



Sen. William R. Haine

Filed: 5/3/2011

09700HB1870sam001

LRB097 08603 RPM 54856 a

1 AMENDMENT TO HOUSE BILL 1870

2 AMENDMENT NO. _____. Amend House Bill 1870 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Illinois Insurance Code is amended by
5 changing Sections 245.21, 531.03, 531.05, 531.07, 531.08,
6 531.09, and 531.14 as follows:

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

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

1 incidental thereto), payable in fixed or variable amounts or
2 both, subject to the following:

3 (1) The income, gains and losses, realized or unrealized,
4 from assets allocated to a separate account must be credited to
5 or charged against the account, without regard to other income,
6 gains or losses of the company.

7 (2) Except as may be provided with respect to reserves for
8 guaranteed benefits and funds referred to in paragraph (3) of
9 this Section (i) amounts allocated to any separate account and
10 accumulations thereon may be invested and reinvested without
11 regard to any requirements or limitations of Part 2 or Part 3
12 of Article VIII of this Code and (ii) the investments in any
13 separate account or accounts may not be taken into account in
14 applying the investment limitations otherwise applicable to
15 the investments of the company.

16 (3) Except with the approval of the Director and under the
17 conditions as to investments and other matters as the Director
18 may prescribe, that must recognize the guaranteed nature of the
19 benefits provided, reserves for (i) benefits guaranteed as to
20 dollar amount and duration and (ii) funds guaranteed as to
21 principal amount or stated rate of interest may not be
22 maintained in a separate account.

23 (4) Unless otherwise approved by the Director, assets
24 allocated to a separate account must be valued at their market
25 value on the date of valuation, or if there is no readily
26 available market, then as provided in the contract or the rules

1 or other written agreement applicable to the separate account.
2 Unless otherwise approved by the Director, the portion, if any,
3 of the assets of the separate account equal to the company's
4 reserve liability with regard to the guaranteed benefits and
5 funds referred to in paragraph (3) of this Section must be
6 valued in accordance with the rules otherwise applicable to the
7 company's assets.

8 (5) Amounts allocated to a separate account under this
9 Article are owned by the company, and the company may not be,
10 nor hold itself out to be, a trustee with respect to those
11 amounts. To the extent provided under the applicable contract,
12 that portion of the ~~The~~ assets of any separate account equal to
13 the reserves and other contract liabilities with respect to the
14 account may not be charged with liabilities arising out of any
15 other business the company may conduct.

16 (6) No sale, exchange or other transfer of assets may be
17 made by a company between any of its separate accounts or
18 between any other investment account and one or more of its
19 separate accounts unless, in case of a transfer into a separate
20 account, the transfer is made solely to establish the account
21 or to support the operation of the contracts with respect to
22 the separate account to which the transfer is made, and unless
23 the transfer, whether into or from a separate account, is made
24 (i) by a transfer of cash, or (ii) by a transfer of securities
25 having a readily determinable market value, if the transfer of
26 securities is approved by the Director. The Director may

1 approve other transfers among those accounts if, in his or her
2 opinion, the transfers would not be inequitable.

3 (7) To the extent a company considers it necessary to
4 comply with any applicable federal or state laws, the company,
5 with respect to any separate account, including without
6 limitation any separate account which is a management
7 investment company or a unit investment trust, may provide for
8 persons having an interest therein appropriate voting and other
9 rights and special procedures for the conduct of the business
10 of the account, including without limitation special rights and
11 procedures relating to investment policy, investment advisory
12 services, selection of independent public accountants, and the
13 selection of a committee, the members of which need not be
14 otherwise affiliated with the company, to manage the business
15 of the account.

16 (Source: P.A. 90-381, eff. 8-14-97; 90-418, eff. 8-15-97;
17 90-655, eff. 7-30-98.)".

18 (215 ILCS 5/531.03) (from Ch. 73, par. 1065.80-3)

19 Sec. 531.03. Coverage and limitations.

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

22 (a) to persons who, regardless of where they reside
23 (except for non-resident certificate holders under group
24 policies or contracts), are the beneficiaries, assignees
25 or payees of the persons covered under subparagraph (1) (b),

1 and

2 (b) to persons who are owners of or certificate holders
3 under the policies or contracts (other than unallocated
4 annuity contracts and structured settlement annuities) and
5 in each case who:

6 (i) are residents; or

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

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

11 (B) the states in which the persons reside have
12 associations similar to the Association created by
13 this Article;

14 (C) the persons are not eligible for coverage
15 by an association in any other state due to the
16 fact that the insurer was not licensed in that
17 state at the time specified in that state's
18 guaranty association law.

19 (c) For unallocated annuity contracts specified in
20 subsection (2), paragraphs (a) and (b) of this subsection
21 (1) shall not apply and this Article shall (except as
22 provided in paragraphs (e) and (f) of this subsection)
23 provide coverage to:

24 (i) persons who are the owners of the unallocated
25 annuity contracts if the contracts are issued to or in
26 connection with a specific benefit plan whose plan

1 sponsor has its principal place of business in this
2 State; and

3 (ii) persons who are owners of unallocated annuity
4 contracts issued to or in connection with government
5 lotteries if the owners are residents.

6 (d) For structured settlement annuities specified in
7 subsection (2), paragraphs (a) and (b) of this subsection
8 (1) shall not apply and this Article shall (except as
9 provided in paragraphs (e) and (f) of this subsection)
10 provide coverage to a person who is a payee under a
11 structured settlement annuity (or beneficiary of a payee if
12 the payee is deceased), if the payee:

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

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

17 (A) with regard to residency:

18 (I) the contract owner of the structured
19 settlement annuity is a resident; or

20 (II) the contract owner of the structured
21 settlement annuity is not a resident but the
22 insurer that issued the structured settlement
23 annuity is domiciled in this State and the
24 state in which the contract owner resides has
25 an association similar to the Association
26 created by this Article; and

1 (B) neither the payee or beneficiary nor the
2 contract owner is eligible for coverage by the
3 association of the state in which the payee or
4 contract owner resides.

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

6 (i) a person who is a payee or beneficiary of a
7 contract owner resident of this State if the payee or
8 beneficiary is afforded any coverage by the
9 association of another state; or

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

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

26 (2)(a) This Article shall provide coverage to the persons

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

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

16 (i) that portion of a policy or contract not guaranteed
17 by the insurer, or under which the risk is borne by the
18 policy or contract owner;

19 (ii) any such policy or contract or part thereof
20 assumed by the impaired or insolvent insurer under a
21 contract of reinsurance, other than reinsurance for which
22 assumption certificates have been issued;

23 (iii) any portion of a policy or contract to the extent
24 that the rate of interest on which it is based or the
25 interest rate, crediting rate, or similar factor is
26 determined by use of an index or other external reference

1 stated in the policy or contract employed in calculating
2 returns or changes in value:

3 (A) averaged over the period of 4 years prior to
4 the date on which the member insurer becomes an
5 impaired or insolvent insurer under this Article,
6 whichever is earlier, exceeds the rate of interest
7 determined by subtracting 2 percentage points from
8 Moody's Corporate Bond Yield Average averaged for that
9 same 4-year period or for such lesser period if the
10 policy or contract was issued less than 4 years before
11 the member insurer becomes an impaired or insolvent
12 insurer under this Article, whichever is earlier; and

13 (B) on and after the date on which the member
14 insurer becomes an impaired or insolvent insurer under
15 this Article, whichever is earlier, exceeds the rate of
16 interest determined by subtracting 3 percentage points
17 from Moody's Corporate Bond Yield Average as most
18 recently available;

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

25 (v) any portion of any unallocated annuity contract
26 which is not issued to or in connection with a specific

1 employee, union or association of natural persons benefit
2 plan or a government lottery;

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

7 (A) a claim based on marketing materials;

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

12 (C) a misrepresentation of or regarding policy
13 benefits;

14 (D) an extra-contractual claim; or

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

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

20 (viii) any policy or contract providing any hospital,
21 medical, prescription drug, or other health care benefits
22 pursuant to Part C or Part D of Subchapter XVIII, Chapter 7
23 of Title 42 of the United States Code (commonly known as
24 Medicare Part C & D) or any regulations issued pursuant
25 thereto;

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

1 that the assessments required by Section 531.09 of this
2 Code with respect to the policy or contract are preempted
3 or otherwise not permitted by federal or State law;

4 (x) any portion of a policy or contract issued to a
5 plan or program of an employer, association, or other
6 person to provide life, health, or annuity benefits to its
7 employees, members, or others to the extent that the plan
8 or program is self-funded or uninsured, including, but not
9 limited to, benefits payable by an employer, association,
10 or other person under:

11 (A) a multiple employer welfare arrangement as
12 defined in 29 U.S.C. Section 1002 ~~29 U.S.C. Section~~
13 ~~1144~~;

14 (B) a minimum premium group insurance plan;

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

16 (D) an administrative services only contract;

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

19 (A) dividends or experience rating credits;

20 (B) voting rights; or

21 (C) payment of any fees or allowances to any
22 person, including the policy or contract owner, in
23 connection with the service to or administration of the
24 policy or contract;

25 (xii) any policy or contract issued in this State by a
26 member insurer at a time when it was not licensed or did

1 not have a certificate of authority to issue the policy or
2 contract in this State;

3 (xiii) any contractual agreement that establishes the
4 member insurer's obligations to provide a book value
5 accounting guaranty for defined contribution benefit plan
6 participants by reference to a portfolio of assets that is
7 owned by the benefit plan or its trustee, which in each
8 case is not an affiliate of the member insurer;

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

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

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

5 (a) the contractual obligations for which the insurer
6 is liable or would have been liable if it were not an
7 impaired or insolvent insurer, or

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

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

13 (B) in health insurance benefits:

14 (I) \$100,000 for coverages not defined as
15 disability insurance or basic hospital, medical,
16 and surgical insurance or major medical insurance
17 or long-term care insurance, including any net
18 cash surrender and net cash withdrawal values;

19 (II) \$300,000 for disability insurance and
20 \$300,000 for long-term care insurance ~~as defined~~
21 ~~in Section 351A-1 of this Code;~~ and

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

24 (C) \$250,000 in the present value of annuity
25 benefits, including net cash surrender and net cash
26 withdrawal values;

1 (ii) with respect to each individual participating in a
2 governmental retirement benefit plan established under
3 Sections 401, 403(b), or 457 of the U.S. Internal Revenue
4 Code covered by an unallocated annuity contract or the
5 beneficiaries of each such individual if deceased, in the
6 aggregate, \$250,000 in present value annuity benefits,
7 including net cash surrender and net cash withdrawal
8 values;

9 (iii) with respect to each payee of a structured
10 settlement annuity or beneficiary or beneficiaries of the
11 payee if deceased, \$250,000 in present value annuity
12 benefits, in the aggregate, including net cash surrender
13 and net cash withdrawal values, if any; or

14 (iv) with respect to either (1) one contract owner
15 provided coverage under subparagraph (ii) of paragraph (c)
16 of subsection (1) of this Section or (2) one plan sponsor
17 whose plans own directly or in trust one or more
18 unallocated annuity contracts not included in subparagraph
19 (ii) of paragraph (b) of this subsection, \$5,000,000 in
20 benefits, irrespective of the number of contracts with
21 respect to the contract owner or plan sponsor. However, in
22 the case where one or more unallocated annuity contracts
23 are covered contracts under this Article and are owned by a
24 trust or other entity for the benefit of 2 or more plan
25 sponsors, coverage shall be afforded by the Association if
26 the largest interest in the trust or entity owning the

1 contract or contracts is held by a plan sponsor whose
2 principal place of business is in this State. In no event
3 shall the Association be obligated to cover more than
4 \$5,000,000 in benefits with respect to all these
5 unallocated contracts.

6 (3.1) Notwithstanding the provisions of subsection (3), in
7 ~~In~~ no event shall the Association be obligated to cover more
8 than (1) an aggregate of \$300,000 in benefits with respect to
9 any one life under subparagraphs (i), (ii), and (iii) of ~~this~~
10 paragraph (b) of subsection (3) except with respect to benefits
11 for basic hospital, medical, and surgical insurance and major
12 medical insurance under item (B) of subparagraph (i) of ~~this~~
13 paragraph (b) of subsection (3), in which case the aggregate
14 liability of the Association shall not exceed \$500,000 with
15 respect to any one individual or (2) with respect to one owner
16 of multiple nongroup policies of life insurance, whether the
17 policy owner is an individual, firm, corporation, or other
18 person and whether the persons insured are officers, managers,
19 employees, or other persons, \$5,000,000 in benefits,
20 regardless of the number of policies and contracts held by the
21 owner.

22 (3.2) The limitations set forth in subsections (3) and
23 (3.1) ~~this subsection~~ are limitations on the benefits for which
24 the Association is obligated before taking into account either
25 its subrogation and assignment rights or the extent to which
26 those benefits could be provided out of the assets of the

1 impaired or insolvent insurer attributable to covered
2 policies. The costs of the Association's obligations under this
3 Article may be met by the use of assets attributable to covered
4 policies or reimbursed to the Association pursuant to its
5 subrogation and assignment rights.

6 (4) In performing its obligations to provide coverage under
7 Section 531.08 of this Code, the Association shall not be
8 required to guarantee, assume, reinsure, or perform or cause to
9 be guaranteed, assumed, reinsured, or performed the
10 contractual obligations of the insolvent or impaired insurer
11 under a covered policy or contract that do not materially
12 affect the economic values or economic benefits of the covered
13 policy or contract.

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

15 (215 ILCS 5/531.05) (from Ch. 73, par. 1065.80-5)

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

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

19 "Association" means the Illinois Life and Health Insurance
20 Guaranty Association created under Section 531.06.

21 "Authorized assessment" or the term "authorized" when used
22 in the context of assessments means a resolution by the Board
23 of Directors has been passed whereby an assessment shall be
24 called immediately or in the future from member insurers for a
25 specified amount. An assessment is authorized when the

1 resolution is passed.

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

4 "Called assessment" or the term "called" when used in the
5 context of assessments means that a notice has been issued by
6 the Association to member insurers requiring that an authorized
7 assessment be paid within the time frame set forth within the
8 notice. An authorized assessment becomes a called assessment
9 when notice is mailed by the Association to member insurers.

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

11 "Contractual obligation" means any obligation under a
12 policy or contract or certificate under a group policy or
13 contract, or portion thereof for which coverage is provided
14 under Section 531.03.

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

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

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

22 "Impaired insurer" means (A) a member insurer which, after
23 the effective date of this amendatory Act of the 96th General
24 Assembly, is not an insolvent insurer, and is placed under an
25 order of rehabilitation or conservation by a court of competent
26 jurisdiction or (B) a member insurer deemed by the Director

1 after the effective date of this amendatory Act of the 96th
2 General Assembly to be potentially unable to fulfill its
3 contractual obligations and not an insolvent insurer.

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

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

16 (1) a hospital or medical service organization,
17 whether profit or nonprofit;

18 (2) a health maintenance organization;

19 (3) any burial society organized under Article XIX of
20 this Code, any fraternal benefit society organized under
21 Article XVII of this Code, any mutual benefit association
22 organized under Article XVIII of this Code, and any foreign
23 fraternal benefit society licensed under Article VI of this
24 Code ~~or a fraternal benefit society;~~

25 (4) a mandatory State pooling plan;

26 (5) a mutual assessment company or other person that

1 operates on an assessment basis;

2 (6) an insurance exchange;

3 (7) an organization that is permitted to issue
4 charitable gift annuities pursuant to Section 121-2.10 of
5 this Code;

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

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

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

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

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

23 "Person" means an individual, corporation, limited
24 liability company, partnership, association, governmental body
25 or entity, or voluntary organization.

26 "Plan sponsor" means:

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

3 (2) the employee organization in the case of a benefit
4 plan established or maintained by an employee
5 organization; or

6 (3) in a case of a benefit plan established or
7 maintained by 2 or more employers or jointly by one or more
8 employers and one or more employee organizations, the
9 association, committee, joint board of trustees, or other
10 similar group of representatives of the parties who
11 establish or maintain the benefit plan.

12 "Premiums" mean amounts or considerations, by whatever
13 name called, received on covered policies or contracts less
14 returned premiums, considerations, and deposits and less
15 dividends and experience credits.

16 "Premiums" does not include:

17 (A) amounts or considerations received for policies or
18 contracts or for the portions of policies or contracts for
19 which coverage is not provided under Section 531.03 of this
20 Code except that assessable premium shall not be reduced on
21 account of the provisions of subparagraph (iii) of
22 paragraph (b) of subsection (2) ~~(a)~~ of Section 531.03 of
23 this Code relating to interest limitations and the
24 provisions of paragraph (b) of subsection (3), subsection
25 (3.1), or subsection (3.2) of Section 531.03 relating to
26 limitations with respect to one individual, one

1 participant, and one contract owner;

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

7 (C) with respect to multiple nongroup policies of life
8 insurance owned by one owner, whether the policy owner is
9 an individual, firm, corporation, or other person, and
10 whether the persons insured are officers, managers,
11 employees, or other persons, premiums in excess of
12 \$5,000,000 with respect to these policies or contracts,
13 regardless of the number of policies or contracts held by
14 the owner.

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

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

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

26 (C) the state in which the board of directors (or

1 similar governing person or persons) of the entity conducts
2 the majority of its meetings;

3 (D) the state in which the executive or management
4 committee of the board of directors (or similar governing
5 person or persons) of the entity conducts the majority of
6 its meetings;

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

9 (F) in the case of a benefit plan sponsored by
10 affiliated companies comprising a consolidated
11 corporation, the state in which the holding company or
12 controlling affiliate has its principal place of business
13 as determined using the above factors.

14 However, in the case of a plan sponsor, if more than 50% of
15 the participants in the benefit plan are employed in a single
16 state, that state shall be deemed to be the principal place of
17 business of the plan sponsor.

18 The principal place of business of a plan sponsor of a
19 benefit plan described in paragraph (3) of the definition of
20 "plan sponsor" ~~this Section~~ shall be deemed to be the principal
21 place of business of the association, committee, joint board of
22 trustees, or other similar group of representatives of the
23 parties who establish or maintain the benefit plan that, in
24 lieu of a specific or clear designation of a principal place of
25 business, shall be deemed to be the principal place of business
26 of the employer or employee organization that has the largest

1 investment in the benefit plan in question.

2 "Receivership court" means the court in the insolvent or
3 impaired insurer's state having jurisdiction over the
4 conservation, rehabilitation, or liquidation of the insurer.

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

18 "Structured settlement annuity" means an annuity purchased
19 in order to fund periodic payments for a plaintiff or other
20 claimant in payment for or with respect to personal injury
21 suffered by the plaintiff or other claimant.

22 "State" means a state, the District of Columbia, Puerto
23 Rico, and a United States possession, territory, or
24 protectorate.

25 "Supplemental contract" means a written agreement entered
26 into for the distribution of proceeds under a life, health, or

1 annuity policy or a life, health, or annuity contract.

2 "Unallocated annuity contract" means any annuity contract
3 or group annuity certificate which is not issued to and owned
4 by an individual, except to the extent of any annuity benefits
5 guaranteed to an individual by an insurer under such contract
6 or certificate.

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

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

9 Sec. 531.07. Board of Directors.→ The board of directors
10 of the Association consists of not less than 7 nor more than 11
11 members serving terms as established in the plan of operation.
12 The insurer members ~~insurers~~ of the board are to be selected by
13 member insurers subject to the approval of the Director. In
14 addition, 2 persons who must be public representatives may 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.

21 In approving selections or in appointing members to the
22 board, the Director must consider, whether all member insurers
23 are fairly represented.

24 Members of the board may be reimbursed from the assets of
25 the Association for expenses incurred by them as members of the

1 board of directors but members of the board may not otherwise
2 be compensated by the Association for their services.

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

4 (215 ILCS 5/531.08) (from Ch. 73, par. 1065.80-8)

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

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

8 (1) If a member insurer is an impaired insurer, then
9 the Association may, in its discretion and subject to any
10 conditions imposed by the Association that do not impair
11 the contractual obligations of the impaired insurer and
12 that are approved by the Director:

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

16 (b) ~~(B)~~ provide such money, pledges, loans, notes,
17 guarantees, or other means as are proper to effectuate
18 paragraph (a) ~~(A)~~ and assure payment of the contractual
19 obligations of the impaired insurer pending action
20 under paragraph (a) ~~(A)~~.

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

23 (a) ~~(A)~~ guaranty, assume, or reinsure or cause to
24 be guaranteed, assumed, or reinsured the policies or
25 contracts of the insolvent insurer or assure payment of

1 the contractual obligations of the insolvent insurer
2 and provide money, pledges, loans, notes, guarantees,
3 or other means reasonably necessary to discharge the
4 Association's duties; or

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

7 (i) with respect to life and health insurance
8 policies and annuities, assure ~~ensure~~ payment of
9 benefits for premiums identical to the premiums
10 and benefits (except for terms of conversion and
11 renewability) that would have been payable under
12 the policies or contracts of the insolvent insurer
13 for claims incurred:

14 (A) ~~(a)~~ with respect to group policies and
15 contracts, not later than the earlier of the
16 next renewal date under those policies or
17 contracts or 45 days, but in no event less than
18 30 days, after the date on which the
19 Association becomes obligated with respect to
20 the policies and contracts;

21 (B) ~~(b)~~ with respect to nongroup policies,
22 contracts, and annuities not later than the
23 earlier of the next renewal date (if any) under
24 the policies or contracts or one year, but in
25 no event less than 30 days, from the date on
26 which the Association becomes obligated with

1 respect to the policies or contracts;

2 (ii) make diligent efforts to provide all
3 known insureds or annuitants (for nongroup
4 policies and contracts), or group policy owners
5 with respect to group policies and contracts, 30
6 days notice of the termination (pursuant to
7 subparagraph (i) of this paragraph (b) ~~(B)~~) of the
8 benefits provided;

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

1 class.

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

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

13 The Association may reinsure any alternative
14 or reissued policy.

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

21 (v) Alternative policies shall contain at
22 least the minimum statutory provisions required in
23 this State and provide benefits that shall not be
24 unreasonable in relation to the premium charged.
25 The Association shall set the premium in
26 accordance with a table of rates which it shall

1 adopt. The premium shall reflect the amount of
2 insurance to be provided and the age and class of
3 risk of each insured, but shall not reflect any
4 changes in the health of the insured after the
5 original policy was last underwritten.

6 Any alternative policy issued by the
7 Association shall provide coverage of a type
8 similar to that of the policy issued by the
9 impaired or insolvent insurer, as determined by
10 the Association.

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

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

26 (viii) ~~(e)~~ When proceeding under this Section

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

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

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

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

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

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

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

1 rehabilitator and approved by the receivership court.

2 (6) ~~(1)~~ There shall be no liability on the part of and
3 no cause of action shall arise against the Association or
4 against any transferee from the Association in connection
5 with the transfer by reinsurance or otherwise of all or any
6 part of an impaired or insolvent insurer's business by
7 reason of any action taken or any failure to take any
8 action by the impaired or insolvent insurer at any time.

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

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

21 (9) ~~(1)~~ The Association shall have standing to appear
22 or intervene before a court or agency in this State with
23 jurisdiction over an impaired or insolvent insurer
24 concerning which the Association is or may become obligated
25 under this Article or with jurisdiction over any person or
26 property against which the Association may have rights

1 through subrogation or otherwise. Standing shall extend to
2 all matters germane to the powers and duties of the
3 Association, including, but not limited to, proposals for
4 reinsuring, modifying, or guaranteeing the policies or
5 contracts of the impaired or insolvent insurer and the
6 determination of the policies or contracts and contractual
7 obligations. The Association shall also have the right to
8 appear or intervene before a court or agency in another
9 state with jurisdiction over an impaired or insolvent
10 insurer for which the Association is or may become
11 obligated or with jurisdiction over any person or property
12 against whom the Association may have rights through
13 subrogation or otherwise.

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

1 by this Article upon the person.

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

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

21 (d) ~~(4)~~ If the preceding provisions of this subsection
22 (10) ~~(1)~~ are invalid or ineffective with respect to any
23 person or claim for any reason, then the amount payable by
24 the Association with respect to the related covered
25 obligations shall be reduced by the amount realized by any
26 other person with respect to the person or claim that is

1 attributable to the policies, or portion thereof, covered
2 by the Association.

3 (e) ~~(5)~~ If the Association has provided benefits with
4 respect to a covered obligation and a person recovers
5 amounts as to which the Association has rights as described
6 in the preceding paragraphs of this subsection (10), then
7 the person shall pay to the Association the portion of the
8 recovery attributable to the policies, or portion thereof,
9 covered by the Association.

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

11 (a) ~~(1)~~ Enter into such contracts as are necessary
12 or proper to carry out the provisions and purposes of
13 this Article. ~~†~~

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

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

23 (d) ~~(4)~~ Employ or retain such persons as are
24 necessary to handle the financial transactions of the
25 Association, and to perform such other functions as
26 become necessary or proper under this Article.

1 (e) ~~(5)~~ Negotiate and contract with any
2 liquidator, rehabilitator, conservator, or ancillary
3 receiver to carry out the powers and duties of the
4 Association.

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

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

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

18 (i) ~~(9)~~ Request information from a person seeking
19 coverage from the Association in order to aid the
20 Association in determining its obligations under this
21 Article with respect to the person, and the person
22 shall promptly comply with the request.

23 (j) ~~(10)~~ Take other necessary or appropriate
24 action to discharge its duties and obligations under
25 this Article or to exercise its powers under this
26 Article.

1 (12) ~~(e)~~ With respect to covered policies for which
2 the Association becomes obligated after an entry of an
3 order of liquidation or rehabilitation, the Association
4 may elect to succeed to the rights of the insolvent insurer
5 arising after the date of the order of liquidation or
6 rehabilitation under any contract of reinsurance to which
7 the insolvent insurer was a party, to the extent that such
8 contract provides coverage for losses occurring after the
9 date of the order of liquidation or rehabilitation. As a
10 condition to making this election, the Association must pay
11 all unpaid premiums due under the contract for coverage
12 relating to periods before and after the date of the order
13 of liquidation or rehabilitation.

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

1 related to that insolvency and shall remit to the
2 domiciliary receiver the amount so paid to the Association
3 less the amount retained pursuant to this subsection ~~(13)~~.
4 Any amount so paid to the Association and retained by it
5 shall be treated as a distribution of estate assets
6 pursuant to applicable State receivership law dealing with
7 early access disbursements.

8 (14) ~~(c)~~ The Board of Directors of the Association
9 shall have discretion and may exercise reasonable business
10 judgment to determine the means by which the Association is
11 to provide the benefits of this Article in an economical
12 and efficient manner.

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

19 (16) ~~(s)~~ Venue in a suit against the Association
20 arising under the Article shall be in Cook County. The
21 Association shall not be required to give any appeal bond
22 in an appeal that relates to a cause of action arising
23 under this Article.

24 (17) ~~(t)~~ The Association may join an organization of
25 one or more other State associations of similar purposes to
26 further the purposes and administer the powers and duties

1 of the Association.

2 (18) ~~(11)~~ In carrying out its duties in connection with
3 guaranteeing, assuming, or reinsuring policies or
4 contracts under subsections (1) or (2), the Association
5 may, subject to approval of the receivership court, issue
6 substitute coverage for a policy or contract that provides
7 an interest rate, crediting rate, or similar factor
8 determined by use of an index or other external reference
9 stated in the policy or contract employed in calculating
10 returns or changes in value by issuing an alternative
11 policy or contract in accordance with the following
12 provisions:

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

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

24 (c) ~~(3)~~ the alternative policy or contract is
25 substantially similar to the replaced policy or
26 contract in all other material terms.

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

2 (215 ILCS 5/531.09) (from Ch. 73, par. 1065.80-9)

3 Sec. 531.09. Assessments.

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

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

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

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

23 (3) (a) The amount of any Class A assessment shall be
24 determined at the discretion of the board of directors and such
25 assessments shall be authorized and called on a non-pro rata

1 basis. The amount of any Class B assessment shall be allocated
2 for assessment purposes among the accounts and subaccounts
3 pursuant to an allocation formula which may be based on the
4 premiums or reserves of the impaired or insolvent insurer or
5 any other standard deemed by the board in its sole discretion
6 as being fair and reasonable under the circumstances.

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

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

23 (4) The Association may abate or defer, in whole or in
24 part, the assessment of a member insurer if, in the opinion of
25 the board, payment of the assessment would endanger the ability
26 of the member insurer to fulfill its contractual obligations.

1 In the event an assessment against a member insurer is abated
2 or deferred in whole or in part the amount by which the
3 assessment is abated or deferred may be assessed against the
4 other member insurers in a manner consistent with the basis for
5 assessments set forth in this Section. Once the conditions that
6 caused a deferral have been removed or rectified, the member
7 insurer shall pay all assessments that were deferred pursuant
8 to a repayment plan approved by the Association.

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

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

26 (iii) If the maximum assessment, together with the other

1 assets of the Association in an account, does not provide in
2 one year in either account an amount sufficient to carry out
3 the responsibilities of the Association, the necessary
4 additional funds shall be assessed as soon thereafter as
5 permitted by this Article.

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

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

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

1 (7) An assessment is deemed to occur on the date upon which
2 the board votes such assessment. The board may defer calling
3 the payment of the assessment or may call for payment in one or
4 more installments.

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

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

22 100% for the calendar year after the year of issuance;

23 80% for the second calendar year after the year of
24 issuance;

25 60% for the third calendar year after the year of issuance;

26 40% for the fourth calendar year after the year of

1 issuance;

2 20% for the fifth calendar year after the year of issuance.

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

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

9 (215 ILCS 5/531.14) (from Ch. 73, par. 1065.80-14)

10 Sec. 531.14. Miscellaneous Provisions.

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

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

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

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

26 (b) No distribution to stockholders, if any, of an impaired

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

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

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

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

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

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

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

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

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

3 (215 ILCS 125/6-14) (from Ch. 111 1/2, par. 1418.14)

4 Sec. 6-14. Miscellaneous Provisions. (1) Records must be
5 kept of all negotiations and meetings in which the Association
6 or its representatives are involved to discuss the activities
7 of the Association in carrying out its powers and duties under
8 Section 6-8. Records of such negotiations or meetings may be
9 made public only upon the termination of a liquidation,
10 rehabilitation, or conservation proceeding involving the
11 impaired or insolvent organization, upon the termination of the
12 impairment or insolvency of the organization, or upon the order
13 of a court of competent jurisdiction. Nothing in this
14 subsection (1) limits the duty of the Association to submit a
15 report of its activities under Section 6-15.

16 (2) For the purpose of carrying out its obligations under
17 this Article, the Association is deemed to be a creditor of the
18 impaired or insolvent organization to the extent of assets
19 attributable to covered health care plan certificates reduced
20 by any amounts to which the Association is entitled as subrogee
21 (under subsection (7) of Section 6-8). All assets of the
22 impaired or insolvent organization attributable to covered
23 health care plan certificates must be used to continue all
24 covered health care plan certificates and pay all contractual
25 obligations of the impaired organization as required by this

1 Article. "Assets attributable to covered health care plan
2 certificates", as used in this subsection (2), is that
3 proportion of the assets which the reserves that should have
4 been established for such health care plan certificates bear to
5 the reserve that should have been established for all health
6 care plan certificates of the impaired or insolvent
7 organization.

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

18 (b) No distribution to stockholders, if any, of an impaired
19 or insolvent organization may be made until and unless the
20 total amount of valid claims of the Association for funds
21 expended in carrying out its powers and duties under Section
22 6-8, with interest, with respect to such organization have been
23 fully recovered by the Association.

24 (4) (a) If an order for liquidation or rehabilitation of an
25 organization domiciled in this State has been entered, the
26 receiver appointed under such order has a right to recover on

1 behalf of the organization, from any affiliate that controlled
2 it, the amount of distributions, other than stock dividends
3 paid by the organization on its capital stock, made at any time
4 during the 5 years preceding the petition for liquidation or
5 rehabilitation subject to the limitations of paragraphs (b) to
6 (d).

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

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

21 (d) The maximum amount recoverable under subsection (4) of
22 this Section is the amount needed in excess of all other
23 available assets of the insolvent organization to pay the
24 contractual obligations of the insolvent organization.

25 (e) If any person liable under paragraph (c) of subsection
26 (4) of this Section is insolvent, all its affiliates that

1 controlled it at the time the distribution was paid are jointly
2 and severally liable for any resulting deficiency in the amount
3 recovered from the insolvent affiliate.
4 (Source: P.A. 86-620.)".