



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB5217

Introduced 2/3/2010, by Rep. Frank J. Mautino - JoAnn D. Osmond

SYNOPSIS AS INTRODUCED:

See Index

Amends the Illinois Insurance Code. Sets forth definitions of "netting agreement" and "qualified financial contract". Sets forth the conditions under which no person shall be stayed or prohibited from exercising contractual rights concerning netting agreements and qualified financial contracts. Provides that upon termination of a netting agreement or qualified financial contract, the net or settlement amount owed by a nondefaulting party to an insurer against which an application or petition has been filed shall be transferred to or on the order of the receiver for the insurer. Sets forth provisions that shall apply concerning disaffirmance and repudiation. Sets forth requirements concerning proof and allowance of claims. Provides that the Article concerning life and health insurance guaranty associations in the Code shall provide coverage for certain policies and contracts (1) to certain persons who are owners or certificate holders, (2) for certain unallocated annuity contracts, and (3) for certain structured settlement annuities. Sets forth the conditions under which the provisions of the Article shall not apply. Makes changes in a provision concerning definitions. Provides that the life insurance and annuity account that the Illinois Life and Health Insurance Guaranty Association must maintain shall include an annuity account, which shall include annuity contracts owned by a governmental retirement plan and unallocated annuity account, which shall exclude contracts owned by a governmental retirement benefit plan. Makes changes in the provisions concerning the Association's board of directors, powers and duties, assessments, and operations. Amends the Health Maintenance Organization Act to make changes concerning the Association's powers, duties, operations, and immunity. Makes other changes. Effective immediately.

LRB096 17690 RPM 33053 b

1 AN ACT concerning insurance.

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

4 Section 5. The Illinois Insurance Code is amended by
5 changing Sections 187, 209, 531.03, 531.04, 531.05, 531.06,
6 531.07, 531.08, 531.09, 531.10, 531.11, 531.12, 531.14,
7 531.17, 531.18, 537.2, and 545 and by adding Section 206.1 as
8 follows:

9 (215 ILCS 5/187) (from Ch. 73, par. 799)

10 Sec. 187. Scope of Article.

11 (1) This Article shall apply to every corporation,
12 association, society, order, firm, company, partnership,
13 individual, and aggregation of individuals to which any Article
14 of this Code is applicable, or which is subject to examination,
15 visitation or supervision by the Director under any provision
16 of this Code or under any law of this State, or which is
17 engaging in or proposing or attempting to engage in or is
18 representing that it is doing an insurance or surety business,
19 or is undertaking or proposing or attempting to undertake to
20 provide or arrange for health care services as a health care
21 plan as defined in subsection (7) of Section 1-2 of the Health
22 Maintenance Organization Act, including the exchanging of
23 reciprocal or inter-insurance contracts between individuals,

1 partnerships and corporations in this State, or which is in the
2 process of organization for the purpose of doing or attempting
3 or intending to do such business, anything as to any such
4 corporation, association, society, order, firm, company,
5 partnership, individual or aggregation of individuals provided
6 in this Code or elsewhere in the laws of this State to the
7 contrary notwithstanding.

8 (2) The word "company" as used in this Article includes all
9 of the corporations, associations, societies, orders, firms,
10 companies, partnerships, and individuals specified in
11 subsections (1), (4), and (5) of this Section and agents,
12 managing general agents, brokers, premium finance companies,
13 insurance holding companies, and all other non-risk bearing
14 entities or persons engaged in any aspect of the business of
15 insurance on behalf of an insurer against which a receivership
16 proceeding has been or is being filed under this Article,
17 including, but not limited to, entities or persons that provide
18 management, administrative, accounting, data processing,
19 marketing, underwriting, claims handling, or any other similar
20 services to that insurer, whether or not those entities are
21 licensed to engage in the business of insurance in Illinois, if
22 the entity or person is an affiliate of that insurer.

23 (3) The word "court" shall mean the court before which the
24 conservation, rehabilitation, or liquidation proceeding of the
25 company is pending, or the judge presiding in such proceedings.

26 (4) The word "affiliate" as used in this Article means a

1 person that directly, or indirectly through one or more
2 intermediaries, controls, is controlled by, or is under common
3 control with, the person specified.

4 (5) The word "person" as used in this Article means an
5 individual, an aggregation of individuals, a partnership, or a
6 corporation.

7 (6) The word "assets" as used in this Article includes all
8 deposits and funds of a special or trust nature.

9 (7) The words "receivership proceedings" mean any
10 conservation, rehabilitation, liquidation, or ancillary
11 receivership.

12 (8) "Netting agreement", as used in this Article, means (a)
13 a contract or agreement (including terms and conditions
14 incorporated by reference therein), including a master
15 agreement (which master agreement, together with all
16 schedules, confirmations, definitions, and addenda thereto and
17 transactions under any thereof, shall be treated as one netting
18 agreement), that documents one or more transactions between the
19 parties to the agreement for or involving one or more qualified
20 financial contracts and that provides for the netting,
21 liquidation, setoff, termination, acceleration, or close out
22 under or in connection with one or more qualified financial
23 contracts or present or future payment or delivery obligations
24 or payment or delivery entitlements thereunder (including
25 liquidation or close-out values relating to such obligations or
26 entitlements) among the parties to the netting agreement; (b)

1 any master agreement or bridge agreement for one or more master
2 agreements described in paragraph (a) of this subsection (8);
3 or (c) any security agreement or arrangement or other credit
4 enhancement or guarantee or reimbursement obligation related
5 to any contract or agreement described in paragraph (a) or (b)
6 of this subsection (8); provided that any contract or agreement
7 described in paragraphs (a) or (b) of this subsection (8)
8 relating to agreements or transactions that are not qualified
9 financial contracts shall be deemed to be a netting agreement
10 only with respect to those agreements or transactions that are
11 qualified financial contracts.

12 (9) "Qualified financial contract" means any commodity
13 contract, forward contract, repurchase agreement, securities
14 contract, swap agreement, or any similar agreement that the
15 Director determines by regulation, resolution, or order to be a
16 qualified financial contract for the purposes of this Act.

17 (a) "Commodity contract" means:

18 (1) a contract for the purchase or sale of a
19 commodity for future delivery on, or subject to the
20 rules of, a board of trade or contract market under the
21 federal Commodity Exchange Act or a board of trade
22 outside the United States;

23 (2) an agreement that is subject to regulation
24 under Section 19 of the federal Commodity Exchange Act
25 and that is commonly known to the commodities trade as
26 a margin account, margin contract, leverage account,

1 or leverage contract;

2 (3) an agreement or transaction that is subject to
3 regulation under Section 4c(b) of the federal
4 Commodity Exchange Act and that is commonly known to
5 the commodities trade as a commodity option;

6 (4) any combination of the agreements or
7 transactions referred to in this paragraph (a); or

8 (5) any option to enter into an agreement or
9 transaction referred to in this paragraph (a).

10 (b) "Forward contract", "repurchase agreement",
11 "securities contract", and "swap agreement" shall have the
12 meanings set forth in the Federal Deposit Insurance Act, 12
13 U.S.C. § 1821(e) (8) (D), as amended from time to time.

14 (Source: P.A. 92-140, eff. 7-24-01.)

15 (215 ILCS 5/206.1 new)

16 Sec. 206.1. Qualified financial contracts.

17 (a) Notwithstanding any other provision of this Article,
18 including any other provision of this Article permitting the
19 modification of contracts, or other law of a state, no person
20 shall be stayed or prohibited from exercising:

21 (1) a contractual right to cause the termination,
22 liquidation, acceleration, or close out of obligations
23 under or in connection with any netting agreement or
24 qualified financial contract with an insurer because of:

25 (A) the insolvency, financial condition, or

1 default of the insurer at any time, provided that the
2 right is enforceable under an applicable law other than
3 this Code; or

4 (B) the commencement of a formal delinquency
5 proceeding under this Code;

6 (2) any right under a pledge, security, collateral,
7 reimbursement or guarantee agreement or arrangement, any
8 other similar security agreement or arrangement, or other
9 credit enhancement relating to one or more netting
10 agreements or qualified financial contracts;

11 (3) subject to any provision of Section 206 of this
12 Article, any right to set off or net out any termination
13 value, payment amount, or other transfer obligation
14 arising under or in connection with one or more qualified
15 financial contracts where the counterparty or its
16 guarantor is organized under the laws of the United States
17 or a state or a foreign jurisdiction approved by the
18 Securities Valuation Office of the National Association of
19 Insurance Commissioners as eligible for netting; or

20 (4) if a counterparty to a master netting agreement or
21 a qualified financial contract with an insurer subject to a
22 proceeding under this Article terminates, liquidates,
23 closes out or accelerates the agreement or contract, then
24 damages shall be measured as of the date or dates of
25 termination, liquidation, close out, or acceleration; the
26 amount of a claim for damages shall be actual direct

1 compensatory damages calculated in accordance with
2 subsection (f) of this Section.

3 (b) Upon termination of a netting agreement or qualified
4 financial contract, the net or settlement amount, if any, owed
5 by a nondefaulting party to an insurer against which an
6 application or petition has been filed under this Code shall be
7 transferred to or on the order of the receiver for the insurer,
8 even if the insurer is the defaulting party, notwithstanding
9 any walkaway clause in the netting agreement or qualified
10 financial contract.

11 For the purposes of this subsection (b), the term "walkaway
12 clause" means a provision in a netting agreement or a qualified
13 financial contract that, after calculation of a value of a
14 party's position or an amount due to or from one of the parties
15 in accordance with its terms upon termination, liquidation, or
16 acceleration of the netting agreement or qualified financial
17 contract, either does not create a payment obligation of a
18 party or extinguishes a payment obligation of a party in whole
19 or in part solely because of the party's status as a
20 nondefaulting party. Any limited 2-way payment or first method
21 provision in a netting agreement or qualified financial
22 contract with an insurer that has defaulted shall be deemed to
23 be a full 2-way payment or second method provision as against
24 the defaulting insurer. Any such property or amount shall,
25 except to the extent that it is subject to one or more
26 secondary liens or encumbrances or rights of netting or setoff,

1 be a general asset of the insurer.

2 (c) In making any transfer of a netting agreement or
3 qualified financial contract of an insurer subject to a
4 proceeding under this Code, the receiver shall either:

5 (1) transfer to one party (other than an insurer
6 subject to a proceeding under this Article) all netting
7 agreements and qualified financial contracts between a
8 counterparty or any affiliate of the counterparty and the
9 insurer that is the subject of the proceeding, including:

10 (A) all rights and obligations of each party under
11 each netting agreement and qualified financial
12 contract; and

13 (B) all property, including any guarantees or
14 other credit enhancement, securing any claims of each
15 party under each netting agreement and qualified
16 financial contract; or

17 (2) transfer none of the netting agreements, qualified
18 financial contracts, rights, obligations, or property
19 referred to in paragraph (1) of this subsection (c) (with
20 respect to the counterparty and any affiliate of the
21 counterparty).

22 (d) If a receiver for an insurer makes a transfer of one or
23 more netting agreements or qualified financial contracts, then
24 the receiver shall use its best efforts to notify any person
25 who is party to the netting agreements or qualified financial
26 contracts of the transfer by 12:00 noon (the receiver's local

1 time) on the business day following the transfer. For the
2 purposes of this subsection (d), "business day" means a day
3 other than a Saturday, Sunday, or any day on which either the
4 New York Stock Exchange or the Federal Reserve Bank of New York
5 is closed.

6 (e) Notwithstanding any other provision of this Article, a
7 receiver may not avoid a transfer of money or other property
8 arising under or in connection with a netting agreement or
9 qualified financial contract (or any pledge, security,
10 collateral, or guarantee agreement or any other similar
11 security arrangement or credit support document relating to a
12 netting agreement or qualified financial contract) that is made
13 before the commencement of a formal delinquency proceeding
14 under this Article.

15 (f) The following provisions shall apply concerning
16 disaffirmance and repudiation:

17 (1) In exercising the rights of disaffirmance or
18 repudiation of a receiver with respect to any netting
19 agreement or qualified financial contract to which an
20 insurer is a party, the receiver for the insurer shall
21 either:

22 (A) disaffirm or repudiate all netting agreements
23 and qualified financial contracts between a
24 counterparty or any affiliate of the counterparty and
25 the insurer that is the subject of the proceeding; or

26 (B) disaffirm or repudiate none of the netting

1 agreements and qualified financial contracts referred
2 to in subparagraph (A) (with respect to the person or
3 any affiliate of the person).

4 (2) Notwithstanding any other provision of this
5 Article, any claim of a counterparty against the estate
6 arising from the receiver's disaffirmance or repudiation
7 of a netting agreement or qualified financial contract that
8 has not been previously affirmed in the liquidation or
9 immediately preceding a conservation or rehabilitation
10 case shall be determined and shall be allowed or disallowed
11 as if the claim had arisen before the date of the filing of
12 the petition for liquidation or, if a conservation or
13 rehabilitation proceeding is converted to a liquidation
14 proceeding, as if the claim had arisen before the date of
15 the filing of the petition for conservation or
16 rehabilitation. The amount of the claim shall be the actual
17 direct compensatory damages determined as of the date of
18 the disaffirmance or repudiation of the netting agreement
19 or qualified financial contract. The term "actual direct
20 compensatory damages" does not include punitive or
21 exemplary damages, damages for lost profit or lost
22 opportunity, or damages for pain and suffering, but does
23 include normal and reasonable costs of cover or other
24 reasonable measures of damages utilized in the
25 derivatives, securities, or other market for the contract
26 and agreement claims.

1 (g) The term "contractual right", as used in this Section,
2 includes any right set forth in a rule or bylaw of a
3 derivatives clearing organization, as defined in the Commodity
4 Exchange Act; a multilateral clearing organization, as defined
5 in the Federal Deposit Insurance Corporation Improvement Act of
6 1991; a national securities exchange; a national securities
7 association; a securities clearing agency; a contract market
8 designated under the Commodity Exchange Act; a derivatives
9 transaction execution facility registered under the Commodity
10 Exchange Act; or a board of trade, as defined in the Commodity
11 Exchange Act or in a resolution of the governing board thereof
12 and any right, whether or not evidenced in writing, arising
13 under statutory or common law or under law merchant or by
14 reason of normal business practice.

15 (h) The provisions of this Section shall not apply to
16 persons who are affiliates of the insurer that is the subject
17 of the proceeding.

18 (i) All rights of counterparties under this Article shall
19 apply to netting agreements and qualified financial contracts
20 entered into on behalf of the general account or separate
21 accounts if the assets of each separate account are available
22 only to counterparties to netting agreements and qualified
23 financial contracts entered into on behalf of that separate
24 account.

1 Sec. 209. Proof and allowance of claims.

2 (1) The following provisions shall apply concerning proof
3 and allowance of claims:

4 (a) Proof of claim shall consist of a statement signed
5 by the claimant or on behalf of the claimant that includes
6 all of the following that are applicable:

7 (i) the particulars of the claim including the
8 consideration given for it;

9 (ii) the identity and amount of the security on the
10 claim;

11 (iii) the payments made on the debt, if any;

12 (iv) that the sum claimed is justly owing and that
13 there is no setoff, counterclaim, or defense to the
14 claim;

15 (v) any right of priority of payment or other
16 specific right asserted by the claimant;

17 (vi) the name and address of the claimant and the
18 attorney, if any, who represents the claimant; and

19 (vii) the claimant's social security or federal
20 employer identification number.

21 (b) The Director may require that a prescribed form be
22 used and may require that other information and documents
23 be included.

24 (c) At any time the Director may require the claimant
25 to present information or evidence supplementary to that
26 required under paragraph (a) and may take testimony under

1 oath, require production of affidavits or depositions, or
2 otherwise obtain additional information or evidence.

3 (2) (1) A proof of claim shall consist of a written
4 statement signed under oath setting forth the claim, the
5 consideration for it, whether the claim is secured and, if so,
6 how, what payments have been made on the claim, if any, and
7 that the sum claimed is justly owing from the company. Whenever
8 a claim is based upon a document, the document, unless lost or
9 destroyed, shall be filed with the proof of claim. If the
10 document is lost or destroyed, a statement of that fact and of
11 the circumstances of the loss or destruction shall be included
12 in the proof of claim. A claim may be allowed even if
13 contingent or unliquidated as of the date fixed by the court
14 pursuant to subsection (a) of Section 194 if it is filed in
15 accordance with this subsection. Except as otherwise provided
16 in subsection (7), a proof of claim required under this Section
17 must identify a known loss or occurrence.

18 (2) At any time, the Director may require the claimant to
19 present information or evidence supplementary to that required
20 under subsection (1) and may take testimony under oath, require
21 production of affidavits or depositions, or otherwise obtain
22 additional information or evidence.

23 (3) Upon the liquidation, rehabilitation, or conservation
24 of any company which has issued policies insuring the lives of
25 persons, the Director shall, within a reasonable time, after
26 the last day set for the filing of claims, make a list of the

1 persons who have not filed proofs of claim with him and whose
2 rights have not been reinsured, to whom it appears from the
3 books of the company, there are owing amounts on such policies
4 and he shall set opposite the name of each person such amount
5 so owing to such person. The Director shall incur no personal
6 liability by reason of any mistake in such list. Each person
7 whose name shall appear upon said list shall be deemed to have
8 duly filed prior to the last day set for filing of claims a
9 proof of claim for the amount set opposite his name on said
10 list.

11 (4) (a) When a Liquidation, Rehabilitation, or Conservation
12 Order has been entered in a proceeding against an insurer under
13 this Code, any insured under an insurance policy shall have the
14 right to file a contingent claim. The Court at the time of the
15 entry of the Order of Liquidation, Rehabilitation or
16 Conservation shall fix the final date for the liquidation of
17 insureds' contingent claims, but in no event shall said date be
18 more than 3 years after the last day fixed for the filing of
19 claims, provided, such date may be extended by the Court on
20 petition of the Director should the Director determine that
21 such extension will not delay distribution of assets under
22 Section 210. Such a contingent claim shall be allowed if such
23 claim is liquidated and the insured claimant presents evidence
24 of payment of such claim to the Director on or before the last
25 day fixed by the Court.

26 (b) When an insured has been unable to liquidate its claim

1 under paragraph (a) of this subsection (4), the insured may
2 have its claim allowed by estimation if (i) it may be
3 reasonably inferred from the proof presented upon the claim
4 that a claim exists under the policy; (ii) the insured has
5 furnished suitable proof, unless the court for good cause shown
6 shall otherwise direct, that no further valid claims against
7 the insurer arising out of the cause of action other than those
8 already presented can be made, and (iii) the total liability of
9 the insurer to all claimants arising out of the same act shall
10 be no greater than its total liability would be were it not in
11 liquidation, rehabilitation, or conservation.

12 (5) The obligation of the insurer, if any, to defend or
13 continue the defense of any claim or suit under a liability
14 insurance policy shall terminate on the entry of the Order of
15 Liquidation, Rehabilitation or Conservation, except during the
16 appeal of an Order of Liquidation as provided by Section 190.1
17 or, unless upon the petition of the Director, the court directs
18 otherwise. Insureds may include in contingent claims
19 reasonable attorneys fees for services rendered subsequent to
20 the date of Liquidation, Rehabilitation or Conservation in
21 defense of claims or suits covered by the insured's policy
22 provided such attorneys fees have actually been paid by the
23 assured and evidence of payment presented in the manner
24 required for insured's contingent claims.

25 (6) When a liquidation, rehabilitation, or conservation
26 order has been entered in a proceeding against an insurer under

1 this Code, any person who has a cause of action against an
2 insured of the insurer under an insurance policy issued by the
3 insurer shall have the right to file a claim in the proceeding,
4 regardless of the fact that the claim may be contingent, and
5 the claim may be allowed by estimation (a) if it may be
6 reasonably, inferred from proof presented upon the claim that
7 the claimant would be able to obtain a judgment upon the cause
8 of action against the insured; and (b) if the person has
9 furnished suitable proof, unless the court for good cause shown
10 shall otherwise direct, that no further valid claims against
11 the insurer arising out of the cause of action other than those
12 already presented can be made, and (c) the total liability of
13 the insurer to all claimants arising out of the same act shall
14 be no greater than its total liability would be were it not in
15 liquidation, rehabilitation, or conservation.

16 (7) Contingent or unliquidated general creditors' and
17 ceding insurers' claims that are not made absolute and
18 liquidated by the last day fixed by the court pursuant to
19 subsection (4) may be determined and allowed by estimation. Any
20 such estimate shall be based upon an actuarial evaluation made
21 with reasonable actuarial certainty or upon another accepted
22 method of valuing claims with reasonable certainty and, with
23 respect to ceding insurers' claims, may include an estimate of
24 incurred but not reported losses.

25 (7.5) (a) The estimation and allowance of the loss
26 development on a known loss or occurrence shall trigger a

1 reinsurer's obligation to pay pursuant to its reinsurance
2 contract with the insolvent company, provided that the
3 allowance is made in accordance with paragraph (b) of
4 subsection (4) or subsection (6). The Director shall have the
5 authority to exercise all available remedies on behalf of the
6 insolvent company to marshal these reinsurance recoverables.

7 (b) That portion of any estimated and allowed contingent
8 claim that is attributable to claims incurred but not reported
9 to the insolvent company's reinsured shall not be billable to
10 the insolvent company's reinsurers, except to the extent that
11 (A) such claims develop into known losses or occurrences and
12 become billable under paragraph (a) of this subsection or (B)
13 the reinsurance contract specifically provides for the payment
14 of such losses or reserves.

15 (c) Notwithstanding any other provision of this Code, the
16 liquidator may negotiate a voluntary commutation and release of
17 all obligations arising from reinsurance contracts or other
18 agreements.

19 (8) No judgment against such an insured or an insurer taken
20 after the date of the entry of the liquidation, rehabilitation,
21 or conservation order shall be considered in the proceedings as
22 evidence of liability, or of the amount of damages, and no
23 judgment against an insured or an insurer taken by default, or
24 by collusion prior to the entry of the liquidation order shall
25 be considered as conclusive evidence in the proceeding either
26 of the liability of such insured to such person upon such cause

1 of action or of the amount of damages to which such person is
2 therein entitled.

3 (9) The value of securities held by secured creditors shall
4 be determined by converting the same into money according to
5 the terms of the agreement pursuant to which such securities
6 were delivered to such creditors, or by such creditors and the
7 Director by agreement, or by the court, and the amount of such
8 value shall be credited upon the claims of such secured
9 creditors and their claims allowed only for the balance.

10 (10) Claims of creditors or policyholders who have received
11 preferences voidable under Section 204 or to whom conveyances
12 or transfers, assignments or incumbrances have been made or
13 given which are void under Section 204, shall not be allowed
14 unless such creditors or policyholders shall surrender such
15 preferences, conveyances, transfers, assignments or
16 incumbrances.

17 (11) (a) When the Director denies a claim or allows a claim
18 for less than the amount requested by the claimant, written
19 notice of the determination and of the right to object shall be
20 given promptly to the claimant or the claimant's representative
21 by first class mail at the address shown on the proof of claim.
22 Within 60 days from the mailing of the notice, the claimant may
23 file his written objections with the Director. If no such
24 filing is made on a timely basis, the claimant may not further
25 object to the determination.

26 (b) Whenever objections are filed with the Director and he

1 does not alter his determination as a result of the objection
2 and the claimant continues to object, the Director shall
3 petition the court for a hearing as soon as practicable and
4 give notice of the hearing by first class mail to the claimant
5 or his representative and to any other persons known by the
6 Director to be directly affected, not less than 10 days before
7 the date of the hearing.

8 (12) The Director shall review all claims duly filed in the
9 liquidation, rehabilitation, or conservation proceeding,
10 unless otherwise directed by the court, and shall make such
11 further investigation as he considers necessary. The Director
12 may compound, compromise, or in any other manner negotiate the
13 amount for which claims will be recommended to the court.
14 Unresolved disputes shall be determined under subsection (11).

15 (13) (a) The Director shall present to the court reports of
16 claims reviewed under subsection (12) with his recommendations
17 as to each claim.

18 (b) The court may approve or disapprove any recommendations
19 contained in the reports of claims filed by the Director,
20 except that the Director's agreements with claimants shall be
21 accepted as final by the court on claims settled for \$10,000 or
22 less.

23 (14) The changes made in this Section by this amendatory
24 Act of 1993 apply to all liquidation, rehabilitation, or
25 conservation proceedings that are pending on the effective date
26 of this amendatory Act of 1993 and to all future liquidation,

1 rehabilitation, or conservation proceedings, except that the
2 changes made to the provisions of this Section by this
3 amendatory Act of 1993 shall not apply to any company ordered
4 into liquidation on or before January 1, 1982.

5 (15) The changes made in this Section by this amendatory
6 Act of the 93rd General Assembly do not apply to any company
7 ordered into liquidation on or before January 1, 2004.

8 (Source: P.A. 93-1083, eff. 2-7-05.)

9 (215 ILCS 5/531.03) (from Ch. 73, par. 1065.80-3)

10 Sec. 531.03. Coverage and limitations.

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

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

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

22 (i) are residents; or

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

25 (A) the insurer that issued the policies or

1 contracts is domiciled in this State;

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

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

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

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

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

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

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

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

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

8 (A) with regard to residency:

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

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

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

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

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

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

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

20 ~~(i) are residents of this State, or~~

21 ~~(ii) are not residents, but only under all of the~~

22 ~~following conditions:~~

23 ~~(A) the insurers which issued such policies or~~
24 ~~contracts are domiciled in this State;~~

25 ~~(B) such insurers never held a license or~~
26 ~~certificate of authority in the states in which~~

1 ~~such persons reside;~~
2 ~~(C) such states have associations similar to~~
3 ~~the association created by this Act; and~~
4 ~~(D) such persons are not eligible for coverage~~
5 ~~by such associations.~~

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

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

22 (i) that portion of a policy or contract not guaranteed
23 by the insurer, or under which the risk is borne by the
24 policy or contract owner ~~or part of such policies or~~
25 ~~contracts under which the risk is borne by the~~
26 ~~policyholder; provided however, that nothing in this~~

1 ~~subparagraph (i) shall make this Article inapplicable to~~
2 ~~assessment life and accident and health insurance policies~~
3 ~~or contracts; or~~

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

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

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

1 ~~date on which the Association becomes obligated with~~
2 ~~respect to such policy or contract, exceeds a rate of~~
3 ~~interest determined by subtracting two percentage~~
4 ~~points from Moody's Corporate Bond Yield Average~~
5 ~~averaged for that same four year period or for such~~
6 ~~lesser period if the policy or contract was issued less~~
7 ~~than four years before the Association became~~
8 ~~obligated; and~~

9 (B) on and after the date on which the member
10 insurer becomes an impaired or insolvent insurer under
11 this Article, whichever is earlier, exceeds the rate of
12 interest determined by subtracting 3 percentage points
13 from Moody's Corporate Bond Yield Average as most
14 recently available ~~on and after the date on which the~~
15 ~~Association becomes obligated with respect to such~~
16 ~~policy or contract, exceeds the rate of interest~~
17 ~~determined by subtracting three percentage points from~~
18 ~~Moody's Corporate Bond Yield Average as most recently~~
19 ~~available; or~~

20 (iv) any unallocated annuity contract issued to or in
21 connection with a benefit plan protected under the federal
22 Pension Benefit Guaranty Corporation, regardless of
23 whether the federal Pension Benefit Guaranty Corporation
24 has yet become liable to make any payments with respect to
25 the benefit plan ~~any unallocated annuity contract issued to~~
26 ~~an employee benefit plan protected under the federal~~

1 ~~Pension Benefit Guaranty Corporation; or~~

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

6 (vi) an obligation that does not arise under the
7 express written terms of the policy or contract issued by
8 the insurer to the contract owner or policy owner,
9 including without limitation:

10 (A) a claim based on marketing materials;

11 (B) a claim based on side letters, riders, or other
12 documents that were issued by the insurer without
13 meeting applicable policy form filing or approval
14 requirements;

15 (C) a misrepresentation of or regarding policy
16 benefits;

17 (D) an extracontractual claim; or

18 (E) a claim for penalties or consequential or
19 incidental damages; ~~any burial society organized under~~
20 ~~Article XIX of this Act, any fraternal benefit society~~
21 ~~organized under Article XVII of this Act, any mutual~~
22 ~~benefit association organized under Article XVIII of~~
23 ~~this Act, and any foreign fraternal benefit society~~
24 ~~licensed under Article VI of this Act; or~~

25 ~~(vii) any health maintenance organization established~~
26 ~~pursuant to the Health Maintenance Organization Act~~

1 ~~including any health maintenance organization business of~~
2 ~~a member insurer; or~~

3 ~~(viii) any health services plan corporation~~
4 ~~established pursuant to the Voluntary Health Services~~
5 ~~Plans Act; or~~

6 ~~(ix) (blank); or~~

7 ~~(x) any dental service plan corporation established~~
8 ~~pursuant to the Dental Service Plan Act; or~~

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

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

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

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

1 limited to, benefits payable by an employer, association,
2 or other person under:

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

5 (B) a minimum premium group insurance plan;

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

7 (D) an administrative services only contract;

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

10 (A) dividends or experience rating credits;

11 (B) voting rights; or

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

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

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

26 (xiv) any portion of a policy or contract to the extent

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

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

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

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

26 (b) (i) with respect to any one life, regardless of the

1 number of policies or contracts:

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

5 (B) in health insurance benefits:

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

11 (II) \$300,000 for disability insurance and
12 \$300,000 for long-term care insurance as defined
13 in Section 351A-1 of this Code; and

14 (III) \$500,000 for basic hospital medical and
15 surgical insurance or major medical insurance
16 ~~\$300,000 in health insurance benefits, including~~
17 ~~any net cash surrender and net cash withdrawal~~
18 ~~values;~~

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

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

1 aggregate, \$250,000 in present value annuity benefits,
2 including net cash surrender and net cash withdrawal
3 values;

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

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

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

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

25 ~~\$100,000 in the present value of annuity benefits,~~
26 ~~including net cash surrender and net cash withdrawal~~

1 ~~values;~~

2 ~~(ii) with respect to each individual participating in a~~
3 ~~governmental retirement plan established under Section~~
4 ~~401, 403(b) or 457 of the U.S. Internal Revenue Code~~
5 ~~covered by an unallocated annuity contract or the~~
6 ~~beneficiaries of each such individual if deceased, in the~~
7 ~~aggregate, \$100,000 in present value annuity benefits,~~
8 ~~including net cash surrender and net cash withdrawal~~
9 ~~values; provided, however, that in no event shall the~~
10 ~~Association be liable to expend more than \$300,000 in the~~
11 ~~aggregate with respect to any one individual under~~
12 ~~subparagraph (1) and this subparagraph;~~

13 ~~(iii) with respect to any one contract holder covered~~
14 ~~by any unallocated annuity contract not included in~~
15 ~~subparagraph (3)(b)(ii) of this Section above, \$5,000,000~~
16 ~~in benefits, irrespective of the number of such contracts~~
17 ~~held by that contract holder.~~

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

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

1 (215 ILCS 5/531.04) (from Ch. 73, par. 1065.80-4)

2 Sec. 531.04. Construction. ~~This Article shall be is to be~~
3 ~~liberally~~ construed to effect the purpose under Section 531.02
4 ~~which constitutes an aid and guide to interpretation.~~

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

6 (215 ILCS 5/531.05) (from Ch. 73, par. 1065.80-5)

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

8 ~~(1)~~ "Account" means either of the 3 accounts created under
9 Section 531.06.

10 ~~(2)~~ "Association" means the Illinois Life and Health
11 Insurance Guaranty Association created under Section 531.06.

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

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

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

1 when notice is mailed by the Association to member insurers.

2 ~~(3)~~ "Director" means the Director of Insurance of this
3 State.

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

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

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

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

16 "Impaired insurer" means (A) a member insurer which, after
17 the effective date of this amendatory Act of the 96th General
18 Assembly, is not an insolvent insurer, and is placed under an
19 order of rehabilitation or conservation by a court of competent
20 jurisdiction or (B) a member insurer deemed by the Director
21 after the effective date of this amendatory Act of the 96th
22 General Assembly to be potentially unable to fulfill its
23 contractual obligations and not an insolvent insurer. ~~(7)~~

24 ~~"Impaired insurer" means a member insurer deemed by the~~
25 ~~Director after the effective date of this Article to be~~
26 ~~potentially unable to fulfill its contractual obligations and~~

1 ~~not an insolvent insurer.~~

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

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

16 "Member insurer" means an insurer licensed or holding a
17 certificate of authority to transact in this State any kind of
18 insurance for which coverage is provided under Section 531.03
19 of this Code and includes an insurer whose license or
20 certificate of authority in this State may have been suspended,
21 revoked, not renewed, or voluntarily withdrawn or whose
22 certificate of authority may have been suspended pursuant to
23 Section 119 of this Code, but does not include:

24 (1) a hospital or medical service organization,
25 whether profit or nonprofit;

26 (2) a health maintenance organization;

1 (3) any burial society organized under Article XIX of
2 this Code, any fraternal benefit society organized under
3 Article XVII of this Code, any mutual benefit association
4 organized under Article XVIII of this Code, and any foreign
5 fraternal benefit society licensed under Article VI of this
6 Code or a fraternal benefit society;

7 (4) a mandatory State pooling plan;

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

10 (6) an insurance exchange;

11 (7) an organization that is permitted to issue
12 charitable gift annuities pursuant to Section 121-2.10 of
13 this Code;

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

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

18 (10) an entity similar to any of the above. ~~(9) "Member~~
19 ~~insurer" means any person licensed or who holds a~~
20 ~~certificate of authority to transact in this State any kind~~
21 ~~of insurance business to which this Article applies under~~
22 ~~Section 531.03. For purposes of this Article "member~~
23 ~~insurer" includes any person whose certificate of~~
24 ~~authority may have been suspended pursuant to Section 119.~~

25 ~~(10)~~ "Moody's Corporate Bond Yield Average" means the
26 Monthly Average Corporates as published by Moody's Investors

1 Service, Inc., or any successor thereto.

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

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

14 "Plan sponsor" means:

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

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

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

26 "Premiums" mean amounts or considerations, by whatever

1 name called, received on covered policies or contracts less
2 returned premiums, considerations, and deposits and less
3 dividends and experience credits.

4 "Premiums" does not include:

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

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

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

1 the owner. ~~(11) "Premiums" means direct gross insurance~~
2 ~~premiums or subscriptions and annuity considerations~~
3 ~~received on covered policies or contracts, less return~~
4 ~~premiums and considerations thereon and dividends paid or~~
5 ~~credited to policyholders on such direct business.~~
6 ~~"Premiums" do not include premiums and considerations on~~
7 ~~contracts between insurers and reinsurers. "Premiums" do~~
8 ~~not include any amounts received for any policies or~~
9 ~~contracts or for the portions of any policies or contracts~~
10 ~~for which coverage is not provided under paragraph (2) of~~
11 ~~Section 531.03 except that assessable premium shall not be~~
12 ~~reduced on account of subparagraph (2) (b) (iii) of Section~~
13 ~~531.03 relating to interest limitations and subparagraph~~
14 ~~(3) (b) of Section 531.03 relating to limitations with~~
15 ~~respect to any one individual, any one participant and any~~
16 ~~one contractholder; provided that "premiums" shall not~~
17 ~~include any premiums in excess of five million dollars on~~
18 ~~any unallocated annuity contract not issued under a~~
19 ~~governmental retirement plan established under Sections~~
20 ~~401, 403(b) or 457 of the United States Internal Revenue~~
21 ~~Code.~~

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

24 "Principal place of business" of a plan sponsor or a person
25 other than a natural person means the single state in which the
26 natural persons who establish policy for the direction,

1 control, and coordination of the operations of the entity as a
2 whole primarily exercise that function, determined by the
3 Association in its reasonable judgment by considering the
4 following factors:

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

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

9 (C) the state in which the board of directors (or
10 similar governing person or persons) of the entity conducts
11 the majority of its meetings;

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

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

18 (F) in the case of a benefit plan sponsored by
19 affiliated companies comprising a consolidated
20 corporation, the state in which the holding company or
21 controlling affiliate has its principal place of business
22 as determined using the above factors. However, in the case
23 of a plan sponsor, if more than 50% of the participants in
24 the benefit plan are employed in a single state, that state
25 shall be deemed to be the principal place of business of
26 the plan sponsor.

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

11 "Receivership court" means the court in the insolvent or
12 impaired insurer's state having jurisdiction over the
13 conservation, rehabilitation, or liquidation of the insurer.

14 "Resident" means a person to whom a contractual obligation
15 is owed and who resides in this State on the date of entry of a
16 court order that determines a member insurer to be an impaired
17 insurer or a court order that determines a member insurer to be
18 an insolvent insurer. A person may be a resident of only one
19 state, which in the case of a person other than a natural
20 person shall be its principal place of business. Citizens of
21 the United States that are either (i) residents of foreign
22 countries or (ii) residents of United States possessions,
23 territories, or protectorates that do not have an association
24 similar to the Association created by this Article, shall be
25 deemed residents of the state of domicile of the insurer that
26 issued the policies or contracts. ~~(13) "Resident" means any~~

1 ~~person who resides in this State at the time the insurer is~~
2 ~~determined to be impaired or insolvent and to whom contractual~~
3 ~~obligations are owed. A person may be a resident of only one~~
4 ~~state which, in the case of a person other than a natural~~
5 ~~person, shall be its principal place of business.~~

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

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

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

16 ~~"Supplemental contract" means any agreement entered into for~~
17 ~~the distribution of policy or contract proceeds.~~

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

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

24 (215 ILCS 5/531.06) (from Ch. 73, par. 1065.80-6)

25 Sec. 531.06. Creation of the Association. There is created

1 a non-profit legal entity to be known as the Illinois Life and
2 Health Insurance Guaranty Association. All member insurers are
3 and must remain members of the Association as a condition of
4 their authority to transact insurance in this State. The
5 Association must perform its functions under the plan of
6 operation established and approved under Section 531.10 and
7 must exercise its powers through a board of directors
8 established under Section 531.07. For purposes of
9 administration and assessment, the Association must maintain 2
10 accounts:

11 (1) The life insurance and annuity account, which
12 includes the following subaccounts:

13 (a) Life Insurance Account;

14 (b) Annuity account, which shall include annuity
15 contracts owned by a governmental retirement plan (or
16 its trustee) established under Section 401, 403(b), or
17 457 of the United States Internal Revenue Code, but
18 shall otherwise exclude unallocated annuities ~~Annuity~~
19 ~~account~~; and

20 (c) Unallocated annuity account, which shall
21 exclude contracts owned by a governmental retirement
22 benefit plan (or its trustee) established under
23 Section 401, 403(b), or 457 of the United States
24 Internal Revenue Code ~~Unallocated Annuity Account~~
25 ~~which shall include contracts qualified under Section~~
26 ~~403(b) of the United States Internal Revenue Code.~~

1 (2) The health insurance account.

2 The Association shall be supervised by the Director and is
3 subject to the applicable provisions of the Illinois Insurance
4 Code. Meetings or records of the Association may be opened to
5 the public upon majority vote of the board of directors of the
6 Association.

7 (Source: P.A. 95-331, eff. 8-21-07.)

8 (215 ILCS 5/531.07) (from Ch. 73, par. 1065.80-7)

9 Sec. 531.07. Board of Directors.) The board of directors of
10 the Association consists of not less than 7 ~~5~~ nor more than 11
11 ~~9~~ members serving terms as established in the plan of
12 operation. The insurer members of the board are to be selected
13 by member insurers subject to the approval of the Director. In
14 addition, 2 persons who must be public representatives shall be
15 appointed by the Director to the board of directors. A public
16 representative may not be an officer, director, or employee of
17 an insurance company or any person engaged in the business of
18 insurance. Vacancies on the board must be filled for the
19 remaining period of the term in the manner described in the
20 plan of operation. ~~To select the initial board of directors,~~
21 ~~and initially organize the Association, the Director must give~~
22 ~~notice to all member insurers of the time and place of the~~
23 ~~organizational meeting. In determining voting rights at the~~
24 ~~organizational meeting each member insurer is entitled to one~~
25 ~~vote in person or by proxy. If the board of directors is not~~

1 ~~selected within 60 days after notice of the organizational~~
2 ~~meeting, the Director may appoint the initial members.~~

3 In approving selections or in appointing members to the
4 board, the Director must consider, whether all member insurers
5 are fairly represented.

6 Members of the board may be reimbursed from the assets of
7 the Association for expenses incurred by them as members of the
8 board of directors but members of the board may not otherwise
9 be compensated by the Association for their services.

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

11 (215 ILCS 5/531.08) (from Ch. 73, par. 1065.80-8)

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

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

15 (1) If a member insurer is an impaired insurer, then
16 the Association may, in its discretion and subject to any
17 conditions imposed by the Association that do not impair
18 the contractual obligations of the impaired insurer and
19 that are approved by the Director:

20 (A) guarantee, assume, or reinsure or cause to be
21 guaranteed, assumed, or reinsured, any or all of the
22 policies or contracts of the impaired insurer; or

23 (B) provide such money, pledges, loans, notes,
24 guarantees, or other means as are proper to effectuate
25 paragraph (A) and assure payment of the contractual

1 obligations of the impaired insurer pending action
2 under paragraph (A).

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

5 (A) guaranty, assume, or reinsure or cause to be
6 guaranteed, assumed, or reinsured the policies or
7 contracts of the insolvent insurer or assure payment of
8 the contractual obligations of the insolvent insurer
9 and provide money, pledges, loans, notes, guarantees,
10 or other means reasonably necessary to discharge the
11 Association's duties; or

12 (B) provide benefits and coverages in accordance
13 with the following provisions:

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

21 (a) with respect to group policies and
22 contracts, not later than the earlier of the
23 next renewal date under those policies or
24 contracts or 45 days, but in no event less than
25 30 days, after the date on which the
26 Association becomes obligated with respect to

1 the policies and contracts;

2 (b) with respect to nongroup policies,
3 contracts, and annuities not later than the
4 earlier of the next renewal date (if any) under
5 the policies or contracts or one year, but in
6 no event less than 30 days, from the date on
7 which the Association becomes obligated with
8 respect to the policies or contracts;

9 (ii) make diligent efforts to provide all
10 known insureds or annuitants (for nongroup
11 policies and contracts), or group policy owners
12 with respect to group policies and contracts, 30
13 days notice of the termination (pursuant to
14 subparagraph (i) of this paragraph (B)) of the
15 benefits provided;

16 (iii) with respect to nongroup life and health
17 insurance policies and annuities covered by the
18 Association, make available to each known insured
19 or annuitant, or owner if other than the insured or
20 annuitant, and with respect to an individual
21 formerly insured or formerly an annuitant under a
22 group policy who is not eligible for replacement
23 group coverage, make available substitute coverage
24 on an individual basis in accordance with the
25 provisions of paragraph (3), if the insureds or
26 annuitants had a right under law or the terminated

1 policy or annuity to convert coverage to
2 individual coverage or to continue an individual
3 policy or annuity in force until a specified age or
4 for a specified time, during which the insurer had
5 no right unilaterally to make changes in any
6 provision of the policy or annuity or had a right
7 only to make changes in premium by class.

8 ~~(1) If a domestic insurer is an impaired insurer, the~~
9 ~~Association may, subject to any conditions imposed by the~~
10 ~~Association other than those which impair the contractual~~
11 ~~obligations of the impaired insurer, and approved by the~~
12 ~~impaired insurer and the Director:~~

13 ~~(a) Guarantee or reinsure, or cause to be~~
14 ~~guaranteed, assumed or reinsured, any or all of the~~
15 ~~covered policies of covered persons of the impaired~~
16 ~~insurer;~~

17 ~~(b) Provide such monies, pledges, notes,~~
18 ~~guarantees, or other means as are proper to effectuate~~
19 ~~paragraph (a), and assure payment of the contractual~~
20 ~~obligations of the impaired insurer pending action~~
21 ~~under paragraph (a);~~

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

23 ~~(2) If a domestic, foreign, or alien insurer is an~~
24 ~~insolvent insurer, the Association shall, subject to the~~
25 ~~approval of the Director;~~

26 ~~(a) (i) Guarantee, assume or reinsure or cause to be~~

1 ~~guaranteed, assumed, or reinsured the covered policies~~
2 ~~of covered persons of the insolvent insurer;~~

3 ~~(ii) Assure payment of the contractual obligations~~
4 ~~of the insolvent insurer to covered persons;~~

5 ~~(iii) Provide such monies, pledges, notes,~~
6 ~~guaranties, or other means as are reasonably necessary~~
7 ~~to discharge such duties; or~~

8 ~~(b) with respect to only life and health insurance~~
9 ~~policies, provide benefits and coverages in accordance~~
10 ~~with Section 531.08(3).~~

11 ~~(c) Provided however that this subsection (2)~~
12 ~~shall not apply when the Director has determined that~~
13 ~~the foreign or alien insurers domiciliary jurisdiction~~
14 ~~or state of entry provides, by statute, protection~~
15 ~~substantially similar to that provided by this Article~~
16 ~~for residents of this State and such protection will be~~
17 ~~provided in a timely manner.~~

18 ~~(3) When proceeding under subparagraph (2) (b) of this~~
19 ~~Section the Association shall, with respect to only life~~
20 ~~and health insurance policies:~~

21 ~~(a) assure payment of benefits for premiums~~
22 ~~identical to the premiums and benefits (except for~~
23 ~~terms of conversion and renewability) that would have~~
24 ~~been payable under the policies of the insolvent~~
25 ~~insurer, for claims incurred:~~

26 ~~(i) with respect to group policies, not later~~

1 ~~than the earlier of the next renewal date under~~
2 ~~such policies or contracts or sixty days, but in no~~
3 ~~event less than thirty days, after the date on~~
4 ~~which the Association becomes obligated with~~
5 ~~respect to such policies;~~

6 ~~(ii) with respect to non group policies, not~~
7 ~~later than the earlier of the next renewal date (if~~
8 ~~any) under such policies or one year, but in no~~
9 ~~event less than thirty days, from the date on which~~
10 ~~the Association becomes obligated with respect to~~
11 ~~such policies;~~

12 ~~(b) make diligent efforts to provide all known~~
13 ~~insureds or group policyholders with respect to group~~
14 ~~policies thirty days notice of the termination of the~~
15 ~~benefits provided; and~~

16 ~~(c) with respect to non group policies, make~~
17 ~~available to each known insured, or owner if other than~~
18 ~~the insured, and with respect to an individual formerly~~
19 ~~insured under a group policy who is not eligible for~~
20 ~~replacement group coverage, make available substitute~~
21 ~~coverage on an individual basis in accordance with the~~
22 ~~provisions of subparagraph (3) (d) of this Section, if~~
23 ~~the insureds had a right under law or the terminated~~
24 ~~policy to convert coverage to individual coverage or to~~
25 ~~continue a non group policy in force until a specified~~
26 ~~age or for a specified time, during which the insurer~~

1 ~~has no right unilaterally to make changes in any~~
2 ~~provision of the policy or had a right only to make~~
3 ~~changes in premium by class.~~

4 (b) ~~(d)(i)~~ In providing the substitute coverage required
5 under subparagraph (iii) of paragraph (B) of item (2) of
6 subsection (a) ~~(3)(e)~~ of this Section, the Association may
7 offer either to reissue the terminated coverage or to issue an
8 alternative policy.

9 ~~(ii)~~ Alternative or reissued policies shall be offered
10 without requiring evidence of insurability, and shall not
11 provide for any waiting period or exclusion that would not have
12 applied under the terminated policy.

13 ~~(iii)~~ The Association may reinsure any alternative or
14 reissued policy.

15 ~~(e)(i)~~ Alternative policies adopted by the Association
16 shall be subject to the approval of the Director. The
17 Association may adopt alternative policies of various types for
18 future insurance without regard to any particular impairment or
19 insolvency.

20 ~~(ii)~~ Alternative policies shall contain at least the
21 minimum statutory provisions required in this State and provide
22 benefits that shall not be unreasonable in relation to the
23 premium charged. The Association shall set the premium in
24 accordance with a table of rates which it shall adopt. The
25 premium shall reflect the amount of insurance to be provided
26 and the age and class of risk of each insured, but shall not

1 reflect any changes in the health of the insured after the
2 original policy was last underwritten.

3 ~~(iii)~~ Any alternative policy issued by the Association
4 shall provide coverage of a type similar to that of the policy
5 issued by the impaired or insolvent insurer, as determined by
6 the Association.

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

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

18 (e) ~~(4)~~ When proceeding under ~~subparagraph (2) (b) of~~ this
19 Section with respect to any policy or contract carrying
20 guaranteed minimum interest rates, the Association shall
21 assure the payment or crediting of a rate of interest
22 consistent with subparagraph (2) (b) (iii) (B) of Section 531.03.

23 (f) ~~(5)~~ Nonpayment of premiums thirty-one days after the
24 date required under the terms of any guaranteed, assumed,
25 alternative or reissued policy or contract or substitute
26 coverage shall terminate the Association's obligations under

1 such policy or coverage under this Act with respect to such
2 policy or coverage, except with respect to any claims incurred
3 or any net cash surrender value which may be due in accordance
4 with the provisions of this Act.

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

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

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

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

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

15 ~~(7) (a) In carrying out its duties under subsection~~
16 ~~(2), permanent policy liens, or contract liens, may be~~
17 ~~imposed in connection with any guarantee, assumption or~~
18 ~~reinsurance agreement, if the court:~~

19 ~~(i) Finds that the amounts which can be assessed~~
20 ~~under this Act are less than the amounts needed to~~
21 ~~assure full and prompt performance of the insolvent~~
22 ~~insurer's contractual obligations, or that the~~
23 ~~economic or financial conditions as they affect member~~
24 ~~insurers are sufficiently adverse to render the~~
25 ~~imposition of policy or contract liens, to be in the~~
26 ~~public interest; and~~

1 ~~(ii) Approves the specific policy liens or~~
2 ~~contract liens to be used.~~

3 ~~(b) Before being obligated under subsection (2) the~~
4 ~~Association may request that there be imposed temporary~~
5 ~~moratoriums or liens on payments of cash values and policy~~
6 ~~loans in addition to any contractual provisions for~~
7 ~~deferral of cash or policy loan values, and such temporary~~
8 ~~moratoriums and liens may be imposed if they are approved~~
9 ~~by the court.~~

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

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

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

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

25 (m) (1) A person receiving benefits under this Article shall
26 be deemed to have assigned the rights under and any causes of

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

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

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

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

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

1 the policies, or portion thereof, covered by the Association.

2 (n) ~~(13)~~ The Association may:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (r) Where the Association has arranged or offered to
25 provide the benefits of this Article to a covered person under
26 a plan or arrangement that fulfills the Association's

1 obligations under this Article, the person shall not be
2 entitled to benefits from the Association in addition to or
3 other than those provided under the plan or arrangement.

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

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

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

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

- 1 interest or changes in value;
2 (2) there is no requirement for evidence of
3 insurability, waiting period, or other exclusion that
4 would not have applied under the replaced policy or
5 contract; and
6 (3) the alternative policy or contract is
7 substantially similar to the replaced policy or contract in
8 all other material terms.

9 (Source: P.A. 93-326, eff. 1-1-04.)

10 (215 ILCS 5/531.09) (from Ch. 73, par. 1065.80-9)

11 Sec. 531.09. Assessments.

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

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

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

1 (b) Class B assessments shall be made to the extent
2 necessary to carry out the powers and duties of the
3 Association under Section 531.08 with regard to an impaired
4 or insolvent domestic insurer or insolvent foreign or alien
5 insurers.

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

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

24 (c) Assessments for funds to meet the requirements of the
25 Association with respect to an impaired or insolvent insurer
26 shall not be made until necessary to implement the purposes of

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

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

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

26 If 2 or more assessments are authorized in one calendar

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

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

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

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

25 ~~(4) The Association may abate or defer, in whole or in~~
26 ~~part, the assessment of a member insurer if, in the opinion of~~

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

17 ~~(5) In the event an assessment against a member insurer is~~
18 ~~abated, or deferred, in whole or in part, because of the~~
19 ~~limitations set forth in subsection (4) of this Section the~~
20 ~~amount by which such assessment is abated or deferred, may be~~
21 ~~assessed against the other member insurers in a manner~~
22 ~~consistent with the basis for assessments set forth in this~~
23 ~~Section. If the maximum assessment, together with the other~~
24 ~~assets of the Association in either account, does not provide~~
25 ~~in any one year in either account an amount sufficient to carry~~
26 ~~out the responsibilities of the Association, the necessary~~

1 ~~additional funds may be assessed as soon thereafter as~~
2 ~~permitted by this Article. The board may provide in the plan of~~
3 ~~operation a method of allocating funds among claims, whether~~
4 ~~relating to one or more impaired or insolvent insurers, when~~
5 ~~the maximum assessment will be insufficient to cover~~
6 ~~anticipated claims.~~

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

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

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

26 (9) The Association must issue to each insurer paying a

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

12 100% for the calendar year after the year of issuance;

13 80% for the second calendar year after the year of
14 issuance;

15 60% for the third calendar year after the year of issuance;

16 40% for the fourth calendar year after the year of
17 issuance;

18 20% for the fifth calendar year after the year of issuance.

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

23 (Source: P.A. 95-86, eff. 9-25-07 (changed from 1-1-08 by P.A.
24 95-632).)

25 (215 ILCS 5/531.10) (from Ch. 73, par. 1065.80-10)

1 Sec. 531.10. Plan of Operation.) (1) (a) The Association
2 must submit to the Director a plan of operation and any
3 amendments thereto necessary or suitable to assure the fair,
4 reasonable, and equitable administration of the Association.
5 The plan of operation and any amendments thereto become
6 effective upon approval in writing by the Director.

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

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

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

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

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

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

26 (d) Establish procedures for records to be kept of all

1 financial transactions of the Association, its agents, and
2 the board of directors;

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

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

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

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

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

1 ~~accompanied by a statement in writing that the payment is~~
2 ~~made under protest, setting forth a brief statement of the~~
3 ~~ground for the protest. The Association shall hold such~~
4 ~~payments in a separate interest bearing account.~~

5 (b) within ~~Within~~ 30 days following the payment of an
6 assessment under protest by any protesting member insurer,
7 the Association must notify the member insurer in writing
8 of its determination with respect to the protest unless the
9 Association notifies the member that additional time is
10 required to resolve the issues raised by the protest; ~~and~~.

11 (c) in ~~In~~ the event the Association determines that the
12 protesting member insurer is entitled to a refund, such
13 refund shall be made within 30 days following the date upon
14 which the Association makes its determination; ~~and~~.

15 (d) the ~~The~~ decision of the Association with respect to
16 a protest may be appealed to the Director pursuant to
17 Section 531.11(3); ~~and~~.

18 (e) in ~~In~~ the alternative to rendering a decision with
19 respect to any protest based on a question regarding the
20 assessment base, the Association may refer such protests to
21 the Director for final decision, with or without a
22 recommendation from the Association; ~~and~~.

23 (f) interest ~~Interest~~ on any refund due a protesting
24 member insurer shall be paid at the rate actually earned by
25 the Association ~~on the separate account~~.

26 (5) The plan of operation may provide that any or all

1 powers and duties of the Association, except those under
2 paragraph (c) of subsection (10) of Section 531.08 and Section
3 531.09 are delegated to a corporation, association or other
4 organization which performs or will perform functions similar
5 to those of this Association, or its equivalent, in 2 or more
6 states. Such a corporation, association or organization shall
7 be reimbursed for any payments made on behalf of the
8 Association and shall be paid for its performance of any
9 function of the Association. A delegation under this subsection
10 shall take effect only with the approval of both the Board of
11 Directors and the Director, and may be made only to a
12 corporation, association or organization which extends
13 protection not substantially less favorable and effective than
14 that provided by this Act.

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

16 (215 ILCS 5/531.11) (from Ch. 73, par. 1065.80-11)

17 Sec. 531.11. Duties and powers of the Director. In addition
18 to the duties and powers enumerated elsewhere in this Article:

19 (1) The Director must do all of the following:

20 (a) Upon request of the board of directors, provide the
21 Association with a statement of the premiums in the
22 appropriate accounts for each member insurer.

23 (b) Notify ~~notify~~ the board of directors of the
24 existence of an impaired or insolvent insurer not later
25 than 3 days after a determination of impairment or

1 insolvency is made or when the Director receives notice of
2 impairment or insolvency.

3 (c) Give ~~give~~ notice to an impaired insurer as required
4 by Sections 34 or 60. Notice to the impaired insurer shall
5 constitute notice to its shareholders, if any.

6 (d) In any liquidation or rehabilitation proceeding
7 involving a domestic insurer, be appointed as the
8 liquidator or rehabilitator. If a foreign or alien member
9 insurer is subject to a liquidation proceeding in its
10 domiciliary jurisdiction or state of entry, the Director
11 shall be appointed conservator.

12 (2) The Director may suspend or revoke, after notice and
13 hearing, the certificate of authority to transact insurance in
14 this State of any member insurer which fails to pay an
15 assessment when due or fails to comply with the plan of
16 operation. As an alternative the Director may levy a forfeiture
17 on any member insurer which fails to pay an assessment when
18 due. Such forfeiture may not exceed 5% of the unpaid assessment
19 per month, but no forfeiture may be less than \$100 per month.

20 (3) Any action of the board of directors or the Association
21 may be appealed to the Director by any member insurer or any
22 other person adversely affected by such action if such appeal
23 is taken within 30 days of the action being appealed. Any final
24 action or order of the Director is subject to judicial review
25 in a court of competent jurisdiction.

26 (4) The liquidator, rehabilitator, or conservator of any

1 impaired insurer may notify all interested persons of the
2 effect of this Article.

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

4 (215 ILCS 5/531.12) (from Ch. 73, par. 1065.80-12)

5 Sec. 531.12. Prevention of Insolvencies. To aid in the
6 detection and prevention of insurer insolvencies or
7 impairments:

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

9 (a) To notify the Commissioners of all other states,
10 territories of the United States, and the District of Columbia
11 when he takes any of the following actions against a member
12 insurer:

13 (i) revocation of license;

14 (ii) suspension of license;

15 (iii) makes any formal order except for an order issued
16 pursuant to Article XII 1/2 of this Code that such company
17 restrict its premium writing, obtain additional contributions
18 to surplus, withdraw from the State, reinsure all or any part
19 of its business, or increase capital, surplus or any other
20 account for the security of policyholders or creditors.

21 Such notice shall be transmitted to all commissioners
22 within 30 days following the action taken or the date on which
23 the action occurs.

24 (b) To report to the board of directors when he has taken
25 any of the actions set forth in subparagraph (a) of this

1 paragraph or has received a report from any other commissioner
2 indicating that any such action has been taken in another
3 state. Such report to the board of directors shall contain all
4 significant details of the action taken or the report received
5 from another commissioner.

6 (c) To report to the board of directors when the Director
7 has reasonable cause to believe from an examination, whether
8 completed or in process, of any member insurer that the insurer
9 may be an impaired or insolvent insurer.

10 (d) To furnish to the board of directors the National
11 Association of Insurance Commissioners Insurance Regulatory
12 Information System ratios and listings of companies not
13 included in the ratios developed by the National Association of
14 Insurance Commissioners. The board may use the information
15 contained therein in carrying out its duties and
16 responsibilities under this Section. The report and the
17 information contained therein shall be kept confidential by the
18 board of directors until such time as made public by the
19 Director or other lawful authority.

20 (2) The Director may seek the advice and recommendations of
21 the board of directors concerning any matter affecting his
22 duties and responsibilities regarding the financial condition
23 of member companies and companies seeking admission to transact
24 insurance business in this State.

25 (3) The board of directors may, upon majority vote, make
26 reports and recommendations to the Director upon any matter

1 germane to the liquidation, rehabilitation or conservation of
2 any member insurer. Such reports and recommendations shall not
3 be considered public documents.

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

7 (5) The board of directors shall, at the conclusion of any
8 insurer insolvency in which the Association was obligated to
9 pay covered claims prepare a report to the Director containing
10 such information as it may have in its possession bearing on
11 the history and causes of such insolvency. The board shall
12 cooperate with the boards of directors of guaranty associations
13 in other states in preparing a report on the history and causes
14 for insolvency of a particular insurer, and may adopt by
15 reference any report prepared by such other associations.

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

17 (215 ILCS 5/531.14) (from Ch. 73, par. 1065.80-14)

18 Sec. 531.14. Miscellaneous Provisions.†

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

23 (2) Records must be kept of all negotiations and meetings
24 in which the Association or its representatives are involved to
25 discuss the activities of the Association in carrying out its

1 powers and duties under Section 531.08. Records of such
2 negotiations or meetings may be made public only upon the
3 termination of a liquidation, rehabilitation, or conservation
4 proceeding involving the impaired or insolvent insurer, upon
5 the termination of the impairment or insolvency of the insurer,
6 or upon the order of a court of competent jurisdiction. Nothing
7 in this paragraph (2) limits the duty of the Association to
8 render a report of its activities under Section 531.15.

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

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

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

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

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

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

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

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

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

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

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

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

8 (215 ILCS 5/531.17) (from Ch. 73, par. 1065.80-17)

9 Sec. 531.17. Immunity. There shall be no liability on the
10 part of, and no cause of action of any nature shall arise
11 against, any member insurer or its agents or employees, the
12 Association or its agents or employees, members of the board of
13 directors, or the Director or the Director's representatives
14 for any action or omission by them in the performance of their
15 powers and duties under this Article. This immunity shall
16 extend to the participation in any organization of one or more
17 other State associations of similar purposes and to any such
18 organization and its agents or employees.) ~~There is no~~
19 ~~liability on the part of and no cause of action of any nature~~
20 ~~may arise against any member insurer or its agents or~~
21 ~~employees, the Association or its agents or employees, members~~
22 ~~of the board of directors, or the Director or his~~
23 ~~representatives, for any action taken by them in the~~
24 ~~performance of their powers and duties under this Article.~~

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

1 (215 ILCS 5/531.18) (from Ch. 73, par. 1065.80-18)
2 Sec. 531.18. Stay of Proceedings - Reopening Default
3 Judgments.) All proceedings in which the insolvent insurer is a
4 party in any court in this State shall be stayed 180 ~~60~~ days
5 from the date an order of liquidation, rehabilitation, or
6 conservation is final to permit proper legal action by the
7 Association on any matters germane to its powers or duties. As
8 to a judgment under any decision, order, verdict, or finding
9 based on default the Association may apply to have such
10 judgment set aside by the same court that made such judgment
11 and must be permitted to defend against such suit on the
12 merits.
13 (Source: P.A. 82-210.)

14 (215 ILCS 5/537.2) (from Ch. 73, par. 1065.87-2)
15 Sec. 537.2. Obligation of Fund. The Fund shall be obligated
16 to the extent of the covered claims existing prior to the entry
17 of an Order of Liquidation against an insolvent company and
18 arising within 30 days after the entry of such Order, or before
19 the policy expiration date if less than 30 days after the entry
20 of such Order, or before the insured replaces the policy or on
21 request effects cancellation, if he does so within 30 days
22 after the entry of such Order. If the entry of an Order of
23 Liquidation occurs on or after October 1, 1975 and before
24 October 1, 1977, such obligations shall not: (i) exceed

1 \$100,000, or (ii) include any obligation to refund the first
2 \$100 of any unearned premium claim; and if the entry of an
3 Order of Liquidation occurs on or after October 1, 1977 and
4 before January 1, 1988, such obligations shall not: (i) exceed
5 \$150,000, except that this limitation shall not apply to any
6 workers compensation claims, or (ii) include any obligation to
7 refund the first \$100 of any unearned premium claim; and if the
8 entry of an Order of Liquidation occurs on or after January 1,
9 1988 and before January 1, 2011, such obligations shall not:
10 (i) exceed \$300,000, except that this limitation shall not
11 apply to any workers compensation claims, or (ii) include any
12 obligation to refund the first \$100 of any unearned premium
13 claim or to refund any unearned premium over \$10,000 under any
14 one policy. If the entry of an Order of Liquidation occurs on
15 or after January 1, 2011, then such obligations shall not: (i)
16 exceed \$500,000, except that this limitation shall not apply to
17 any workers compensation claims or (ii) include any obligation
18 to refund the first \$100 of any unearned premium claim or
19 refund any unearned premium over \$10,000 under any one policy.

20 In no event shall the Fund be obligated to a policyholder or
21 claimant in an amount in excess of the face amount of the
22 policy from which the claim arises.

23 In no event shall the Fund be liable for any interest on
24 any judgment entered against the insured or the insolvent
25 company, or for any other interest claim against the insured or
26 the insolvent company, regardless of whether the insolvent

1 company would have been obligated to pay such interest under
2 the terms of its policy. The Fund shall be liable for interest
3 at the statutory rate on money judgments entered against the
4 Fund until the judgment is satisfied.

5 Any obligation of the Fund to defend an insured shall cease
6 upon the Fund's payment or tender of an amount equal to the
7 lesser of the Fund's covered claim obligation limit or the
8 applicable policy limit.

9 (Source: P.A. 92-77, eff. 7-12-01.)

10 (215 ILCS 5/545) (from Ch. 73, par. 1065.95)

11 Sec. 545. Effect of paid claims.

12 (a) Every insured or claimant seeking the protection of
13 this Article shall cooperate with the Fund to the same extent
14 as such person would have been required to cooperate with the
15 insolvent company. The Fund shall have all the rights, duties
16 and obligations under the policy to the extent of the covered
17 claim payment, provided the Fund shall have no cause of action
18 against the insured of the insolvent company for any sums it
19 has paid out except such causes of action as the insolvent
20 company would have had if such sums had been paid by the
21 insolvent company and except as provided in paragraph (d) of
22 this Section.

23 (b) The Fund and any similar organization in another state
24 shall be recognized as claimants in the liquidation of an
25 insolvent company for any amounts paid by them on covered

1 claims obligations as determined under this Article or similar
2 laws in other states and shall receive dividends at the
3 priority set forth in paragraph (d) of subsection (1) of
4 Section 205 of this Code; provided that if, at the time that
5 the Liquidator issues a cut-off notice to the Fund in
6 anticipation of closing the estate, a reserve has been
7 established by the Fund, or any similar organization in another
8 state, for the amount of their future administrative expenses
9 and loss development associated with unpaid reported pending
10 claims, these reserves will be deemed to have been paid as of
11 the date of the notice and payment shall be made accordingly.

12 The liquidator of an insolvent company shall be bound by
13 determinations of covered claim eligibility under the Act and
14 by settlements of claims made by the Fund or a similar
15 organization in another state on the receipt of certification
16 of such payments, to the extent those determinations or
17 settlements satisfy obligations of the Fund, but the receiver
18 shall not be bound in any way by those determinations or
19 settlements to the extent that there remains a claim in the
20 estate for amounts in excess of the payments by the Fund. In
21 submitting their claim for covered claim payments the Fund and
22 any similar organization in another state shall not be subject
23 to the requirements of Sections 208 and 209 of this Code and
24 shall not be affected by the failure of the person receiving a
25 covered claim payment to file a proof of claim.

26 (c) The expenses of the Fund and of any similar

1 organization in any other state, other than expenses incurred
2 in the performance of duties under Section 547 or similar
3 duties under the statute governing a similar organization in
4 another state, shall be accorded the same priority as the
5 liquidator's expenses. The liquidator shall make prompt
6 reimbursement to the Fund and any similar organization for such
7 expense payments.

8 (d) The Fund has the right to recover from the following
9 persons the amount of any covered claims and allocated claims
10 expenses which the Fund paid or incurred on behalf of such
11 person in satisfaction, in whole or in part, of liability
12 obligations of such person to any other person:

13 (i) any insured whose net worth on December 31 of the
14 year next preceding the date the company becomes an
15 insolvent company exceeds \$25,000,000; provided that an
16 insured's net worth on such date shall be deemed to include
17 the aggregate net worth of the insured and all of its
18 affiliates as calculated on a consolidated basis.

19 (ii) any insured who is an affiliate of the insolvent
20 company.

21 (Source: P.A. 89-206, eff. 7-21-95; 90-499, eff. 8-19-97.)

22 Section 10. The Health Maintenance Organization Act is
23 amended by changing Sections 6-4, 6-5, 6-8, 6-9, 6-10, 6-17,
24 and 6-18 as follows:

1 (215 ILCS 125/6-4) (from Ch. 111 1/2, par. 1418.4)

2 Sec. 6-4. Construction. This Article shall be ~~is to be~~
3 ~~liberally construed to be for the benefit of the member~~
4 ~~organizations' enrollees and~~ to effect the purpose under
5 Section 6-2 ~~which constitutes an aid and guide to~~
6 ~~interpretation.~~

7 (Source: P.A. 85-20.)

8 (215 ILCS 125/6-5) (from Ch. 111 1/2, par. 1418.5)

9 Sec. 6-5. Definitions. As used in this Act:

10 (1) "Association" means the Illinois Health Maintenance
11 Organization Guaranty Association created under Section 6-6.

12 (2) "Director" means the Director of Insurance of this
13 State.

14 (3) "Contractual obligation" means any obligation of the
15 member organization under covered health care plan
16 certificates.

17 (4) "Covered person" means any enrollee who is entitled to
18 the protection of the Association as described in Section 6-2.

19 (5) "Covered health care plan certificate" means any health
20 care plan certificate, contract or other evidence of coverage
21 within the scope of this Article under Section 6-3.

22 (6) "Fund" means the fund created under Section 6-6.

23 (7) "Impaired organization" means a member organization
24 deemed by the Director after the effective date of this Article
25 to be potentially unable to fulfill its contractual obligations

1 and not an insolvent organization.

2 (8) "Insolvent organization" means a member organization
3 which becomes insolvent and is placed under a final order of
4 liquidation or rehabilitation by a court of competent
5 jurisdiction.

6 (9) "Member organization" means any person licensed or who
7 holds a certificate of authority to transact in this State any
8 kind of business to which this Article applies under Section
9 6-3. For purposes of this Article "member organization"
10 includes any person whose certificate of authority may have
11 been suspended pursuant to Section 5-5 of this Act.

12 (10) "Premiums" means direct gross premiums or
13 subscriptions received on covered health care plan
14 certificates. "Premiums" does not include amounts or
15 considerations received for policies, contracts, or
16 certificates or for the portions of policies, contracts, or
17 certificates for which coverage is not provided.

18 (11) "Person" means any individual, corporation,
19 partnership, association or voluntary organization.

20 (12) "Resident" means any person who resides in this State
21 at the time the organization is issued a Notice of Impairment
22 by the Director or at the time a complaint for liquidation or
23 rehabilitation is filed and to whom contractual obligations are
24 owed. A person may be a resident of only one state which, in
25 the case of a person other than a natural person, shall be its
26 principal place of business.

1 (Source: P.A. 88-297.)

2 (215 ILCS 125/6-8) (from Ch. 111 1/2, par. 1418.8)

3 Sec. 6-8. Powers and duties of the Association. In addition
4 to the powers and duties enumerated in other Sections of this
5 Article, the Association shall have the powers set forth in
6 this Section.

7 (1) If a domestic organization is an impaired organization,
8 the Association may, subject to any conditions imposed by the
9 Association other than those which impair the contractual
10 obligations of the impaired organization, and approved by the
11 impaired organization and the Director:

12 (a) guarantee, assume, or reinsure, or cause to be
13 guaranteed, assumed or reinsured, any or all of the covered
14 health care plan certificates of covered persons of the
15 impaired organization;

16 (b) provide such monies, pledges, notes, guarantees,
17 or other means as are proper to effectuate paragraph (a),
18 and assure payment of the contractual obligations of the
19 impaired organization pending action under paragraph (a);
20 and

21 (c) loan money to the impaired organization.

22 (2) If a domestic, foreign, or alien organization is an
23 insolvent organization, the Association shall, subject to the
24 approval of the Director:

25 (a) guarantee, assume, indemnify or reinsure or cause

1 to be guaranteed, assumed, indemnified or reinsured the
2 covered health care plan benefits of covered persons of the
3 insolvent organization; however, in the event that the
4 Director of Healthcare and Family Services (formerly
5 Director of the Department of Public Aid) assigns
6 individuals that are recipients of public aid from an
7 insolvent organization to another organization, the
8 Director of Healthcare and Family Services shall, before
9 fixing the rates to be paid by the Department of Healthcare
10 and Family Services to the transferee organization on
11 account of such individuals, consult with the Director of
12 the Department of Insurance as to the reasonableness of
13 such rates in light of the health care needs of such
14 individuals and the costs of providing health care services
15 to such individuals;

16 (b) assure payment of the contractual obligations of
17 the insolvent organization to covered persons;

18 (c) make payments to providers of health care, or
19 indemnity payments to covered persons, so as to assure the
20 continued payment of benefits substantially similar to
21 those provided for under covered health care plan
22 certificate issued by the insolvent organization to
23 covered persons; and

24 (d) provide such monies, pledges, notes, guaranties,
25 or other means as are reasonably necessary to discharge
26 such duties.

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

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

14 (4) If the Association fails to act within a reasonable
15 period of time as provided in subsection (2) of this Section
16 with respect to an insolvent organization, the Director shall
17 have the powers and duties of the Association under this
18 Article with regard to such insolvent organization.

19 (5) The Association or its designated representatives may
20 render assistance and advice to the Director, upon his request,
21 concerning rehabilitation, payment of claims, continuations of
22 coverage, or the performance of other contractual obligations
23 of any impaired or insolvent organization.

24 (6) The Association has standing to appear before any court
25 concerning all matters germane to the powers and duties of the
26 Association, including, but not limited to, proposals for

1 reinsuring or guaranteeing the covered health care plan
2 certificates of the impaired or insolvent organization and the
3 determination of the covered health care plan certificates and
4 contractual obligations.

5 (7) (a) Any person receiving benefits under this Article is
6 deemed to have assigned the rights under the covered health
7 care plan certificates to the Association to the extent of the
8 benefits received because of this Article whether the benefits
9 are payments of contractual obligations or continuation of
10 coverage. The Association may require an assignment to it of
11 such rights by any payee, enrollee or beneficiary as a
12 condition precedent to the receipt of any rights or benefits
13 conferred by this Article upon such person. The Association is
14 subrogated to these rights against the assets of any insolvent
15 organization and against any other party who may be liable to
16 such payee, enrollee or beneficiary.

17 (b) The subrogation rights of the Association under this
18 subsection have the same priority against the assets of the
19 insolvent organization as that possessed by the person entitled
20 to receive benefits under this Article.

21 (8) (a) The contractual obligations of the insolvent
22 organization for which the Association becomes or may become
23 liable are as great as but no greater than the contractual
24 obligations of the insolvent organization would have been in
25 the absence of an insolvency unless such obligations are
26 reduced as permitted by subsection (3), but the aggregate

1 liability of the Association shall not exceed \$300,000 with
2 respect to any one natural person.

3 (b) Furthermore, the Association shall not be required to
4 pay, and shall have no liability to, any provider of health
5 care services to an enrollee:

6 (i) if such provider, or his or its affiliates or
7 members of his immediate family, at any time within the one
8 year prior to the date of the issuance of the first order,
9 by a court of competent jurisdiction, of conservation,
10 rehabilitation or liquidation pertaining to the health
11 maintenance organization:

12 (A) was a securityholder of such organization (but
13 excluding any securityholder holding an equity
14 interest of 5% or less);

15 (B) exercised control over the organization by
16 means such as serving as an officer or director,
17 through a management agreement or as a principal member
18 of a not-for-profit organization;

19 (C) had a representative serving by virtue of his
20 or her official position as a representative of such
21 provider on the board of any entity which exercised
22 control over the organization;

23 (D) received provider payments made by such
24 organization pursuant to a contract which was not a
25 product of arms-length bargaining; or

26 (E) received distributions other than for

1 physician services from a not-for-profit organization
2 on account of such provider's status as a member of
3 such organization.

4 For purposes of this subparagraph (i), the terms
5 "affiliate," "person," "control" and "securityholder"
6 shall have the meanings ascribed to such terms in Section
7 131.1 of the Illinois Insurance Code; or

8 (ii) if and to the extent such a provider has agreed by
9 contract not to seek payment from the enrollee for services
10 provided to such enrollee or if, and to the extent, as a
11 matter of law such provider may not seek payment from the
12 enrollee for services provided to such enrollee.

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

19 (iv) for any portion of a policy, contract, or
20 certificate to the extent that the assessments required by
21 this Article with respect to the policy or contract are
22 preempted or otherwise not permitted by federal or State
23 law; or

24 (v) for any obligation that does not arise under the
25 express written terms of the policy or contract issued by
26 the organization to the contract owner or policy owner,

1 including without limitation:

2 (A) claims based on marketing materials;

3 (B) claims based on side letters, riders, or other
4 documents that were issued by the insurer without
5 meeting applicable policy form filing or approval
6 requirements;

7 (C) misrepresentations of or regarding policy
8 benefits;

9 (D) extracontractual claims; or

10 (E) claims for penalties or consequential or
11 incidental damages.

12 (c) In no event shall the Association be required to pay
13 any provider participating in the insolvent organization any
14 amount for in-plan services rendered by such provider prior to
15 the insolvency of the organization in excess of (1) the amount
16 provided by a capitation contract between a physician provider
17 and the insolvent organization for such services; or (2) the
18 amounts provided by contract between a hospital provider and
19 the Department of Healthcare and Family Services (formerly
20 Department of Public Aid) for similar services to recipients of
21 public aid; or (3) in the event neither (1) nor (2) above is
22 applicable, then the amounts paid under the Medicare area
23 prevailing rate for the area where the services were provided,
24 or if no such rate exists with respect to such services, then
25 80% of the usual and customary rates established by the Health
26 Insurance Association of America. The payments required to be

1 made by the Association under this Section shall constitute
2 full and complete payment for such provider services to the
3 enrollee.

4 (d) The Association shall not be required to pay more than
5 an aggregate of \$300,000 for any organization which is declared
6 to be insolvent prior to July 1, 1987, and such funds shall be
7 distributed first to enrollees who are not public aid
8 recipients pursuant to a plan recommended by the Association
9 and approved by the Director and the court having jurisdiction
10 over the liquidation.

11 (9) The Association may:

12 (a) Enter into such contracts as are necessary or
13 proper to carry out the provisions and purposes of this
14 Article.

15 (b) Sue or be sued, including taking any legal actions
16 necessary or proper for recovery of any unpaid assessments
17 under Section 6-9. The Association shall not be liable for
18 punitive or exemplary damages.

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

24 (d) Employ or retain such persons as are necessary to
25 handle the financial transactions of the Association, and
26 to perform such other functions as become necessary or

1 proper under this Article.

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

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

7 (g) Exercise, for the purposes of this Article and to
8 the extent approved by the Director, the powers of a
9 domestic organization, but in no case may the Association
10 issue evidence of coverage other than that issued to
11 perform the contractual obligations of the impaired or
12 insolvent organization.

13 (h) Exercise all the rights of the Director under
14 Section 193(4) of the Illinois Insurance Code with respect
15 to covered health care plan certificates after the
16 association becomes obligated by statute.

17 (i) Request information from a person seeking coverage
18 from the Association in order to aid the Association in
19 determining its obligations under this Article with
20 respect to the person and the person shall promptly comply
21 with the request.

22 (j) Take other necessary or appropriate action to
23 discharge its duties and obligations under this Article or
24 to exercise its powers under this Article.

25 (10) The obligations of the Association under this Article
26 shall not relieve any reinsurer, insurer or other person of its

1 obligations to the insolvent organization (or its conservator,
2 rehabilitator, liquidator or similar official) or its
3 enrollees, including without limitation any reinsurer, insurer
4 or other person liable to the insolvent insurer (or its
5 conservator, rehabilitator, liquidator or similar official) or
6 its enrollees under any contract of reinsurance, any contract
7 providing stop loss coverage or similar coverage or any health
8 care contract. With respect to covered health care plan
9 certificates for which the Association becomes obligated after
10 an entry of an order of liquidation or rehabilitation, the
11 Association may elect to succeed to the rights of the insolvent
12 organization arising after the date of the order of liquidation
13 or rehabilitation under any contract of reinsurance, any
14 contract providing stop loss coverage or similar coverages or
15 any health care service contract to which the insolvent
16 organization was a party, on the terms set forth under such
17 contract, to the extent that such contract provides coverage
18 for health care services provided after the date of the order
19 of liquidation or rehabilitation. As a condition to making this
20 election, the Association must pay premiums for coverage
21 relating to periods after the date of the order of liquidation
22 or rehabilitation.

23 (11) The Association shall be entitled to collect premiums
24 due under or with respect to covered health care certificates
25 for a period from the date on which the domestic, foreign, or
26 alien organization became an insolvent organization until the

1 Association no longer has obligations under subsection (2) of
2 this Section with respect to such certificates. The
3 Association's obligations under subsection (2) of this Section
4 with respect to any covered health care plan certificates shall
5 terminate in the event that all such premiums due under or with
6 respect to such covered health care plan certificates are not
7 paid to the Association (i) within 30 days of the Association's
8 demand therefor, or (ii) in the event that such certificates
9 provide for a longer grace period for payment of premiums after
10 notice of non-payment or demand therefor, within the lesser of
11 (A) the period provided for in such certificates or (B) 60
12 days.

13 (12) The Board of Directors of the Association shall have
14 discretion and may exercise reasonable business judgment to
15 determine the means by which the Association is to provide the
16 benefits of this Article in an economical and efficient manner.

17 (13) Where the Association has arranged or offered to
18 provide the benefits of this Article to a covered person under
19 a plan or arrangement that fulfills the Association's
20 obligations under this Article, the person shall not be
21 entitled to benefits from the Association in addition to or
22 other than those provided under the plan or arrangement.

23 (14) Venue in a suit against the Association arising under
24 the Article shall be in Cook County. The Association shall not
25 be required to give any appeal bond in an appeal that relates
26 to a cause of action arising under this Article.

1 (Source: P.A. 95-331, eff. 8-21-07.)

2 (215 ILCS 125/6-9) (from Ch. 111 1/2, par. 1418.9)

3 Sec. 6-9. Assessments. (1) For the purpose of providing the
4 funds necessary to carry out the powers and duties of the
5 Association, the board of directors shall assess the member
6 organizations, at such times and for such amounts as the board
7 finds necessary. Assessments shall be due not less than 30 days
8 after written notice to the member organizations and shall
9 accrue interest from the due date at such adjusted rate as is
10 established under Section 531.09 of the Illinois Insurance Code
11 and such interest shall be compounded daily.

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

13 (a) Class A assessments shall be made for the purpose of
14 meeting administrative costs and other general expenses and
15 examinations conducted under the authority of the Director
16 under subsection (5) of Section 6-12.

17 (b) Class B assessments shall be made to the extent
18 necessary to carry out the powers and duties of the Association
19 under Section 6-8 with regard to an impaired or insolvent
20 domestic organization or insolvent foreign or alien
21 organizations.

22 (3) (a) The amount of any Class A assessment shall be
23 determined by the Board and may be made on a non-pro rata
24 basis.

25 (b) Class B assessments against member organizations shall

1 be in the proportion that the premiums received on health
2 maintenance organization business in this State by each
3 assessed member organization on covered health care plan
4 certificates for the calendar year preceding the assessment
5 bears to such premiums received on health maintenance
6 organization business in this State for the calendar year
7 preceding the assessment by all assessed member organizations.

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

15 (4) (a) The Association may abate or defer, in whole or in
16 part, the assessment of a member organization if, in the
17 opinion of the board, payment of the assessment would endanger
18 the ability of the member organization to fulfill its
19 contractual obligations.

20 (b) The total of all assessments upon a member organization
21 may not in any one calendar year exceed 2% of such
22 organization's premiums in this State during the calendar year
23 preceding the assessment on the covered health care plan
24 certificates.

25 (5) In the event an assessment against a member
26 organization is abated, or deferred, in whole or in part,

1 because 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
4 organizations in a manner consistent with the basis for
5 assessments set forth in this Section. If the maximum
6 assessment, together with the other assets of the Association,
7 does not provide in any one year an amount sufficient to carry
8 out the responsibilities of the Association, the necessary
9 additional funds may be assessed as soon thereafter as
10 permitted by this Article.

11 (6) The board may, by an equitable method as established in
12 the plan of operation, refund to member organizations, in
13 proportion to the contribution of each organization, the amount
14 by which the assets of the fund exceed the amount the board
15 finds is necessary to carry out during the coming year the
16 obligations of the Association, including assets accruing from
17 net realized gains and income from investments. A reasonable
18 amount may be retained in the fund to provide moneys for the
19 continuing expenses of the Association and for future losses ~~if~~
20 ~~refunds are impractical.~~

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

25 (8) It is proper for any member organization, in
26 determining its rates to consider the amount reasonably

1 necessary to meet its assessment obligations under this
2 Article.

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

15 100% for the calendar year after the year of issuance;

16 80% for the second calendar year after the year of
17 issuance;

18 60% for the third calendar year after the year of issuance;

19 40% for the fourth calendar year after the year of
20 issuance;

21 20% for the fifth calendar year after the year of issuance.

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

26 (Source: P.A. 85-20.)

1 (215 ILCS 125/6-10) (from Ch. 111 1/2, par. 1418.10)

2 Sec. 6-10. Plan of Operation. (1) (a) The Association must
3 submit to the Director a plan of operation and any amendments
4 thereto necessary or suitable to assure the fair, reasonable,
5 and equitable administration of the Association. The plan of
6 operation and any amendments thereto become effective upon
7 approval in writing by the Director.

8 (b) If the Association fails to submit a suitable plan of
9 operation within 90 days following the effective date of this
10 Article or if at any time thereafter the Association fails to
11 submit suitable amendments to the plan, the Director may, after
12 notice and hearing, adopt and promulgate such reasonable rules
13 as are necessary or advisable to effectuate the provisions of
14 this Article. Such rules are in force until modified by the
15 Director or superseded by a plan submitted by the Association
16 and approved by the Director.

17 (2) All member organizations must comply with the plan of
18 operation.

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

21 (a) Establish procedures for handling the assets of the
22 Association;

23 (b) Establish the amount and method of reimbursing members
24 of the board of directors under Section 6-7;

25 (c) Establish regular places and times for meetings of the

1 board of directors;

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

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

7 (f) Establish any additional procedures for assessments
8 under Section 6-9; and

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

11 (4) The plan of operation shall establish a procedure for
12 protest by any member organization of assessments made by the
13 Association pursuant to Section 6-9. Such procedures shall
14 require that:

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

1 ~~in writing that the payment is made under protest, setting~~
2 ~~forth a brief statement of the ground for the protest. The~~
3 ~~Association shall hold such payments in a separate interest~~
4 ~~bearing account.~~

5 (b) Within 30 days following the payment of an assessment
6 under protest by any protesting member organization, the
7 Association must notify the member organization in writing of
8 its determination with respect to the protest unless the
9 Association notifies the member that additional time is
10 required to resolve the issues raised by the protest.

11 (c) In the event the Association determines that the
12 protesting member organization is entitled to a refund, such
13 refund shall be made within 30 days following the date upon
14 which the Association makes its determination.

15 (d) The decision of the Association with respect to a
16 protest may be appealed to the Director pursuant to subsection
17 (3) of Section 6-11.

18 (e) In the alternative to rendering a decision with respect
19 to any protest based on a question regarding the assessment
20 base, the Association may refer such protests to the Director
21 for final decision, with or without a recommendation from the
22 Association.

23 (f) Interest on any refund due a protesting member
24 organization shall be paid at the rate actually earned by the
25 Association ~~on the separate account.~~

26 (5) The plan of operation may provide that any or all

1 powers and duties of the Association, except those under
2 paragraph (c) of subsection (10) of Section 6-8 and Section 6-9
3 are delegated to a corporation, association or other
4 organization which performs or will perform functions similar
5 to those of this Association, or its equivalent, in 2 or more
6 states. Such a corporation, association or organization shall
7 be reimbursed for any payments made on behalf of the
8 Association and shall be paid for its performance of any
9 function of the Association. A delegation under this subsection
10 shall take effect only with the approval of both the Board of
11 Directors and the Director, and may be made only to a
12 corporation, association or organization which extends
13 protection not substantially less favorable and effective than
14 that provided by this Article.

15 (Source: P.A. 85-20.)

16 (215 ILCS 125/6-17) (from Ch. 111 1/2, par. 1418.17)

17 Sec. 6-17. Immunity. There shall be no liability on the
18 part of and no cause of action of any nature shall arise
19 against any member organization or its agents or employees, the
20 Association or its agents or employees, members of the board of
21 directors, or the Director or Director's representatives for
22 any action or omission by them in the performance of their
23 powers and duties under this Article. This immunity shall
24 extend to the participation in any organization of one or more
25 other State associations of similar purposes and to any such

1 ~~organization and its agents or employees. There is no liability~~
2 ~~on the part of and no cause of action of any nature may arise~~
3 ~~against any member organization or its agents or employees, the~~
4 ~~Association or its agents or employees, members of the board of~~
5 ~~directors, or the Director or his representatives, for any~~
6 ~~action taken by them in the performance of their powers and~~
7 ~~duties under this Article.~~

8 (Source: P.A. 85-20.)

9 (215 ILCS 125/6-18) (from Ch. 111 1/2, par. 1418.18)

10 Sec. 6-18. Stay of Proceedings - Reopening Default
11 Judgments. All proceedings in which the insolvent organization
12 is a party in any court in this State shall be stayed 180 ~~60~~
13 days from the date an order of liquidation, rehabilitation, or
14 conservation is final to permit proper legal action by the
15 Association on any matters germane to its powers or duties. As
16 to a judgment under any decision, order, verdict, or finding
17 based on default the Association may apply to have such
18 judgment set aside by the same court that made such judgment
19 and must be permitted to defend against such suit on the
20 merits.

21 (Source: P.A. 85-20.)

22 Section 99. Effective date. This Act takes effect upon
23 becoming law.

1

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2

Statutes amended in order of appearance

3	215 ILCS 5/187	from Ch. 73, par. 799
4	215 ILCS 5/206.1 new	
5	215 ILCS 5/209	from Ch. 73, par. 821
6	215 ILCS 5/531.03	from Ch. 73, par. 1065.80-3
7	215 ILCS 5/531.04	from Ch. 73, par. 1065.80-4
8	215 ILCS 5/531.05	from Ch. 73, par. 1065.80-5
9	215 ILCS 5/531.06	from Ch. 73, par. 1065.80-6
10	215 ILCS 5/531.07	from Ch. 73, par. 1065.80-7
11	215 ILCS 5/531.08	from Ch. 73, par. 1065.80-8
12	215 ILCS 5/531.09	from Ch. 73, par. 1065.80-9
13	215 ILCS 5/531.10	from Ch. 73, par. 1065.80-10
14	215 ILCS 5/531.11	from Ch. 73, par. 1065.80-11
15	215 ILCS 5/531.12	from Ch. 73, par. 1065.80-12
16	215 ILCS 5/531.14	from Ch. 73, par. 1065.80-14
17	215 ILCS 5/531.17	from Ch. 73, par. 1065.80-17
18	215 ILCS 5/531.18	from Ch. 73, par. 1065.80-18
19	215 ILCS 5/537.2	from Ch. 73, par. 1065.87-2
20	215 ILCS 5/545	from Ch. 73, par. 1065.95
21	215 ILCS 125/6-4	from Ch. 111 1/2, par. 1418.4
22	215 ILCS 125/6-5	from Ch. 111 1/2, par. 1418.5
23	215 ILCS 125/6-8	from Ch. 111 1/2, par. 1418.8
24	215 ILCS 125/6-9	from Ch. 111 1/2, par. 1418.9
25	215 ILCS 125/6-10	from Ch. 111 1/2, par. 1418.10

1 215 ILCS 125/6-17

from Ch. 111 1/2, par. 1418.17

2 215 ILCS 125/6-18

from Ch. 111 1/2, par. 1418.18