

AN ACT in relation to insurance.

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

Section 5. The Illinois Insurance Code is amended by
changing Section 531.08 as follows:

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

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

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

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

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

(c) Loan money to the impaired insurer;

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

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

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

(iii) Provide such monies, pledges, notes, guaranties,

or other means as are reasonably necessary to discharge such duties; or

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

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

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

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

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

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

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

(c) with respect to non-group policies, make available to each known insured, or owner if other than the insured, and with respect to an individual formerly insured under a

group policy who is not eligible for replacement group coverage, make available substitute coverage on an individual basis in accordance with the provisions of subparagraph (3)(d) of this Section, if the insureds had a right under law or the terminated policy to convert coverage to individual coverage or to continue a non-group policy in force until a specified age or for a specified time, during which the insurer has no right unilaterally to make changes in any provision of the policy or had a right only to make changes in premium by class.

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

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

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

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

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

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

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

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

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

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

(6) Premiums due for coverage after entry of an order of liquidation of an insolvent insurer shall belong to and be payable at the direction of the Association, and the Association shall be liable for unearned premiums due to

policy or contract owners arising after the entry of such order.

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

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

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

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

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

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

(10) The Association or its designated representatives

may render assistance and advice to the Director, upon his request, concerning rehabilitation, payment of claims, continuations of coverage, or the performance of other contractual obligations of any impaired or insolvent insurer.

(11) The Association has standing to appear before any court concerning all matters germane to the powers and duties of the Association, including, but not limited to, proposals for reinsuring or guaranteeing the covered policies of the impaired or insolvent insurer and the determination of the covered policies and contractual obligations.

(12) (a) Any person receiving benefits under this Article is deemed to have assigned the rights under the covered policy to the Association to the extent of the benefits received because of this Article whether the benefits are payments of contractual obligations or continuation of coverage. The Association may require an assignment to it of such rights by any payee, policy or contract owner, beneficiary, insured, certificate holder or annuitant as a condition precedent to the receipt of any rights or benefits conferred by this Article upon such person. The Association is subrogated to these rights against the assets of any insolvent insurer.

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

(13) The Association may:

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

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

(c) Borrow money to effect the purposes of this Article.

Any notes or other evidence of indebtedness of the Association not in default are legal investments for domestic insurers and may be carried as admitted assets.

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

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

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

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

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

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

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