiations-and--meetings--in--which--the
16 Association--or--its--representatives-are-involved to discuss
17 the activities of the Association in carrying out its powers
18 and duties under Section 531.08. The records of the
19 Association with respect to an impaired or insolvent insurer
20 may be made public only (a) upon the order of the Director or
21 a court of competent jurisdiction or upon a determination by
22 the board, and (b) during the pendency Records-of-such
23 negotiations-or-meetings-may-be-made--public--only--upon--the
24 termination of a liquidation, rehabilitation, or conservation
25 proceeding involving the impaired or insolvent insurer, upon
26 a showing of compelling circumstances the-termination-of--the
27 impairment--or--insolvency-of-the-insurer, or--upon-the-order
28 of-a--court--of--competent--jurisdiction. Nothing in this
29 paragraph (3) (2) limits the duty of the Association to
30 render a report of its activities under Section 531.15.

31 (4) (3) For the purpose of carrying out its obligations
32 under this Article, the Association is deemed to be a
33 creditor of the impaired or insolvent insurer to the extent

1 of assets attributable to covered policies reduced by any
2 amounts to which the Association is entitled as subrogee
3 (under paragraph (15) ~~(8)~~ of Section 531.08). All assets of
4 the impaired or insolvent insurer attributable to covered
5 policies must be used to continue all covered policies and
6 pay all contractual obligations of the impaired insurer as
7 required by this Article. "Assets attributable to covered
8 policies", as used in this paragraph (4) ~~(3)~~, is that
9 proportion of the assets which the reserves that should have
10 been established for such policies bear to the reserves
11 reserve that should have been established for all policies of
12 insurance written by the impaired or insolvent insurer.

13 (5) As a creditor of the impaired or insolvent insurer
14 as established in paragraph (4) of this Section 531.14 and
15 paragraph (15) of Section 531.08 and consistent with
16 paragraph (2) of Section 205 of the Code and similar
17 provisions under the laws of other states, the Association
18 and other similar associations shall be entitled to receive
19 disbursements of assets out of the marshaled assets from time
20 to time as the assets become available. If the liquidator
21 has not, within 120 days of a final determination of
22 insolvency of an insurer by the receivership court, made an
23 application to the court for the approval of a proposal to
24 disburse assets out of marshaled assets to guaranty
25 associations having obligations because of the insolvency,
26 then the Association shall be entitled to make application to
27 the receivership court for approval of its own proposal to
28 disburse these assets.

29 (6) ~~(4)~~ (a) Prior to the termination of any liquidation,
30 rehabilitation, or conservation proceeding, the court may
31 take into consideration the contributions of the respective
32 parties, including the Association, the shareholders and the
33 policy and contract owners ~~policyowners~~ of the impaired or
34 insolvent insurer, and any other party with a bona fide

1 interest, in making an equitable distribution of the
2 ownership rights of such impaired or insolvent insurer. In
3 such a determination, consideration must be given to the
4 welfare of the policy owners and contract owners
5 ~~policyholders~~ of the continuing or successor insurer.

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

12 (7) ~~(5)~~ (a) If an order for liquidation or
13 rehabilitation of an insurer domiciled in this State has been
14 entered, the receiver appointed under such order has a right
15 to recover on behalf of the insurer, from any affiliate that
16 controlled it, the amount of distributions, other than stock
17 dividends paid by the insurer on its capital stock, made at
18 any time during the 5 years preceding the petition for
19 liquidation or rehabilitation subject to the limitations of
20 subparagraphs paragraphs (b) to (d) of this paragraph (7).

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

27 (c) Any person who was as an affiliate that controlled
28 the insurer at the time the distributions were paid is liable
29 up to the amount of distributions such person he received.
30 Any person who was an affiliate that controlled the insurer
31 at the time the distributions were declared, is liable up to
32 the amount of distributions such person he would have
33 received if they had been paid immediately. If 2 or more
34 persons are liable with respect to the same distributions,

1 they are jointly and severally liable.

2 (d) The maximum amount recoverable under this paragraph
3 (7) subsection--(5) of this Section is the amount needed in
4 excess of all other available assets of the insolvent insurer
5 to pay the contractual obligations of the insolvent insurer.

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

12 (Source: P.A. 81-899.)

13 (215 ILCS 5/531.15) (from Ch. 73, par. 1065.80-15)

14 Sec. 531.15. Examination of the Association. Annual
15 Report. The Association shall be subject to examination and
16 regulation by the Director. The board of directors must
17 submit to the Director, not later than the first day of the
18 fifth month following the end of the Association's fiscal
19 year, a financial report for such fiscal year in a form
20 acceptable to the Director and a report of its activities
21 during such fiscal year. Upon the request of a member
22 insurer, the Association shall provide the member with a copy
23 of the report.

24 (Source: P.A. 86-753.)

25 (215 ILCS 5/531.17) (from Ch. 73, par. 1065.80-17)

26 Sec. 531.17. Immunity. There is no liability on the
27 part of and no cause of action of any nature may arise
28 against any member insurer or its agents or employees, the
29 Association or its agents or employees, members of the board
30 of directors or their representatives or alternate
31 representatives, or the Director or the Director's his
32 representatives, for any decision or action taken or omission

1 made by them in the performance of their powers and duties
2 under this Article. Without limitation, the Association
3 shall be immune from any claim that any omission by the
4 Association or any action of the Association, taken
5 separately or in concert with the Director in any of his or
6 her capacities, has caused loss or any other injury to any
7 impaired insurer or any insolvent insurer. Immunity shall
8 extend to the Association's participation in any organization
9 of one or more other state associations of similar purposes
10 and to any such organization and its agents or employees.

11 (Source: P.A. 81-899.)

12 (215 ILCS 5/531.19) (from Ch. 73, par. 1065.80-19)

13 Sec. 531.19. Prohibited advertisement of action of the
14 Insurantee-Guaranty Association in sale of insurance.

15 (a) No person, including an insurer, agent or affiliate
16 of an insurer shall make, publish, disseminate, circulate, or
17 place before the public, or cause directly or indirectly, to
18 be made, published, disseminated, circulated or placed before
19 the public, in any newspaper, magazine or other publication,
20 or in the form of a notice, circular, pamphlet, letter or
21 poster, or over any radio station or television station, or
22 in any other way, any advertisement, announcement or
23 statement, written or oral, which uses the existence of the
24 Insurantee-Guaranty Association of this State for the purpose
25 of sales, solicitation or inducement to purchase any form of
26 insurance covered by this Article; provided, however, that
27 this Section shall not apply to the Illinois-Life-and-Health
28 Guaranty Association or any other entity which does not sell
29 or solicit insurance.

30 (b) Within 180 days of August 16, 1993, the Association
31 shall prepare a summary document describing the general
32 purposes and current limitations of this Article and
33 complying with subsection (c). This document shall be

1 submitted to the Director for approval. Sixty days after
 2 receiving approval, no insurer may deliver a policy or
 3 contract described in subparagraph (2)(a) of ~~paragraph-(2)-of~~
 4 Section 531.03 and not excluded under subparagraph (2)(b) of
 5 that Section to a policy or contract owner holder unless the
 6 document is delivered to the policy or contract owner holder
 7 prior to or at the time of delivery of the policy or
 8 contract. The document should also be available upon request
 9 by a policy or contract owner policyholder. The
 10 distribution, delivery, or contents or interpretation of this
 11 document shall not mean that either the policy or the
 12 contract or the holder thereof would be covered in the event
 13 of the impairment or insolvency of a member insurer. The
 14 description document shall be revised by the Association as
 15 amendments to this Article may require. Failure to receive
 16 this document does not give the policy or policyholder,
 17 contract owner holder, certificate holder, or insured any
 18 greater rights than those stated in this Article.

19 (c) The document prepared under subsection (b) shall
 20 contain a clear and conspicuous disclaimer on its face. The
 21 Director shall promulgate a rule establishing the form and
 22 content of the disclaimer. The disclaimer shall:

23 (1) State the name and address of the Illinois Life
 24 and Health Insurance Guaranty Association and of the
 25 Department.

26 (2) Prominently warn the policy or contract owner
 27 holder that the Illinois Life and Health Insurance
 28 Guaranty Association may not cover the policy or contract
 29 or, if coverage is available, it will be subject to
 30 substantial limitations and exclusions and conditioned on
 31 continued residence in the State.

32 (3) State that the insurer and its agents are
 33 prohibited by law from using the existence of the
 34 Illinois Life and Health Insurance Guaranty Association

1 for the purpose of sales, solicitation, or inducement to
2 purchase any form of insurance.

3 (4) Emphasize that the policy or contract owner
4 holder should not rely on coverage under the Illinois
5 Life and Health Insurance Guaranty Association Law when
6 selecting an insurer.

7 (5) Set forth the name, address, and a toll-free
8 telephone number of the insurer along with a statement
9 that the policy or contract owner should direct inquiries
10 or comments to the insurer at such address or telephone
11 number.

12 (6) (5) Provide other information as directed by
13 the Director.

14 (d) (Blank).

15 (Source: P.A. 88-364; 88-627, eff. 9-9-94; 89-97, eff.
16 7-7-95.)

17 Section 99. Effective date. This Act takes effect on
18 January 1, 2004.