



93RD GENERAL ASSEMBLY

State of Illinois

2003 and 2004

Introduced 2/6/2004, by Frank J. Mautino

SYNOPSIS AS INTRODUCED:

215 ILCS 5/531.02	from Ch. 73, par. 1065.80-2
215 ILCS 5/531.02a new	
215 ILCS 5/531.03	from Ch. 73, par. 1065.80-3
215 ILCS 5/531.04	from Ch. 73, par. 1065.80-4
215 ILCS 5/531.05	from Ch. 73, par. 1065.80-5
215 ILCS 5/531.06	from Ch. 73, par. 1065.80-6
215 ILCS 5/531.07	from Ch. 73, par. 1065.80-7
215 ILCS 5/531.08	from Ch. 73, par. 1065.80-8
215 ILCS 5/531.09	from Ch. 73, par. 1065.80-9
215 ILCS 5/531.10	from Ch. 73, par. 1065.80-10
215 ILCS 5/531.11	from Ch. 73, par. 1065.80-11
215 ILCS 5/531.12	from Ch. 73, par. 1065.80-12
215 ILCS 5/531.14	from Ch. 73, par. 1065.80-14
215 ILCS 5/531.15	from Ch. 73, par. 1065.80-15
215 ILCS 5/531.17	from Ch. 73, par. 1065.80-17
215 ILCS 5/531.19	from Ch. 73, par. 1065.80-19

Amends the Life and Health Insurance Guaranty Association Article of the Illinois Insurance Code. Prohibits health care providers from seeking payment from insureds until a final determination of the Association's liability has been made. Excludes from coverage certain variable rate instruments. Excludes from coverage certain self-funded employer and employee benefit plans. Removes authority of the Association to loan money to an impaired insurer. Sets forth conditions under which coverage is provided to residents and nonresidents. Makes changes with respect to the manner assessments are made upon insurers. Limits the liability of the Association and the Director of Insurance with respect to the operation of the Association. Effective January 1, 2005.

LRB093 18698 SAS 44426 b

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning insurance.

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

4 Section 5. The Illinois Insurance Code is amended by
5 changing Sections 531.02, 531.03, 531.04, 531.05, 531.06,
6 531.07, 531.08, 531.09, 531.10, 531.11, 531.12, 531.14,
7 531.15, 531.17, and 531.19, and adding Section 531.02a as
8 follows:

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

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

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

27 (215 ILCS 5/531.02a new)

28 Sec. 531.02a. Restrictions on recoveries by health care
29 providers. In the event of the insolvency of a member insurer,
30 no provider of health care services shall seek to recover any
31 amount from any insured until a final determination has been

1 made as to the Association's liability for such services
2 (including the resolution of any dispute or litigation
3 resulting therefrom).

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

11 (215 ILCS 5/531.03) (from Ch. 73, par. 1065.80-3)

12 Sec. 531.03. Coverage and limitations.

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

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

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

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

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

28 following conditions:

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

32 (B) the states in which such persons reside
33 have associations similar to the association
34 created by this Article ~~such insurers never held a~~
35 ~~license or certificate of authority in the states~~

1 ~~in which such persons reside; and~~

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

8 ~~(D) such persons are not eligible for coverage~~
9 ~~by such associations.~~

10 (c) For unallocated annuity contracts specified in
11 paragraph (2) of this Section, subparagraphs (a) and (b) of
12 this paragraph shall not apply, and this Article shall
13 (except as provided in subparagraphs (e) and (f) of this
14 paragraph) 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 is 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 paragraph (2) of this Section, subparagraphs (a) and (b) of
25 this paragraph shall not apply, and this Article shall
26 (except as provided in subparagraphs (e) and (f) of this
27 paragraph) provide coverage to a person who is a payee
28 under a structured settlement annuity (or beneficiary of a
29 payee if the payee is deceased), if the payee:

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

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

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

36 (II) the contract owner of the structured

1 settlement annuity is not a resident, but
2 the insurer that issued the structured
3 settlement annuity is domiciled in this State; and
4 the state in which the contract owner resides
5 has an association similar to the association
6 created by this Article; and

7 (B) neither the payee (or beneficiary) nor the
8 contract owner is eligible for coverage by the
9 association of the state in which the payee or
10 contract owner resides.

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

12 (i) a person who is a payee (or beneficiary) of a
13 contract owner resident of this State, if the payee (or
14 beneficiary) is afforded any coverage by the
15 association of another state, or

16 (ii) a person covered under subparagraph (c) of
17 this paragraph, if any coverage is provided by the
18 association of another state to or through the trustee
19 who is the contract owner.

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

33 (2)(a) Except as otherwise provided, this Article shall
34 provide coverage to the persons specified in paragraph (1) of
35 this Section for direct, ~~(i) individual or other~~ nongroup life,
36 health, and annuity ~~and supplemental~~ policies, or contracts,

1 and supplemental contracts to any of these, ~~(ii)~~ for
2 certificates under direct group policies or contracts, ~~(iii)~~
3 and for unallocated annuity contracts, in each case issued by
4 member insurers. "Annuity contracts" and "certificates under
5 group annuity contracts" shall have the meaning set forth in
6 subdivision (2) of Section 531.05 ~~and (iv) for contracts to~~
7 ~~furnish health care services and subscription certificates for~~
8 ~~medical or health care services issued by persons licensed to~~
9 ~~transact insurance business in this State under the Illinois~~
10 ~~Insurance Code. Annuity contracts and certificates under group~~
11 ~~annuity contracts include but are not limited to guaranteed~~
12 ~~investment contracts, deposit administration contracts,~~
13 ~~unallocated funding agreements, allocated funding agreements,~~
14 ~~structured settlement agreements, lottery contracts and any~~
15 ~~immediate or deferred annuity contracts.~~

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

17 (i) any that portion or provision part of such policies
18 or contracts not guaranteed by the insurer, or under which
19 the risk is borne by the policy or contract owner
20 ~~policyholder~~; provided however, that nothing in this
21 subparagraph (2) (b) (i) shall make this Article
22 inapplicable to assessment life ~~and accident~~ and health
23 insurance policies or contracts; or

24 (ii) any such policy or contract or part thereof
25 assumed by the impaired or insolvent insurer under a
26 contract of reinsurance, unless other than reinsurance for
27 ~~which~~ assumption certificates have been issued pursuant to
28 the reinsurance policy or contract by the impaired or
29 insolvent insurer; or

30 (iii) any interest rate, crediting rate, or similar
31 factor employed in calculating returns or changes in value
32 (whether or not determined by use of an index or other
33 external reference stated in the policy or contract), and
34 any portion of a policy or contract to the extent that it
35 is based on such a rate or factor, that any portion of a
36 policy or contract to the extent such portion represents an

1 ~~accrued value that the rate of interest on which it is~~
2 ~~accrued~~

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

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

18 (iv) any provision or portion of a policy or contract
19 issued to a plan or program of an employer, association, or
20 other person to provide life, health, or annuity benefits
21 to its employees, members, or others, to the extent that
22 the plan or program is self-funded or uninsured, including
23 but not limited to benefits payable by an employer,
24 association, or other person under:

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

27 (B) a minimum premium group insurance plan;

28 (C) a stop-loss group insurance plan and any
29 stop-loss insurance, as defined in clause (b) of Class
30 1 or clause (a) of Class 2 of Section 4, and further
31 defined in subsection (d) of Section 352;

32 (D) an administrative services only contract; or

33 (E) a cost-plus contract; or

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

36 (A) dividends or experience rating credits which,

1 in each case, were not paid or credited as of the date
2 of impairment or insolvency, whichever is earlier;

3 (B) voting rights;

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

6 (D) payment of any fees or allowances to any
7 person, including the policy or contract owner, in
8 connection with the service to or administration of the
9 policy or contract; or

10 (E) other nonmonetary obligations; or

11 (vi) ~~(iv)~~ any unallocated annuity contract issued to or
12 in connection with a ~~an employee~~ benefit plan the
13 beneficiaries of which are protected by ~~protected under~~ the
14 federal Pension Benefit Guaranty Corporation law,
15 regardless of whether the federal Pension Benefit Guaranty
16 Corporation has yet become liable to make any payments with
17 respect to the benefit plan; or

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

22 (viii) ~~(vi)~~ any policy or contract or portion thereof
23 issued by any burial society organized under Article XIX of
24 this Code Act, any fraternal benefit society organized
25 under Article XVII of this Code Act, any mutual benefit
26 association organized under Article XVIII of this Code Act,
27 and any foreign fraternal benefit society licensed under
28 Article VI of this Code Act; or

29 (ix) ~~(vii)~~ any policy or contract or portion thereof
30 issued by any health maintenance organization established
31 pursuant to the Health Maintenance Organization Act
32 including any health maintenance organization business of
33 a member insurer; or

34 (x) ~~(viii)~~ any policy or contract or portion thereof
35 issued by any health services plan corporation established
36 pursuant to the Voluntary Health Services Plans Act; or

1 ~~(ix) (blank); or~~

2 (xi) ~~(*)~~ any policy or contract or portion thereof
3 issued by any dental service plan corporation established
4 pursuant to the Dental Service Plan Act; or

5 ~~(xi) any stop loss insurance, as defined in clause (b)~~
6 ~~of Class 1 or clause (a) of Class 2 of Section 4, and~~
7 ~~further defined in subsection (d) of Section 352; or~~

8 (xii) any that portion or part of a variable life
9 insurance or variable annuity policy or contract not
10 guaranteed by an insurer; or

11 (xiii) any policy or contract or portion thereof to the
12 extent that assessments with respect to such policy or
13 contract or portion thereof are prohibited or preempted by
14 federal or state law; or

15 (xiv) any obligation that does not arise under the
16 express written terms of the policy or contract issued by
17 the insurer to the contract owner or policy owner,
18 including without limitation:

19 (A) claims based on marketing materials;

20 (B) claims based on side letters, riders, or other
21 documents that were issued by the insurer without
22 meeting applicable policy or contract form filing or
23 approval requirements;

24 (C) misrepresentations of or regarding policy or
25 contract benefits;

26 (D) extra-contractual claims;

27 (E) a claim for penalties or consequential or
28 incidental damages; or

29 (xv) any contractual agreement that establishes the
30 member insurer's obligations to provide a book value
31 accounting guaranty for defined contribution benefit plan
32 participants by reference to a portfolio of assets that is
33 owned by the benefit plan or its trustee, which in each
34 case is not an affiliate of the member insurer; or

35 (xvi) any portion of a policy or contract that, on the
36 date the Association becomes obligated, exceeds in value

1 the maximum benefit levels specified in paragraph (3)(b) of
2 this Section; or

3 (xvii) any portion of a policy or contract to the
4 extent it provides for interest or other changes in value
5 to be determined by the use of an index or other external
6 reference stated in the policy or contract, but which have
7 not been credited to the policy or contract, or as to which
8 the policy or contract owner's rights are subject to
9 forfeiture, as of the date the member insurer becomes an
10 impaired or insolvent insurer under this Article,
11 whichever is earlier. If a policy's or contract's interest
12 or changes in value are credited less frequently than
13 annually, then for purposes of determining the values that
14 have been credited and are not subject to forfeiture under
15 this subdivision 531.03(2)(b)(xvii), the interest or
16 change in value determined by using the procedures defined
17 in the policy or contract shall be credited as if the
18 contractual date of crediting interest or changing values
19 was the date of impairment or insolvency, whichever is
20 earlier, and shall not be subject to forfeiture; or

21 (xviii) a policy or contract issued in this State by a
22 member insurer at a time when it was not licensed or did
23 not have a certificate of authority to issue the policy or
24 contract in this State.

25 (3) The benefits that ~~for which~~ the Association may become
26 obligated to cover ~~liable~~ shall in no event exceed the lesser
27 of:

28 (a) the contractual obligations for which the insurer
29 is liable or would have been liable if it were not an
30 impaired or insolvent insurer, or

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

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

36 (B) \$300,000 in health insurance benefits,

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

3 (C) \$100,000 in the present value of annuity
4 benefits, including net cash surrender and net cash
5 withdrawal values;

6 (ii) with respect to each individual participating in a
7 governmental retirement benefit plan established under
8 Section 401, 403(b) or 457 of the United States U.S.
9 Internal Revenue Code covered by an unallocated annuity
10 contract or the beneficiaries of each such individual if
11 deceased, in the aggregate, \$100,000 in present value
12 annuity benefits, including net cash surrender and net cash
13 withdrawal values; provided, however, that in no event
14 shall the Association be liable to expend more than
15 \$300,000 in the aggregate with respect to any one
16 individual under subparagraph (1) and this subparagraph;

17 (iii) with respect to each payee of a structured
18 settlement annuity contract (or the beneficiary or
19 beneficiaries of the payee if deceased), \$100,000 in the
20 present value of annuity benefits, in the aggregate
21 including net cash surrender and net cash withdrawal
22 values;

23 (iv) provided, however, that in no event shall the
24 Association be liable to expend more than \$300,000 in the
25 aggregate with respect any one life under subparagraphs
26 (3)(b)(i), (ii), and (iii);

27 (v) with respect to one owner of multiple non-group
28 policies or contracts of life insurance, whether the policy
29 owner is an individual, firm, corporation, or other person,
30 and whether the persons insured are officers, managers,
31 employees, or other persons, \$5,000,000 in benefits,
32 regardless of the number of policies and contracts held by
33 the owner;

34 (vi) ~~(iii)~~ with respect to either (i) one contract
35 owner provided coverage under subparagraph (1)(c)(ii) of
36 this Section; or (ii) any one plan sponsor whose plans own

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

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

35 (4) In performing its obligations to provide coverage under
36 Section 531.08 of this Article, the Association shall not be

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

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

8 (215 ILCS 5/531.04) (from Ch. 73, par. 1065.80-4)

9 Sec. 531.04. Construction. ~~→~~ This Article is to be ~~liberally~~
10 construed to effect the purpose established under Section
11 531.02 ~~which constitutes an aid and guide to interpretation.~~

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

13 (215 ILCS 5/531.05) (from Ch. 73, par. 1065.80-5)

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

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

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

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

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

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

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

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

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

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

16 (9) ~~(4)~~ "Contractual obligation" means any obligation
17 under a policy or contract or certificate under a group policy
18 or contract, or portion thereof for which coverage is provided
19 under Section 531.03.

20 (10) ~~(5)~~ "Covered person" means any person who is entitled
21 to the protection of the Association as described in Section
22 531.02.

23 (11) ~~(6)~~ "Covered policy" means any policy or contract or
24 portion of a policy or contract for which coverage is provided
25 ~~within the scope of this Article~~ under Section 531.03.

26 (12) "Director" means the Director of Insurance of this
27 State.

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

33 (14) ~~(7)~~ "Impaired insurer" means a member insurer
34 determined ~~deemed~~ by the Director in a written notice to the
35 Association after the effective date of this Article to be
36 potentially unable to fulfill its contractual obligations and

1 not an insolvent insurer.

2 (15) ~~(8)~~ "Insolvent insurer" means ~~(a)~~ a member insurer
3 that is found to be either at the time the policy was issued or
4 when the insured event occurred, or any company which has
5 acquired such direct policy obligations through purchase,
6 merger, consolidation, reinsurance or otherwise, whether or
7 not such acquiring company held a certificate of authority to
8 transact insurance in this State at the time such policy was
9 issued or when the insured event occurred; and (b) becomes
10 insolvent, and is placed under a final order of liquidation,
11 rehabilitation, or conservation by a court of competent
12 jurisdiction.

13 (16) ~~(9)~~ "Member insurer" means any person licensed or that
14 ~~who~~ holds a certificate of authority to transact in this State
15 any kind of insurance business to which this Article applies
16 under Section 531.03. For purposes of this Article "member
17 insurer" includes any person whose certificate of authority may
18 have been suspended pursuant to Section 119, revoked,
19 voluntarily withdrawn, or not renewed subsequent to the date on
20 which a member insurer became an impaired insurer or an
21 insolvent insurer, whichever is earlier. "Member insurer" does
22 not include any of the following:-

23 (a) a mandatory State pooling plan;

24 (b) an insurance exchange;

25 (c) an organization (other than an insurer authorized
26 to transact business in this State) issuing charitable gift
27 annuities; or

28 (d) any entity similar to any of the above.

29 (17) ~~(10)~~ "Moody's Corporate Bond Yield Average" means the
30 Monthly Average Corporates as published by Moody's Investors
31 Service, Inc., or any successor thereto.

32 (18) "Owner" of a policy or contract and "policy owner" and
33 "contract owner" mean the person who is identified as the legal
34 owner under the terms of the policy or contract or who is
35 otherwise vested with legal title to the policy or contract
36 through a valid assignment completed in accordance with the

1 terms of the policy or contract and properly recorded as the
2 owner on the books of the insurer. The terms "owner", "contract
3 owner", and "policy owner" do not include persons with a mere
4 beneficial interest in a policy or contract.

5 (19) "Person" means any individual, corporation, trust,
6 limited liability company, partnership, association,
7 governmental body or entity, or voluntary organization.

8 (20) "Plan sponsor" means:

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

11 (b) the employee organization in the case of a benefit
12 plan established or maintained by an employee
13 organization; or

14 (c) in a case of a benefit plan established or
15 maintained by 2 or more employers or jointly by one or more
16 employers and one or more employee organizations, the
17 association, committee, joint board of trustees, or other
18 similar group of representatives of the parties who
19 establish or maintain the benefit plan.

20 (21) ~~(11)~~ "Premiums" means direct gross insurance
21 premiums, ~~or~~ subscriptions, ~~or~~ ~~and~~ ~~annuity~~ considerations (by
22 whatever name called) received on covered policies or
23 contracts, less returned ~~return~~ premiums, ~~and~~ considerations,
24 ~~and deposits~~ ~~thereon~~ and less dividends and experience credits
25 paid or credited to policy or contract owners ~~policyholders~~ on
26 such direct business. "Premiums" do not include premiums and
27 considerations on contracts between insurers and reinsurers.
28 "Premiums" do not include any amounts or considerations
29 received for any policies or contracts or for the portions of
30 any policies or contracts for which coverage is not provided
31 under paragraph (2) of Section 531.03 except that assessable
32 premium shall not be reduced on account of subparagraph
33 (2) (b) (iii) of Section 531.03 relating to interest limitations
34 and subparagraph (3) (b) of Section 531.03 relating to
35 limitations with respect to any one life, any one individual,
36 any one participant, ~~and~~ any one policy or contract owner.

1 ~~contractholder; provided that~~ "Premiums" shall not include:

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

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

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

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

24 (a) the state in which the primary executive and
25 administrative headquarters of the entity are located;

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

28 (c) the state in which the board of directors (or
29 similar governing person or persons) of the entity conducts
30 the majority of its meetings;

31 (d) the state in which the executive or management
32 committee of the board of directors (or similar governing
33 person or persons) of the entity conducts the majority of
34 its meetings;

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

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

6 However, in the case of a plan sponsor, if more than 50% of
7 the participants in the benefit plan are employed in a single
8 state, that state shall be deemed to be the principal place of
9 business of the plan sponsor; except that the principal place
10 of business of a plan sponsor of a benefit plan described in
11 paragraph (20)(c) of this Section shall be deemed to be the
12 principal place of business of the association, committee,
13 joint board of trustees, or other similar group of
14 representatives of the parties who establish or maintain the
15 benefit plan; provided, however, that in the absence of a
16 specific or clear designation of such a principal place of
17 business, the principal place of business shall be deemed to be
18 the principal place of business of the employer or employee
19 organization that has the largest investment in the benefit
20 plan in question.

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

25 (24) ~~(13)~~ "Resident" means any person to whom a contractual
26 obligation is owed and, except in the case of a contract owner
27 of an unallocated annuity contract issued to a benefit plan or
28 trustee of a benefit plan, who resides in this State on the
29 date the Director determines a member insurer to be an impaired
30 insurer or a court order determines a member insurer to be an
31 insolvent insurer, whichever occurs first. In the case of an
32 unallocated annuity contract issued to a benefit plan, or the
33 trustee of a benefit plan, the contract owner shall be a
34 "resident" of the state in which the principal place of
35 business of the plan sponsor was located on such date at the
36 time the insurer is determined to be impaired or insolvent and

1 ~~to whom contractual obligations are owed.~~ A person may be a
2 resident of only one state which, in the case of a person other
3 than a natural person, shall be its principal place of
4 business. Citizens of the United States that are either (i)
5 residents of foreign countries or (ii) residents of United
6 States possessions, territories, or protectorates that do not
7 have an association similar to the Association shall be deemed
8 residents of the state of domicile of the insurer that issued
9 the policies or contracts.

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

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

18 (27) "Subaccount" means any of the 3 subaccounts of the
19 life insurance and annuity account created under subdivision
20 (1) of 531.06.

21 (28) ~~(14)~~"Supplemental contract" means any written
22 agreement entered into for the distribution of proceeds under a
23 life, health, or annuity policy or contract ~~proceeds.~~

24 (29) ~~(15)~~ "Unallocated annuity contract" means any annuity
25 contract or group annuity certificate which is not issued to
26 and owned by an individual, except to the extent of any annuity
27 benefits guaranteed to an individual by an insurer under such
28 contract or certificate.

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

30 (215 ILCS 5/531.06) (from Ch. 73, par. 1065.80-6)

31 Sec. 531.06. Creation of the Association. There is created
32 a non-profit legal entity to be known as the Illinois Life and
33 Health Insurance Guaranty Association. All member insurers are
34 and must remain members of the Association as a condition of
35 their authority to transact insurance in this State. The

1 Association must perform its functions under the plan of
2 operation established and approved under Section 531.10 and
3 must exercise its powers through a board of directors
4 established under Section 531.07. For purposes of
5 administration and assessment, the Association must maintain 2
6 accounts:

7 (1) The life insurance and annuity account which includes
8 the following subaccounts:

9 (a) Life insurance account;

10 (b) Annuity account which shall include annuity contracts
11 owned by a governmental retirement plan (or its trustee)
12 established under Section 401, 403(b), or 457 of the United
13 States Internal Revenue Code, but shall otherwise exclude
14 unallocated annuity contracts; and

15 (c) Unallocated annuity account which shall exclude
16 contracts owned by a governmental retirement benefit plan (or
17 its trustee) established under Section 401, 403(b), or 457 of
18 the United States Internal Revenue Code ~~include contracts~~
19 ~~qualified under Section 403(b) of the United State Internal~~
20 ~~Revenue Code.~~

21 (2) The health insurance account.

22 The Association shall be supervised by the Director and is
23 subject to the applicable provisions of the Illinois Insurance
24 Code.

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

26 (215 ILCS 5/531.07) (from Ch. 73, par. 1065.80-7)

27 Sec. 531.07. Board of Directors.→ The board of directors of
28 the Association consists of not less than 5 nor more than 9
29 members serving terms as established in the plan of operation.
30 The members of the board are to be selected by member insurers
31 subject to the approval of the Director. Vacancies on the board
32 must be filled for the remaining period of the term in the
33 manner described in the plan of operation. To select the
34 initial board of directors, and initially organize the
35 Association, the Director must give notice to all member

1 insurers of the time and place of the organizational meeting.
2 In determining voting rights at the organizational meeting each
3 member insurer is entitled to one vote in person or by proxy.
4 If the board of directors is not selected within 60 days after
5 notice of the organizational meeting, the Director may appoint
6 the initial members.

7 In approving selections or in appointing members to the
8 board, the Director must consider~~7~~ whether all member insurers
9 are fairly represented.

10 Members of the board may be reimbursed from the assets of
11 the Association for expenses incurred by them as members of the
12 board of directors but members of the board may not otherwise
13 be compensated by the Association for their services.

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

15 (215 ILCS 5/531.08) (from Ch. 73, par. 1065.80-8)

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

19 (1) If an ~~a domestic~~ insurer is an impaired insurer,
20 the Association may, in its discretion and subject to any
21 conditions imposed by the Association other than those
22 which impair the contractual obligations of the impaired
23 insurer~~7~~ and approval ~~approved~~ by the ~~impaired insurer and~~
24 ~~the~~ Director:

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

29 (b) Provide such monies, pledges, notes,
30 guarantees, or other means as are proper to effectuate
31 subparagraph ~~paragraph~~ (1) (a), and assure payment of
32 the contractual obligations of the impaired insurer
33 pending action under subparagraph ~~paragraph~~ (1) (a).~~7~~

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

35 (2) If an ~~a domestic, foreign, or alien~~ insurer is an

1 insolvent insurer, the Association shall, in its
2 discretion, either ~~subject to the approval of the Director;~~

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

7 (ii) Otherwise assure ~~Assure~~ payment of the
8 contractual obligations of the insolvent insurer to
9 covered persons; and

10 (iii) Provide such monies, pledges, loans, notes,
11 guaranties, or other means as are reasonably necessary
12 to discharge such duties under subparagraphs (2) (a) (i)
13 and (2) (a) (ii); or

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

17 (c) Provided however that this paragraph
18 ~~subsection~~ (2) shall not apply when the Director has
19 determined that the foreign or alien insurer's
20 ~~insurers~~ domiciliary jurisdiction or state of entry
21 provides, by statute, protection substantially similar
22 to that provided by this Article for residents of this
23 State and such protection will be provided in a timely
24 manner.

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

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

33 (i) with respect to group policies and
34 contracts, not later than the earlier of the next
35 renewal date under such policies or contracts or 60
36 ~~sixty~~ days, but in no event less than 30 ~~thirty~~

1 days, after the date on which the Association
2 becomes obligated with respect to such policies
3 and contracts;

4 (ii) with respect to individual and other
5 non-group policies and contracts, not later than
6 the earlier of the next renewal date (if any) under
7 such policies or contracts or one year, but in no
8 event less than 30 ~~thirty~~ days, from the date on
9 which the Association becomes obligated with
10 respect to such policies or contracts;

11 (b) make diligent efforts to provide all known
12 policy and contract owners 30 ~~insureds or group~~
13 ~~policyholders with respect to group policies thirty~~
14 days notice of the termination (pursuant to
15 subparagraph (3) (a)) of the benefits provided; and

16 (c) with respect to individual and other non-group
17 life and health policies and annuity contracts covered
18 by the Association, make available to each known
19 insured, or owner if other than the insured or
20 annuitant, and with respect to an individual formerly
21 insured or formerly an annuitant under a group policy
22 on contract who is not eligible for replacement group
23 coverage, make available substitute coverage on an
24 individual basis in accordance with the provisions of
25 subparagraph (3) (d) of this Section, if the insureds or
26 annuitants had a right under law or the terminated
27 policy or annuity contract to convert coverage to
28 individual coverage or to continue a an individual
29 ~~non-group~~ policy or annuity contract in force until a
30 specified age or for a specified time, during which the
31 insurer has no right unilaterally to make changes in
32 any provision of the policy or annuity contract or had
33 a right only to make changes in premium by class.

34 (d) (i) In providing the substitute coverage
35 required under subparagraph (3) (c) of this Section,
36 the Association may offer either to reissue the

1 terminated coverage or to issue an alternative policy
2 or contract.

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

8 (iii) The Association may cause ~~reinsure~~ any
9 alternative or reissued policy or contract to be
10 assumed or reinsured.

11 (e) (i) Alternative policies or contracts adopted
12 by the Association shall be subject to the approval of
13 either (A) the Director or (B) the domiciliary
14 commissioner and the receivership court. The
15 Association may adopt alternative policies or
16 contracts of various types for future issuance
17 ~~insurance~~ without regard to any particular impairment
18 or insolvency.

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

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

35 (f) If the Association elects to reissue
36 terminated coverage at a premium rate different from

1 that charged under the terminated policy or contract,
2 the premium shall be set by the Association in
3 accordance with the amount of insurance provided and
4 the age and class of risk, subject to approval of
5 either (A) the Director or (B) by the domiciliary
6 commissioner and the receivership court ~~by a court of~~
7 ~~competent jurisdiction.~~

8 (g) The Association's obligations with respect to
9 coverage under any policy or contract of the impaired
10 or insolvent insurer or under any reissued or
11 alternative policy or contract shall cease on the date
12 such coverage or policy or contract is replaced by
13 another similar policy or contract by the policy owner
14 ~~policyholder~~, the insured, or the Association.

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

21 (5) Nonpayment of premiums 31 ~~thirty-one~~ days after the
22 date required under the terms of any guaranteed, assumed,
23 alternative or reissued policy or contract or substitute
24 coverage shall terminate the Association's obligations
25 under such policy or contract or coverage under this
26 Article Act with respect to such policy or contract or
27 coverage, except with respect to any claims incurred or any
28 net cash surrender value which may be due in accordance
29 with the provisions of this Article Act.

30 (6) Premiums due for coverage after entry of an order
31 of liquidation of an insolvent insurer shall belong to and
32 be payable at the direction of the Association, and the
33 Association shall be liable for unearned premiums due to
34 policy or contract owners arising after the entry of such
35 order.

36 (7) The protection provided by this Article shall not

1 apply when any guaranty protection is provided to residents
 2 of this State by the laws of the domiciliary state or
 3 jurisdiction of the impaired or insolvent insurer other
 4 than this State.

5 ~~(8) (7) (a)~~ In carrying out its duties under paragraph
 6 ~~subsection~~ (2) of this Section, the Association may
 7 ~~permanent policy liens, or contract liens, may be imposed~~
 8 ~~in connection with any guarantee, assumption or~~
 9 ~~reinsurance agreement, if the court:~~

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

23 (b) subject to approval by the receivership court
 24 or a court of competent jurisdiction in this State,
 25 impose temporary moratoriums or liens on payments of
 26 cash values and policy loans, or any other right to
 27 withdraw funds held in conjunction with policies or
 28 contracts, in addition to any contractual provisions
 29 for deferral of cash or policy or contract loan value.
 30 In addition, in the event of a temporary moratorium or
 31 moratorium charge imposed by the receivership court or
 32 a court of competent jurisdiction in this State on
 33 payment of cash values or policy or contract loans, or
 34 on any other right to withdraw funds held in
 35 conjunction with policies or contracts, out of the
 36 assets of the impaired or insolvent insurer, the

1 Association may defer the payment of cash values,
2 policy or contract loans, or other rights by the
3 Association for the period of the moratorium or
4 moratorium charge imposed by the receivership court or
5 a court of competent jurisdiction in this State, except
6 for claims covered by the Association to be paid in
7 accordance with a hardship procedure (i) established
8 by the liquidator or rehabilitator and approved by the
9 receivership court or (ii) approved by a court of
10 competent jurisdiction in this State.

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

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

20 (9) A deposit in this State, held pursuant to law or
21 required by the Director for the benefit of creditors,
22 including policy and contract owners, not turned over to
23 the domiciliary liquidator upon the entry of a final order
24 of liquidation or order approving a rehabilitation plan of
25 an insurer domiciled in this State or in a reciprocal state
26 shall be promptly paid to the Association. The Association
27 (i) shall be entitled to retain a portion of any amount so
28 paid to it equal to the percentage determined by dividing
29 the aggregate amount of policy and contract owners' claims
30 related to that insolvency for which the Association has
31 provided statutory benefits by the aggregate amount of all
32 policy and contract owners' claims in this State related to
33 that insolvency and (ii) shall remit to the domiciliary
34 receiver the amount so paid to the Association, less the
35 amount retained pursuant to clause (i). Any amount so paid
36 to the Association and retained by it pursuant to clause

1 (i) shall be treated as a distribution of estate assets
2 pursuant to subsection (2) of Section 205 of this Code or
3 similar provision of the state of domicile of the impaired
4 or insolvent insurer.

5 (10) The Association may fulfill its obligations under
6 paragraph (2) of this Section by providing benefits in
7 connection with policies or contracts of the insolvent
8 insurer whose terms have been modified pursuant to an order
9 of the receivership court or a court of competent
10 jurisdiction in this State, provided that the economic
11 values and economic benefits of such modified policies or
12 contracts, after the Association has acted to fulfill its
13 obligations, are not materially less than the economic
14 values and economic benefits that covered persons would
15 have received after the Association had acted to fulfill
16 its obligations if the terms of such policies or contracts
17 had not been modified. In determining what economic values
18 and economic benefits covered persons would have received
19 after the Association had acted to fulfill its obligations
20 if the terms of the insolvent insurer's policies or
21 contracts had not been modified, the Association shall take
22 into account (i) the coverage limitations set forth in
23 paragraphs (2) and (3) of Section 531.03, (ii) any
24 substitute coverage that the Association would have
25 provided pursuant to paragraphs (3) and (22) of this
26 Section, and (iii) any permanent policy or contract liens
27 and any temporary moratoriums that would have been
28 necessary under paragraph (8) of this Section but for the
29 modifications in terms approved by the court.

30 (11) ~~(8)~~ There shall be no liability on the part of and
31 no cause of action shall arise against the Association or
32 against any transferee from the Association in connection
33 with the transfer by reinsurance or otherwise of all or any
34 part of an impaired or insolvent insurer's business by
35 reason of any action taken or any failure to take any
36 action by the impaired or insolvent insurer at any time.

1 (12) ~~(9)~~ If the Association fails to act within a
2 reasonable period of time with respect to an insolvent
3 insurer as provided in paragraph subsection (2) of this
4 Section ~~with respect to an insolvent insurer~~, the Director
5 may assume ~~shall have~~ the powers and duties of the
6 Association under this Article Act with regard to the such
7 insolvent insurer insurers.

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

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

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

33 (15) ~~(12)~~ (a) Any person receiving benefits under this
34 Article is deemed to have assigned the rights under , and
35 any causes of action against any person for losses arising
36 under, resulting from, or otherwise relating to the covered

1 policy or contract to the Association to the extent of the
2 benefits received because of this Article whether the
3 benefits are payments of contractual obligations, ~~or~~
4 continuation of coverage, or provision of substitute
5 coverages. The Association may require an assignment to it
6 of such rights and causes of action by any payee, policy or
7 contract owner, beneficiary, insured, certificate holder,
8 or annuitant as a condition precedent to the receipt of any
9 rights or benefits conferred by this Article upon such
10 person. The Association is subrogated to these rights
11 against the assets of any insolvent insurer.

12 (b) The subrogation rights of the Association under
13 this subsection have the same priority against the assets
14 of the insolvent insurer as that possessed by the person
15 entitled to receive benefits under this Article. The
16 Association's subrogation rights against the assets of the
17 insolvent insurer shall not be reduced by any recoveries
18 from persons other than the estate of the insolvent insurer
19 obtained by the Association pursuant to assignment rights
20 provided under this subsection, except that the
21 Association's subrogation rights against the assets of the
22 insolvent insurer with respect to a covered policy or
23 contract shall be deemed fulfilled where any and all such
24 recoveries from third parties with respect to the covered
25 policy or contract, together with any distributions of
26 estate assets with respect to the covered policy or
27 contract, have made the Association whole, after
28 accounting for any and all legal fees and expenses
29 (including interest) incurred by the Association in
30 achieving such recoveries.

31 (c) In addition to the rights set forth in
32 subparagraphs (15)(a) and (b) of this Section, the
33 Association has all common law rights of subrogation and
34 any other equitable or legal remedy that would have been
35 available to the impaired or insolvent insurer or owner,
36 beneficiary, or payee of a policy or contract with respect

1 to the policy or contract (including without limitation, in
2 the case of a structured settlement annuity contract, any
3 rights of the owner, beneficiary, or payee of the annuity
4 contract, to the extent of benefits received pursuant to
5 this Article, against a person originally or by succession
6 responsible for the losses arising from the personal injury
7 relating to the annuity contract or payment therefor),
8 excepting any such person responsible by reason of serving
9 as an assignee in respect of a qualified assignment under
10 United States Internal Revenue Code Section 130.

11 (d) If subparagraph (a), (b), or (c) of this paragraph
12 is invalid or ineffective with respect to any person or
13 claim for any reason, the amount payable by the Association
14 with respect to the related covered obligations shall be
15 reduced by the amount realized by any other person with
16 respect to the person or claim that is attributable to the
17 policies and contracts (or portion thereof) covered by the
18 Association.

19 (e) If the Association has provided benefits with
20 respect to a covered obligation and a person recovers
21 amounts as to which the Association has rights as described
22 in subparagraph (a), (b), (c) or (d) of this paragraph, the
23 person shall pay to the Association the portion of the
24 recovery attributable to the policies and contracts (or
25 portion thereof) covered by the Association.

26 (16) ~~(13)~~ In addition to the rights and powers
27 elsewhere in this Article, the ~~The~~ Association may do any
28 of the following:

29 (a) Enter into such contracts as are necessary or
30 proper to carry out the provisions and purposes of this
31 Article. †

32 (b) Sue or be sued, including taking any legal
33 actions necessary or proper for recovery of any unpaid
34 assessments under Section 531.09and to settle any
35 litigation, any threatened or potential litigation,
36 and any claims or potential claims by or against the

1 ~~Association. The Association shall not be liable for~~
2 ~~punitive or exemplary damages;~~

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

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

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

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

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

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

29 (i) Request information from a person seeking
30 coverage from the Association in order to aid the
31 Association in determining its obligations under this
32 Article with respect to the person. The person shall
33 promptly comply with the request as a condition
34 precedent to the receipt of any right or benefit
35 conferred by this Article.

36 (j) Take other necessary or appropriate action to

1 discharge its duties and obligations under this
2 Article or to exercise its powers under this Article.

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

22 (i) The Association shall be responsible for all
23 unpaid premiums due under the agreements (for periods
24 both before and after the coverage date) and shall be
25 responsible for the performance of all other
26 obligations to be performed after the coverage date, in
27 each case which relate to policies and contracts
28 covered (in whole or in part) by the Association. The
29 Association may charge policies and contracts covered
30 in part by the Association, through reasonable
31 allocation methods, the costs for reinsurance in
32 excess of the obligations of the Association.

33 (ii) The Association shall be entitled to any
34 amounts payable by the reinsurer under the agreements
35 with respect to losses or events that occur in periods
36 after the coverage date and that relate to policies and

1 contracts covered by the Association (in whole or in
2 part), provided that, upon receipt of any such amounts,
3 the Association shall be obliged to pay to the
4 beneficiary under the policy or contract on account of
5 which the amounts were paid a portion of the amount
6 equal to the excess of:

7 (A) the amount received by the Association over

8 (B) the benefits paid by the Association on account
9 of the policy or contract less the retention of the
10 impaired or insolvent member insurer applicable to the
11 loss or event.

12 (iii) Within 30 days following the Association's
13 election, the Association and each indemnity reinsurer
14 shall calculate the net balance due to or from the
15 Association under each reinsurance agreement as of the
16 date of the Association's election, giving full credit
17 to all items paid by either the member insurer (or its
18 receiver, rehabilitator, or liquidator) or the
19 indemnity reinsurer during the period between the
20 coverage date and the date of the Association's
21 election. Either the Association or indemnity
22 reinsurer shall pay the net balance due the other
23 within 5 days after the completion of the calculation.
24 If the receiver, rehabilitator, or liquidator has
25 received any amounts due the Association pursuant to
26 subparagraph (17) (a) (ii), the receiver, rehabilitator,
27 or liquidator shall remit the same to the Association
28 as promptly as practicable.

29 (iv) If the Association, within 60 days of the
30 election, pays the premiums due for periods both before
31 and after the coverage date that relate to policies and
32 contracts covered by the Association (in whole or in
33 part), the reinsurer shall not be entitled to terminate
34 the reinsurance agreements insofar as such agreements
35 relate to policies and contracts covered by the
36 Association (in whole or in part) and shall not be

1 entitled to set off any unpaid premium due for periods
2 prior to the coverage date against amounts due the
3 Association.

4 (b) In the event the Association transfers its
5 obligations to another insurer, and if the Association and
6 the other insurer agree, the other insurer shall succeed to
7 the rights and obligations of the Association under
8 subparagraph (17) (a) of this Section effective as of the
9 date agreed upon by the Association and the other insurer
10 and regardless of whether the Association has made the
11 election referred to in subparagraph (17) (a) provided
12 that:

13 (i) the indemnity reinsurance agreements shall
14 automatically terminate for new reinsurance unless the
15 indemnity reinsurer and the other insurer agree to the
16 contrary;

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

22 (iii) this subparagraph (17) (b) shall not apply if
23 the Association has previously expressly determined in
24 writing that it will not exercise the election referred
25 to in subparagraph (17) (a) of this Section.

26 (c) The provisions of this paragraph (17) shall
27 supersede the provisions of any law of this State or of any
28 affected reinsurance agreement that provides for or
29 requires any payment of reinsurance proceeds, on account of
30 losses or events that occur in periods after the coverage
31 date, to the receiver, liquidator, or rehabilitator of the
32 insolvent member insurer. The receiver, rehabilitator, or
33 liquidator shall remain entitled to any amounts payable by
34 the reinsurer under the reinsurance agreement with respect
35 to losses or events that occur in periods prior to the
36 coverage date (subject to applicable setoff provisions).

1 (d) Except as otherwise expressly provided in this
2 paragraph (17), nothing herein shall alter or modify the
3 terms and conditions of the indemnity reinsurance
4 agreements of the insolvent member insurer. Nothing herein
5 shall abrogate or limit any rights of any reinsurer to
6 claim that it is entitled to rescind a reinsurance
7 agreement.

8 Nothing herein shall give a policy or contract owner or
9 beneficiary an independent cause of action against an
10 indemnity reinsurer that is not otherwise set forth in the
11 indemnity reinsurance agreement.

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

25 (18) The Association may join an organization of one or
26 more other state associations of similar purposes to further
27 the purposes and administer the powers and duties of the
28 Association.

29 (19) The board of directors of the Association shall have
30 discretion and may exercise reasonable business judgment to
31 determine the means by which the Association is to provide the
32 benefits of this Article in an economical and efficient manner.

33 (20) Where the Association has arranged or offered to
34 provide the benefits of this Article to a covered person under
35 a plan or arrangement that fulfills the Association's
36 obligations under this Article, the person shall not be

1 entitled to benefits from the Association in addition to or
2 other than those provided under the plan or arrangement.

3 (21) Venue in a suit against the Association arising under
4 this Article shall be in Cook County. The Association shall not
5 be required to give an appeal bond in any case or proceeding
6 that arises from or is based in whole or in part on claims or
7 other rights asserted under this Article.

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

18 (a) in lieu of the index or other external reference
19 provided for in the original policy or contract, the
20 alternative policy or contract provides for (i) a fixed
21 interest rate, (ii) payment of dividends with minimum
22 guarantees, or (iii) a different method for calculating
23 interest or changes in value;

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

28 (c) the alternative policy or contract is
29 substantially similar to the replaced policy or contract in
30 all other material terms.

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

32 (215 ILCS 5/531.09) (from Ch. 73, par. 1065.80-9)
33 Sec. 531.09. Assessments.

34 (1) For the purpose of providing the funds necessary to
35 carry out the powers and duties of the Association, the board

1 of directors shall assess the member insurers, separately for
2 each account and subaccount, at such times and for such amounts
3 as the board finds necessary. Assessments shall be due not less
4 than 30 days after written notice to the member insurers and
5 shall accrue interest from the due date the rate of 10% per
6 annum ~~at such adjusted rate as is established under Section~~
7 ~~6621 of Chapter 26 of the United States Code~~ and such interest
8 shall be compounded daily.

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

10 (a) Class A assessments shall be authorized and called ~~made~~
11 for the purpose of meeting administrative costs and other
12 general expenses ~~and examinations conducted under the~~
13 ~~authority of the Director under subsection (5) of Section~~
14 531.12. Class A assessments may be authorized and called
15 whether or not related to a particular impaired or insolvent
16 insurer.

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

22 (3) (a) The amount of any Class A assessment shall be
23 determined by the board of directors ~~Board~~ and may be
24 authorized and called ~~made~~ on a pro-rata or non-pro rata basis.
25 With respect to any pro rata Class A assessment, the board may
26 provide that no member insurer shall be assessed less than \$100
27 as its share of such assessment, notwithstanding that such
28 assessment is pro rata. The board may provide that any pro rata
29 assessment shall be credited against future Class B
30 assessments. The total of all non-pro rata ~~Such~~ assessments
31 shall be in an amount determined by the board, but shall not
32 exceed \$500 ~~\$200~~ per company in any one calendar year. The
33 amount of any Class B assessment shall be allocated for
34 assessment purposes among the accounts and subaccounts
35 pursuant to an allocation formula which may be based on the
36 premiums or reserves of the impaired or insolvent insurer or

1 any other standard deemed by the board in its sole discretion
2 as being fair and reasonable under the circumstances.

3 (b) Class B assessments against member insurers for each
4 account and subaccount shall be in the proportion that the
5 premiums received on business in this State by each assessed
6 member insurer on policies or contracts covered by each account
7 or subaccount for the three most recent calendar years for
8 which information is available preceding the year in which the
9 insurer became impaired or insolvent, as the case may be, bears
10 to such premiums received on business in this State for such
11 calendar years by all assessed member insurers. To the extent
12 that any federal or state law prohibits or preempts the
13 Association from making assessments on the basis of any such
14 premiums, assessments under this subparagraph shall be made on
15 the basis of all such premiums not subject to any prohibitions
16 or preemption, and the assessment method set forth in this
17 subparagraph shall not be rendered invalid by any such
18 prohibitions or preemption.

19 (c) Assessments for funds to meet the requirements of the
20 Association with respect to an impaired or insolvent insurer
21 shall not be authorized or called ~~made~~ until the board in its
22 judgment determines that such authorization or call is
23 necessary to implement the purposes of this Article. When in
24 the judgment of the board an assessment will be necessary to
25 implement the purposes of this Article, the board may authorize
26 a future assessment, to become effective after a member insurer
27 has become an impaired or insolvent insurer, and such
28 assessment shall not be invalid because the member insurer was
29 not an impaired or insolvent insurer at the time the board
30 authorized such future assessment. Classification of
31 assessments under paragraph ~~subsection~~ (2) of this Section and
32 computations of assessments under this paragraph (3)
33 ~~subsection~~ shall be made with a reasonable degree of accuracy,
34 recognizing that exact determinations may not always be
35 possible. The Association shall notify each member insurer of
36 its anticipated pro rata share of an authorized assessment not

1 yet called within 180 days after the assessment is authorized.

2 (4) The Association may abate or defer, in whole or in
3 part, the assessment of a member insurer if, in the opinion of
4 the board, payment of the assessment would endanger the ability
5 of the member insurer to fulfill its contractual obligations.
6 In the event an assessment against a member insurer is abated
7 or deferred, in whole or in part, because of the limitations
8 set forth in this paragraph (4), the amount by which such
9 assessment is abated or deferred, may be assessed against the
10 other member insurers in a manner consistent with the basis for
11 assessments set forth in this Section 531.09. Once the
12 conditions that caused a deferral have been removed or
13 rectified, the member insurer shall pay all assessments that
14 were deferred pursuant to a repayment plan approved by the
15 Association ~~The total of all assessments upon a member insurer~~
16 ~~for the life and annuity account and for each subaccount~~
17 ~~thereunder may not in any one calendar year exceed 2% and for~~
18 ~~the health account may not in any one calendar year exceed 2%~~
19 ~~of such insurer's average premiums received in this State on~~
20 ~~the policies and contracts covered by the account or subaccount~~
21 ~~during the three calendar years preceding the year in which the~~
22 ~~insurer became an impaired or insolvent insurer. If a one~~
23 ~~percent assessment for any subaccount of the life and annuity~~
24 ~~account in any one year does not provide an amount sufficient~~
25 ~~to carry out the responsibilities of the Association, then~~
26 ~~pursuant to subsection 3(b), the board shall access all~~
27 ~~subaccounts of the life and annuity account for the necessary~~
28 ~~additional amount, subject to the maximum stated in this~~
29 ~~subsection.~~

30 (5) (a) (i) Subject to the provisions of paragraph
31 (5) (a) (ii) of this Section, the total of all assessments upon a
32 member insurer for the life and annuity account and for each
33 subaccount thereunder may not in any one calendar year exceed
34 2%, and for the health account may not in any one calendar year
35 exceed 2%, of such insurer's average premiums received in this
36 State on the policies and contracts covered by the account or

1 subaccount during the 3 calendar years preceding the year in
2 which the insurer became an impaired or insolvent insurer.

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

11 ~~In the event an assessment against a member insurer is abated,~~
12 ~~or deferred, in whole or in part, because of the limitations~~
13 ~~set forth in subsection (4) of this Section the amount by which~~
14 ~~such assessment is abated or deferred, may be assessed against~~
15 ~~the other member insurers in a manner consistent with the basis~~
16 ~~for assessments set forth in this Section.~~

17 (iii) If funds available from assessments, investment
18 income, recoveries of estate assets, or other recoveries are
19 insufficient to the maximum assessment, together with the other
20 assets of the Association in either account, does not provide
21 in any one year in either account an amount sufficient to carry
22 out the responsibilities of the Association, the necessary
23 additional funds may be assessed as soon thereafter as
24 permitted by this Article.

25 (iv) If the maximum assessment for any subaccount of the
26 life and annuity account in any one year does not provide an
27 amount sufficient to carry out the responsibilities of the
28 Association, then pursuant to subparagraph (3) (b) of this
29 Section 531.09, the board shall access all subaccounts of the
30 life and annuity account for the necessary additional amount,
31 subject to the maximum stated in this paragraph (5).

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

36 (7) ~~(6)~~ The board may, by an equitable method as

1 established in the plan of operation, refund to member
2 insurers, in proportion to the contribution of each insurer to
3 that account, the amount by which the assets of the account
4 exceed the amount the board finds is necessary to carry out
5 ~~during the coming year~~ the obligations of the Association with
6 regard to that account, including assets accruing from
7 assignment, subrogation, net realized gains, and income from
8 investments. A reasonable amount may be retained in any account
9 to provide funds for the continuing expenses of the Association
10 and for future claims ~~losses if refunds are impractical.~~

11 (8) ~~(7)~~ Unless otherwise determined by the board pursuant
12 to subdivision 531.09(3)(c), an assessment is deemed to occur
13 on the date upon which the board votes such assessment. The
14 board may defer calling the payment of the assessment or may
15 call for payment in one or more installments.

16 (9) ~~(8)~~ It is proper for any member insurer, in determining
17 its premium rates and policyowner dividends as to any kind of
18 insurance within the scope of this Article, to consider the
19 amount reasonably necessary to meet its assessment obligations
20 under this Article.

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

34 100% for the calendar year after the year of issuance;

35 80% for the second calendar year after the year of
36 issuance;

1 60% for the third calendar year after the year of issuance;
2 40% for the fourth calendar year after the year of
3 issuance;

4 20% for the fifth calendar year after the year of issuance.

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

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

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

11 Sec. 531.10. Plan of Operation.†

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

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

27 (2) All member insurers must comply with the plan of
28 operation.

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

31 (a) Establish procedures for handling the assets of the
32 Association;

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

35 (c) Establish regular places and times for meetings, ‡

1 including telephone conference calls, of the board of
2 directors;

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

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

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

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

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

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

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

32 (c) Within 30 days after a final decision has been made,
33 the Association shall notify the protesting member insurer in
34 writing of that final decision. ~~In the event the Association~~
35 ~~determines that the protesting member insurer is entitled to a~~
36 ~~refund, such refund shall be made within 30 days following the~~

1 ~~date upon which the Association makes its determination.~~

2 (d) The final decision of the Association with respect to a
3 protest may be appealed to the Director pursuant to Section
4 531.11(3).

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

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

19 (5) The plan of operation may provide that any or all
20 powers and duties of the Association, except those under
21 ~~paragraph (e) of subsection (10)~~ subdivision (16) (c) of Section
22 531.08 and Section 531.09 are delegated to a corporation,
23 association or other organization which performs or will
24 perform functions similar to those of this Association, or its
25 equivalent, in 2 or more states. Such a corporation,
26 association or organization shall be reimbursed for any
27 payments made on behalf of the Association and shall be paid
28 for its performance of any function of the Association. A
29 delegation under this subsection shall take effect only with
30 the approval of both the board of directors and the Director,
31 and may be made only to a corporation, association or
32 organization which extends protection not substantially less
33 favorable and effective than that provided by this Article Act.
34 (Source: P.A. 84-1035.)

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

3 (1) The Director must:

4 (a) Upon request of the board of directors, provide the
5 Association with a statement of the premiums in the
6 appropriate accounts for each member insurer.

7 (b) notify the board of directors of the existence of
8 an impaired or insolvent insurer not later than 3 days
9 after a determination of impairment or insolvency is made
10 or when the Director receives notice of impairment or
11 insolvency.

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

15 (d) In any liquidation or rehabilitation proceeding
16 involving a domestic insurer, be appointed as the
17 liquidator or rehabilitator. If a foreign or alien member
18 insurer is subject to a liquidation proceeding in its
19 domiciliary jurisdiction or state of entry, the Director
20 shall be appointed conservator.

21 (2) The Director may suspend or revoke, after notice and
22 hearing, the certificate of authority to transact insurance in
23 this State of any member insurer which fails to pay an
24 assessment when due or fails to comply with the plan of
25 operation. As an alternative the Director may levy a forfeiture
26 on any member insurer which fails to pay an assessment when
27 due. Such forfeiture may not exceed 5% of the unpaid assessment
28 per month, but no forfeiture may be less than \$100 per month.

29 (3) Any final decision or action of the board of directors
30 or the Association may be appealed to the Director by any
31 member insurer or any other person adversely affected by such
32 action if such appeal is taken within 30 days of the decision
33 or action being appealed. Any final action or order of the
34 Director is subject to judicial review in a court of competent
35 jurisdiction. An action or order of the Director may be final
36 and subject to judicial review even if the aggrieved party

1 seeking judicial review has not sought reconsideration or
2 rehearing by the Director.

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

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

7 (215 ILCS 5/531.12) (from Ch. 73, par. 1065.80-12)

8 Sec. 531.12. Prevention of Insolvencies. To aid in the
9 detection and prevention of insurer insolvencies or
10 impairments:

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

12 (a) To notify the commissioners of all other states,
13 territories of the United States, and the District of Columbia
14 when he or she takes any of the following actions against a
15 member insurer:

16 (i) revocation of license;

17 (ii) suspension of license;

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

24 ~~Such notice shall be transmitted to all commissioners~~
25 ~~within 30 days following the action taken or the date on which~~
26 ~~the action occurs.~~

27 (b) To report to the board of directors when he or she has
28 taken any of the actions set forth in subparagraph (a) of this
29 paragraph or has received a report from any other commissioner
30 indicating that any such action has been taken in another
31 state. Such report to the board of directors shall contain all
32 significant details of the action taken or the report received
33 from another commissioner.

34 (2) The Director may seek the advice and recommendations of
35 the board of directors concerning any matter affecting the

1 Director's ~~his~~ duties and responsibilities regarding the
2 financial condition of member companies and companies seeking
3 admission to transact insurance business in this State.

4 (3) The board of directors may, upon majority vote, make
5 reports and recommendations to the Director upon any matter
6 germane to the liquidation, rehabilitation or conservation of
7 any member insurer. Such reports and recommendations shall not
8 be considered public documents.

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

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

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

23 (215 ILCS 5/531.14) (from Ch. 73, par. 1065.80-14)

24 Sec. 531.14. Miscellaneous Provisions.† (1) Nothing in
25 this Article may be construed to reduce the liability for
26 unpaid assessments of the insured of an impaired or insolvent
27 insurer operating under a plan with assessment liability.

28 (2) No member insurer may voluntarily withdraw from this
29 State or liquidate its property, business, and affairs, and no
30 such voluntary withdrawal or voluntary liquidation shall be
31 effective, until such member insurer has paid all authorized
32 assessments, whether called or uncalled, for which it is liable
33 under this Article.

34 (3) †(2) Records must be kept of all meetings of the board
35 of directors negotiations and meetings in which the Association

1 ~~or its representatives are involved~~ to discuss the activities
2 of the Association in carrying out its powers and duties under
3 Section 531.08. The records of the Association with respect to
4 an impaired or insolvent insurer may be made public only (a)
5 upon the order of the Director or a court of competent
6 jurisdiction or upon a determination by the board, and (b)
7 during the pendency ~~Records of such negotiations or meetings~~
8 ~~may be made public only upon the termination~~ of a liquidation,
9 rehabilitation, or conservation proceeding involving the
10 impaired or insolvent insurer, upon a showing of compelling
11 circumstances ~~the termination of the impairment or insolvency~~
12 ~~of the insurer, or upon the order of a court of competent~~
13 ~~jurisdiction~~. Nothing in this paragraph (3) ~~(2)~~ limits the duty
14 of the Association to render a report of its activities under
15 Section 531.15.

16 (4) ~~(3)~~ For the purpose of carrying out its obligations
17 under this Article, the Association is deemed to be a creditor
18 of the impaired or insolvent insurer to the extent of assets
19 attributable to covered policies reduced by any amounts to
20 which the Association is entitled as subrogee (under paragraph
21 (15) ~~(8)~~ of Section 531.08). All assets of the impaired or
22 insolvent insurer attributable to covered policies must be used
23 to continue all covered policies and pay all contractual
24 obligations of the impaired insurer as required by this
25 Article. "Assets attributable to covered policies", as used in
26 this paragraph (4) ~~(3)~~, is that proportion of the assets which
27 the reserves that should have been established for such
28 policies bear to the reserves ~~reserve~~ that should have been
29 established for all policies of insurance written by the
30 impaired or insolvent insurer.

31 (5) As a creditor of the impaired or insolvent insurer as
32 established in paragraph (4) of this Section 531.14 and
33 paragraph (15) of Section 531.08 and consistent with paragraph
34 (2) of Section 205 of the Code and similar provisions under the
35 laws of other states, the Association and other similar
36 associations shall be entitled to receive disbursements of

1 assets out of the marshaled assets from time to time as the
2 assets become available. If the liquidator has not, within 120
3 days of a final determination of insolvency of an insurer by
4 the receivership court, made an application to the court for
5 the approval of a proposal to disburse assets out of marshaled
6 assets to guaranty associations having obligations because of
7 the insolvency, then the Association shall be entitled to make
8 application to the receivership court for approval of its own
9 proposal to disburse these assets.

10 (6) ~~(4)~~ (a) Prior to the termination of any liquidation,
11 rehabilitation, or conservation proceeding, the court may take
12 into consideration the contributions of the respective
13 parties, including the Association, the shareholders and the
14 policy and contract owners ~~policyowners~~ of the impaired or
15 insolvent insurer, and any other party with a bona fide
16 interest, in making an equitable distribution of the ownership
17 rights of such impaired or insolvent insurer. In such a
18 determination, consideration must be given to the welfare of
19 the policy owners and contract owners ~~policyholders~~ of the
20 continuing or successor insurer.

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

27 (7) ~~(5)~~ (a) If an order for liquidation or rehabilitation
28 of an insurer domiciled in this State has been entered, the
29 receiver appointed under such order has a right to recover on
30 behalf of the insurer, from any affiliate that controlled it,
31 the amount of distributions, other than stock dividends paid by
32 the insurer on its capital stock, made at any time during the 5
33 years preceding the petition for liquidation or rehabilitation
34 subject to the limitations of subparagraphs ~~paragraphs~~ (b) to
35 (d) of this paragraph (7).

36 (b) No such dividend is recoverable if the insurer shows

1 that when paid the distribution was lawful and reasonable, and
2 that the insurer did not know and could not reasonably have
3 known that the distribution might adversely affect the ability
4 of the insurer to fulfill its contractual obligations.

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

14 (d) The maximum amount recoverable under this paragraph (7)
15 ~~subsection (5)~~ of this Section is the amount needed in excess
16 of all other available assets of the insolvent insurer to pay
17 the contractual obligations of the insolvent insurer.

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

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

25 (215 ILCS 5/531.15) (from Ch. 73, par. 1065.80-15)

26 Sec. 531.15. Examination of the Association. Annual
27 Report. The Association shall be subject to examination and
28 regulation by the Director. The board of directors must submit
29 to the Director, not later than the first day of the fifth
30 month following the end of the Association's fiscal year, a
31 financial report for such fiscal year in a form acceptable to
32 the Director and a report of its activities during such fiscal
33 year. Upon the request of a member insurer, the Association
34 shall provide the member with a copy of the report.

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

1 (215 ILCS 5/531.17) (from Ch. 73, par. 1065.80-17)

2 Sec. 531.17. Immunity.† There is no liability on the part
3 of and no cause of action of any nature may arise against any
4 member insurer or its agents or employees, the Association or
5 its agents or employees, members of the board of directors or
6 their representatives or alternate representatives, or the
7 Director or the Director's ~~his~~ representatives,† for any
8 decision or action taken or omission made by them in the
9 performance of their powers and duties under this Article.
10 Without limitation, the Association shall be immune from any
11 claim that any omission by the Association or any action of the
12 Association, taken separately or in concert with the Director
13 in any of his or her capacities, has caused loss or any other
14 injury to any impaired insurer or any insolvent insurer.
15 Immunity shall extend to the Association's participation in any
16 organization of one or more other state associations of similar
17 purposes and to any such organization and its agents or
18 employees.

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

20 (215 ILCS 5/531.19) (from Ch. 73, par. 1065.80-19)

21 Sec. 531.19. Prohibited advertisement of action of the
22 ~~Insurance Guaranty~~ Association in sale of insurance.

23 (a) No person, including an insurer, agent or affiliate of
24 an insurer shall make, publish, disseminate, circulate, or
25 place before the public, or cause directly or indirectly, to be
26 made, published, disseminated, circulated or placed before the
27 public, in any newspaper, magazine or other publication, or in
28 the form of a notice, circular, pamphlet, letter or poster, or
29 over any radio station or television station, or in any other
30 way, any advertisement, announcement or statement, written or
31 oral, which uses the existence of the ~~Insurance Guaranty~~
32 Association ~~of this State~~ for the purpose of sales,
33 solicitation or inducement to purchase any form of insurance
34 covered by this Article; provided, however, that this Section

1 shall not apply to the ~~Illinois Life and Health Guaranty~~
2 Association or any other entity which does not sell or solicit
3 insurance.

4 (b) Within 180 days of August 16, 1993, the Association
5 shall prepare a summary document describing the general
6 purposes and current limitations of this Article and complying
7 with subsection (c). This document shall be submitted to the
8 Director for approval. Sixty days after receiving approval, no
9 insurer may deliver a policy or contract described in
10 subparagraph (2)(a) of ~~paragraph (2) of~~ Section 531.03 and not
11 excluded under subparagraph (2)(b) of that Section to a policy
12 or contract owner holder unless the document is delivered to
13 the policy or contract owner holder prior to or at the time of
14 delivery of the policy or contract. The document should also be
15 available upon request by a policy or contract owner
16 ~~policyholder~~. The distribution, delivery, or contents or
17 interpretation of this document shall not mean that either the
18 policy or the contract or the holder thereof would be covered
19 in the event of the impairment or insolvency of a member
20 insurer. The description document shall be revised by the
21 Association as amendments to this Article may require. Failure
22 to receive this document does not give the policy or
23 ~~policyholder,~~ contract owner holder, certificate holder, or
24 insured any greater rights than those stated in this Article.

25 (c) The document prepared under subsection (b) shall
26 contain a clear and conspicuous disclaimer on its face. The
27 Director shall promulgate a rule establishing the form and
28 content of the disclaimer. The disclaimer shall:

29 (1) State the name and address of the Illinois Life and
30 Health Insurance Guaranty Association and of the
31 Department.

32 (2) Prominently warn the policy or contract owner
33 ~~holder~~ that the Illinois Life and Health Insurance Guaranty
34 Association may not cover the policy or contract or, if
35 coverage is available, it will be subject to substantial
36 limitations and exclusions and conditioned on continued

1 residence in the State.

2 (3) State that the insurer and its agents are
3 prohibited by law from using the existence of the Illinois
4 Life and Health Insurance Guaranty Association for the
5 purpose of sales, solicitation, or inducement to purchase
6 any form of insurance.

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

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

16 (6) ~~(5)~~ Provide other information as directed by the
17 Director.

18 (d) (Blank).

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

20 Section 99. Effective date. This Act takes effect on
21 January 1, 2005.