

1 AN ACT in relation to 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 Section 531.08 as follows:

6 (215 ILCS 5/531.08) (from Ch. 73, par. 1065.80-8)

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

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

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

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

22 (c) Loan money to the impaired insurer;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (10) The Association or its designated representatives

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

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

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

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

27 (13) The Association may:

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

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

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

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

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

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

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

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

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

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

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