

1 HB403
2 136151-6
3 By Representative Johnson (K)
4 RFD: Insurance
5 First Read: 23-FEB-12

1
2 ENROLLED, An Act,

3 Relating to insurance; to provide the scope and
4 purpose of the Alabama Life and Disability Insurance Guaranty
5 Association; to provide that payees under a structured
6 settlement annuity would be covered based on the residency of
7 the payee and not the residency of the owner of the contract;
8 to avoid duplication of coverage by coordinating with
9 applicable guaranty associations in other states; to specify
10 the limits of coverage for life insurance policies to be
11 \$300,000 in death benefits and \$100,000 in cash surrender
12 values; to specify the limits of coverage for disability
13 insurance benefits to be \$300,000 for disability income and
14 long-term care insurance, \$500,000 for basic hospital,
15 medical, and surgical insurance or major medical insurance,
16 and \$100,000 for any coverage other than disability income,
17 long-term care, basic hospital, medical, and surgical
18 insurance or major medical insurance; to specify the limits of
19 coverage of annuity contracts to be \$250,000 of the present
20 value of annuity benefits; to provide a maximum Class A
21 assessment of \$300 per year per member insurer; to permit a
22 member insurer to appeal a decision of the association to the
23 commissioner within 60 days; to provide a stay of 180 days on
24 all proceedings in which an insolvent insurer is a party; and
25 thus conform Alabama law to be substantially similar to the

1 current model law developed by the National Association of
 2 Insurance Commissioners, and for those purposes to amend
 3 Sections 27-44-2, 27-44-3, 27-44-5, 27-44-8, 27-44-9,
 4 27-44-11, and 27-44-18, Code of Alabama 1975.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

6 Section 1. Sections 27-44-2, 27-44-3, 27-44-5,
 7 27-44-8, 27-44-9, 27-44-11, and 27-44-18, Code of Alabama
 8 1975, are amended to read as follows:

9 "§27-44-2.

10 "(a) The purpose of this chapter is to protect
 11 ~~policyowners, insureds, beneficiaries, annuitants, payees, and~~
 12 ~~the assignees of life insurance policies, disability insurance~~
 13 ~~policies, annuity contracts, and supplemental contracts,~~
 14 subject to certain limitations, the persons specified in
 15 Section 27-44-3(a) against failure in the performance of
 16 contractual obligations ~~due to,~~ under life and disability
 17 insurance policies and annuity contracts specified in Section
 18 27-44-3(b), because of the impairment or insolvency of the
 19 member insurer issuing such that issued the policies or
 20 contracts.

21 "(b) To provide this protection, ~~(1)~~ an association
 22 of insurers is created to ~~enable the guaranty of payment of~~
 23 pay benefits and of continuation of to continue coverages, ~~(2)~~
 24 as limited by this chapter, and members of the association are
 25 subject to assessment to provide funds to carry out the

1 purpose of this chapter, and (3) the association is authorized
2 to assist the commissioner, in the prescribed manner, in the
3 detection and prevention of insurer impairments or
4 insolvencies.

5 "§27-44-3.

6 "(a) This chapter shall apply to direct life
7 insurance policies, disability insurance policies, annuity
8 contracts, and contracts supplemental to life and disability
9 insurance policies, and annuity contracts issued by persons
10 licensed to transact insurance in this state at any time,
11 except as limited by this section.

12 "(b) This chapter shall not apply to:

13 "(1) That portion or part of a variable life
14 insurance or variable annuity contract not guaranteed by an
15 insurer.

16 "(2) That portion or part of any policy or contract
17 under which the risk is borne by the policyholder.

18 "(3) Any policy or contract or part thereof assumed
19 by the impaired or insolvent insurer under a contract of
20 reinsurance, other than reinsurance for which assumption
21 certificates have been issued.

22 "(4) Any policy or contract issued by non-profit
23 hospital and medical service plans, fraternal benefit
24 societies, cooperative hospital associations, or health
25 maintenance organizations.

1 "~~(5) A policy or contract providing coverage to~~
 2 ~~persons not specified in subsection (c).~~"

3 "~~(c)~~ (a) This chapter shall provide coverage for the
 4 policies and contracts specified in subsection ~~(a)~~ (b) as
 5 follows:

6 "(1) To persons who, regardless of where they reside
 7 (except for non-resident certificate holders under group
 8 policies or contracts), are the beneficiaries, assignees, or
 9 payees of the persons covered under subdivision (2).

10 "(2) To persons who are owners of ~~7~~ or certificate
 11 holders under ~~7~~ covered the policies or contracts, other than
 12 structured settlement annuities, and in each case who are
 13 residents, ~~or are not~~ either of the following:

14 "a. Residents

15 "b. Not residents, but only under all of the
 16 following conditions:

17 "a.1. The ~~insurers which~~ insurer that issued the
 18 policies or contracts ~~are~~ is domiciled in this state.

19 "b.2. The ~~insurers at the time of issuance of the~~
 20 ~~policies or contracts did not hold licenses or certificates of~~
 21 ~~authority in the state in which such persons reside~~ states in
 22 which the persons reside have associations similar to the
 23 association created by this chapter.

24 "c.3. The persons are not eligible for coverage by a
 25 guaranty an association of ~~another~~ in any other state

1 ~~providing protection substantially similar to that provided by~~
 2 ~~this chapter for residents of this state~~ due to the fact the
 3 insurer was not licensed in the state at the time specified in
 4 the state's guaranty association law.

5 ~~"(d) Any member insurer that has been declared~~
 6 ~~insolvent and is placed under a final order of liquidation,~~
 7 ~~rehabilitation, or conservation by a court of competent~~
 8 ~~jurisdiction prior to May 17, 1993 shall be subject to this~~
 9 ~~chapter as it existed prior to May 17, 1993.~~

10 "(3) For structured settlement annuities specified
 11 in subsection (b), subdivision (1) and (2) of this subsection
 12 shall not apply, and this chapter, except as provided in
 13 subdivisions (4) and (5) of this subsection, shall provide
 14 coverage to a person who is a payee under a structured
 15 settlement annuity (or beneficiary of a payee if the payee is
 16 deceased), if the payee is either of the following:

17 "a. A resident, regardless of where the contract
 18 owner resides.

19 "b. Not a resident, but only under both of the
 20 following conditions:

21 "1. The contract owner of the structured settlement
 22 annuity is either of the following:

23 "(i) A resident.

24 "(ii) Not a resident, but only under both of the
 25 following conditions:

1 "(I) The insurer that issued the structured
2 settlement annuity is domiciled in this state.

3 "(II) The state in which the contract owner resides
4 has an association similar to the association created by this
5 chapter.

6 "2. Neither the payee (or beneficiary) nor the
7 contract owner is eligible for coverage by the association of
8 the state in which the payee or contract owner resides.

9 "(4) The chapter shall not provide coverage to a
10 person who is a payee (or beneficiary) of a contract owner
11 resident of this state, if the payee (or beneficiary) is
12 afforded any coverage by the association of another state.

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

1 "(b) (1) This chapter shall provide coverage to the
2 persons specified in subsection (a) for direct, non-group
3 life, disability, or annuity policies or contracts, and for
4 certificates under direct group policies and contracts, and
5 for supplemental contracts to any of these, in each case
6 issued by member insurers, except as limited by this chapter.
7 Annuity contracts and certificates under group annuity
8 contracts include allocated funding agreements, structured
9 settlement annuities, and any immediate or deferred annuity
10 contracts.

11 "(2) This chapter shall not provide coverage for any
12 of the following:

13 "a. A portion of a policy or contract not guaranteed
14 by the insurer, or under which the risk is borne by the policy
15 or contract owner.

16 "b. A policy or contract of reinsurance, unless
17 assumption certificates have been issued pursuant to the
18 reinsurance policy or contract.

19 "c. A portion of a policy or contract to the extent
20 that the rate of interest on which it is based, or the
21 interest rate, crediting rate or similar factor determined by
22 use of an index or other external reference stated in the
23 policy or contract employed in calculating returns or changes
24 in value:

1 "1. Averaged over the period of four years prior to
2 the date on which the member insurer becomes an impaired or
3 insolvent insurer under this chapter, whichever is earlier,
4 exceeds the rate of interest determined by subtracting two
5 percentage points from Moody's Corporate Bond Yield Average
6 averaged for that same four-year period or for such lesser
7 period if the policy or contract was issued less than four
8 years before the member insurer becomes an impaired or
9 insolvent insurer under this chapter, whichever is earlier.

10 "2. On and after the date on which the member
11 insurer becomes an impaired or insolvent insurer under this
12 chapter, whichever is earlier, exceeds the rate of interest
13 determined by subtracting three percentage points from Moody's
14 Corporate Bond Yield Average as most recently available.

15 "d. A portion of a policy or contract issued to a
16 plan or program of an employer, association or other person to
17 provide life, disability, or annuity benefits to its
18 employees, members or others, to the extent that the plan or
19 program is self-funded or uninsured, including, but not
20 limited to, benefits payable by an employer, association, or
21 other person under any of the following:

22 "1. A multiple employer welfare arrangement as
23 defined in Section 3(40) of the Employee Retirement Income
24 Security Act of 1974 (29 U.S.C. Section 1002(40)).

25 "2. A minimum premium group insurance plan.

1 "3. A stop-loss group insurance plan.

2 "4. An administrative services only contract.

3 "e. A portion of a policy or contract to the extent
4 that it provides for any of the following:

5 "1. Dividends or experience rating credits.

6 "2. Voting rights.

7 "3. Payment of any fees or allowances to any person,
8 including the policy or contract owner, in connection with the
9 service to or administration of the policy or contract.

10 "f. A policy or contract issued in this state by a
11 member insurer at a time when it was not licensed or did not
12 have a certificate of authority to issue the policy or
13 contract in this state.

14 "g. A portion of a policy or contract to the extent
15 that the assessments required by Section 27-44-9 with respect
16 to the policy or contract are preempted by federal or state
17 law.

18 "h. An obligation that does not arise under the
19 express written terms of the policy or contract issued by the
20 insurer to the contract owner or policy owner, including
21 without limitation:

22 "1. Claims based on marketing materials.

23 "2. Claims based on side letters, riders, or other
24 documents that were issued by the insurer without meeting
25 applicable policy form filing or approval requirements.

1 "3. Misrepresentations of or regarding policy
2 benefits.

3 "4. Extra-contractual claims, including, without
4 limitation, claims relating to bad faith in the payment of
5 claims, punitive or exemplary damages or attorneys' fees and
6 costs.

7 "5. A claim for penalties or consequential or
8 incidental damages.

9 "i. A contractual agreement that establishes the
10 member insurer's obligations to provide a book value
11 accounting guaranty for defined contribution benefit plan
12 participants by reference to a portfolio of assets that is
13 owned by the benefit plan or its trustee, which in each case
14 is not an affiliate of the member insurer.

15 "j. An unallocated annuity contract.

16 "k. A portion of a policy or contract to the extent
17 it provides for interest or other changes in value to be
18 determined by the use of an index or other external reference
19 stated in the policy or contract, but which have not been
20 credited to the policy or contract, or as to which the policy
21 or contract owner's rights are subject to forfeiture, as of
22 the date the member insurer becomes an impaired or insolvent
23 insurer under this chapter, whichever is earlier. If a
24 policy's or contract's interest or changes in value are
25 credited less frequently than annually, then for purposes of

1 determining the values that have been credited and are not
2 subject to forfeiture under this subsection, the interest or
3 change in value determined by using the procedures defined in
4 the policy or contract will be credited as if the contractual
5 date of crediting interest or changing values was the date of
6 impairment or insolvency, whichever is earlier, and will not
7 be subject to forfeiture.

8 "1. A policy or contract providing any hospital,
9 medical, prescription drug, or other health care benefits
10 pursuant to Part C or Part D of Subchapter XVIII, Chapter 7 of
11 Title 42 of the United States Code (commonly known as Medicare
12 Part C and D) or any regulations issued pursuant thereto.

13 "(c) The benefits that the association may become
14 obligated to cover shall in no event exceed the lesser of:

15 "(1) The contractual obligations for which the
16 insurer is liable or would have been liable if it were not an
17 impaired or insolvent insurer.

18 "(2)a. With respect to one life, regardless of the
19 number of policies or contracts:

20 "1. Three hundred thousand dollars (\$300,000) in
21 life insurance death benefits, but not more than one hundred
22 thousand dollars (\$100,000) in net cash surrender and net cash
23 withdrawal values for life insurance.

24 "2. In disability insurance benefits:

1 "(i) One hundred thousand dollars (\$100,000) for
 2 coverages not defined as disability income insurance or basic
 3 hospital, medical, and surgical insurance or major medical
 4 insurance or long-term care insurance including any net cash
 5 surrender and net cash withdrawal values.

6 "(ii) Three hundred thousand dollars (\$300,000) for
 7 disability income insurance and three hundred thousand dollars
 8 (\$300,000) for long-term care insurance.

9 "(iii) Five hundred thousand dollars (\$500,000) for
 10 basic hospital, medical, and surgical insurance or major
 11 medical insurance.

12 "3. Two hundred fifty thousand dollars (\$250,000) in
 13 the present value of annuity benefits, including net cash
 14 surrender and net cash withdrawal values.

15 "b. With respect to each payee of a structured
 16 settlement annuity (or beneficiary or beneficiaries if the
 17 payee is deceased), two hundred fifty thousand dollars
 18 (\$250,000) in present value annuity benefits, in the
 19 aggregate, including net cash surrender and net cash
 20 withdrawal values, if any.

21 "c. However, in no event shall the association be
 22 obligated to cover more than either of the following:

23 "1. An aggregate of three hundred thousand dollars
 24 (\$300,000) in benefits with respect to any one life under
 25 paragraphs a. and b. except with respect to benefits for basic

1 hospital, medical, and surgical insurance and major medical
2 insurance under paragraph a.2., in which case the aggregate
3 liability of the association shall not exceed five hundred
4 thousand dollars (\$500,000) with respect to any one
5 individual.

6 "2. With respect to one owner of multiple non-group
7 policies of life insurance, whether the policy owner is an
8 individual, firm, corporation, or other person, and whether
9 the persons insured are officers, managers, employees, or
10 other persons, more than five million dollars (\$5,000,000) in
11 benefits, regardless of the number of policies and contracts
12 held by the owner.

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

23 "(d) In performing its obligations to provide
24 coverage under Section 27-44-8, the association shall not be
25 required to guarantee, assume, reinsure or perform, or cause

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

6 "§27-44-5.

7 "As used in this chapter, the following terms shall
8 have the following meanings, respectively, unless the context
9 clearly indicates otherwise:

10 "(1) ACCOUNT. Either of the three accounts created
11 under Section 27-44-6.

12 "(2) ASSOCIATION. The Alabama Life and Disability
13 Insurance Guaranty Association created under Section 27-44-6.

14 "(3) AUTHORIZED ASSESSMENT or the term AUTHORIZED
15 when used in the context of assessments. A resolution by the
16 board of directors has been passed whereby an assessment will
17 be called immediately or in the future from member insurers
18 for a specified amount. An assessment is authorized when the
19 resolution is passed.

20 "(4) BENEFIT PLAN. A specific employee, union or
21 association of natural persons benefit plan.

22 "(5) CALLED ASSESSMENT or the term CALLED when used
23 in the context of assessments. A notice that has been issued
24 by the association to member insurers requiring that an
25 authorized assessment be paid within the time frame set forth

1 within the notice. An authorized assessment becomes a called
2 assessment when notice is mailed by the association to member
3 insurers.

4 "~~(3)~~(6) COMMISSIONER. The Commissioner of Insurance
5 of this state.

6 "~~(4)~~(7) CONTRACTUAL OBLIGATION. ~~Any~~ An obligation
7 under ~~covered policies~~ a policy or contract, or certificate
8 under a group policy or contract, or portion thereof for which
9 coverage is provided under Section 27-44-3.

10 "~~(5)~~(8) COVERED POLICY. ~~Any~~ A policy or contract
11 ~~within the scope of this chapter~~ or portion of a policy or
12 contract for which coverage is provided under Section 27-44-3.

13 "~~(6)~~(9) IMPAIRED INSURER. A member insurer ~~deemed by~~
14 ~~the commissioner~~ which, after January 1, 1983 to be
15 ~~potentially unable to fulfill its contractual obligations and~~
16 the effective date of this act, is not an insolvent insurer
17 and is placed under an order of rehabilitation or conservation
18 by a court of competent jurisdiction.

19 "~~(7)~~(10) INSOLVENT INSURER. A member insurer which,
20 after January 1, 1983, ~~becomes insolvent and~~ the effective
21 date of this act, is placed under a final an order of
22 liquidation, ~~rehabilitation or conservation~~ by a court of
23 competent jurisdiction with a finding of insolvency.

24 "~~(8)~~(11) MEMBER INSURER. ~~Any~~ An insurer licensed or
25 that holds a certificate of authority to transact in this

1 state any kind of insurance ~~to~~ for which ~~this chapter applies~~
 2 coverage is provided under Section 27-44-3-, and includes an
 3 insurer whose license or certificate of authority in this
 4 state may have been suspended, revoked, not renewed, or
 5 voluntarily withdrawn, but does not include any of the
 6 following:

7 "a. A hospital or medical service organization,
 8 whether profit or non-profit.

9 "b. A health care services plan.

10 "c. A cooperative hospital association.

11 "d. A health maintenance organization.

12 "e. A fraternal benefit society.

13 "f. A mandatory state pooling plan.

14 "g. A mutual assessment company or other person that
 15 operates on an assessment basis.

16 "h. An insurance exchange.

17 "i. An organization that has a certificate or
 18 license limited to the issuance of charitable gift annuities.

19 "j. An entity substantially similar to any of the
 20 above.

21 "(12) MOODY'S CORPORATE BOND YIELD AVERAGE. The
 22 Monthly Average Corporates as published by Moody's Investors
 23 Service, Inc., or any successor thereto.

24 "(13) OWNER of a policy or contract and POLICY OWNER
 25 and CONTRACT OWNER. The person who is identified as the legal

1 owner under the terms of the policy or contract or who is
2 otherwise vested with legal title to the policy or contract
3 through a valid assignment completed in accordance with the
4 terms of the policy or contract and properly recorded as the
5 owner on the books of the insurer. For policies or contracts
6 which do not contractually provide for the designation of an
7 owner, the owner shall be deemed to be the person who has the
8 right to exercise the traditional incidents of ownership of a
9 policy or contract. The terms owner, contract owner, and
10 policy owner do not include person with a mere beneficial
11 interest in a policy or contract.

12 "(14) PERSON. An individual, corporation, limited
13 liability company, partnership, association, governmental body
14 or entity, or voluntary organization.

15 "(9)(15) PREMIUMS. Direct gross insurance premiums
16 and annuity considerations received on covered policies or
17 contracts, less ~~return~~ returned premiums and considerations
18 thereon and dividends paid or credited to policyholders on
19 such direct business. "Premiums" do not include premiums and
20 considerations on contracts between insurers and reinsurers.

21 "(10) PERSON. Any individual, corporation,
22 partnership, association or voluntary organization.

23 "(16) PRINCIPAL PLACE OF BUSINESS. When referring to
24 a person other than a natural person, the single state in
25 which the natural persons who establish policy for the

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

5 "a. The state in which the primary executive and
 6 administrative headquarters of the entity is located.

7 "b. The state in which the principal office of the
 8 chief executive officer of the entity is located.

9 "c. The state in which the board of directors (or
 10 similar governing person or persons) of the entity conducts
 11 the majority of its meetings.

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

16 "e. The state from which the management of the
 17 overall operations of the entity is directed.

18 "f. In the case of a benefit plan sponsored by
 19 affiliated companies comprising a consolidated corporation,
 20 the state in which the holding company or controlling
 21 affiliate has its principal place of business as determined
 22 using the above factors.

23 "(17) RECEIVERSHIP COURT. The court in the insolvent
 24 or impaired insurer's state having jurisdiction over the
 25 conservation, rehabilitation or liquidation of the insurer.

1 "~~(11)~~(18) RESIDENT. Any A person who resides in this
2 state at the time on the date of entry of a court order that
3 determines a member insurer is determined to be an impaired or
4 insolvent insurer and to whom a contractual obligations are
5 obligation is owed. A person may be a resident of only one
6 state, which in the case of a person other than a natural
7 person shall be its principal place of business. Citizens of
8 the United States that are either (i) residents of foreign
9 countries or (ii) residents of United States possessions,
10 territories, or protectorates that do not have an association
11 similar to the association created by this chapter, shall be
12 deemed residents of the state of domicile of the insurer that
13 issued the policies or contracts.

14 "(19) STATE. A state, the District of Columbia,
15 Puerto Rico, and a United States possession, territory, or
16 protectorate.

17 "(20) STRUCTURED SETTLEMENT ANNUITY. An annuity
18 purchased in order to fund periodic payments for a plaintiff
19 or other claimant in payment for or with respect to personal
20 injury suffered by the plaintiff or other claimant.

21 "(21) SUPPLEMENTAL CONTRACT. A written agreement
22 entered into for the distribution of proceeds under a life,
23 disability, or annuity policy or contract.

24 "(22) UNALLOCATED ANNUITY CONTRACT. An annuity
25 contract or group annuity certificate which is not issued to

1 and owned by an individual, except to the extent of any
 2 annuity benefits guaranteed to an individual by an insurer
 3 under the contract or certificate.

4 "§27-44-8.

5 ~~"In addition to the powers and duties enumerated in~~
 6 ~~other sections of this chapter:~~

7 ~~"(1)(a) If a domestic member insurer is an impaired~~
 8 ~~insurer, the association may, in its discretion and subject to~~
 9 ~~any conditions imposed by the association other than those~~
 10 ~~which that do not impair the contractual obligations of the~~
 11 ~~impaired insurer, and that are approved by the impaired~~
 12 ~~insurer and the commissioner:~~

13 ~~"a.(1) Guarantee or reinsure, or cause to be~~
 14 ~~guaranteed, assumed, or reinsured, any or all of the covered~~
 15 ~~policies of the impaired insurers.~~

16 ~~"b.(2) Provide such moneys, pledges, notes,~~
 17 ~~guarantees, or other means as are proper to effectuate~~
 18 ~~paragraph a. subdivision (1), and assure payment of the~~
 19 ~~contractual obligations of the impaired insurer pending action~~
 20 ~~under paragraph a. subdivision (1).~~

21 ~~"c. Loan money to the impaired insurer.~~

22 ~~"(2)(b) If a domestic member insurer is an insolvent~~
 23 ~~insurer, the association shall, in its discretion and subject~~
 24 ~~to the approval of the commissioner, do either of the~~
 25 ~~following:~~

1 "(1)a. Guarantee, assume, or reinsure, or cause to
2 be guaranteed, assumed, or reinsured, the covered policies of
3 the insolvent insurer~~;~~.

4 "b. Assure payment of the contractual obligations of
5 the insolvent insurer~~;~~ ~~and.~~

6 "c. Provide such moneys, pledges, notes, guarantees,
7 or other means as are reasonably necessary to discharge such
8 duties.

9 "(2) Provide benefits and coverages in accordance
10 with the following provisions:

11 "a. With respect to life and disability insurance
12 policies and annuities, assure payment of benefits for
13 premiums identical to the premiums and benefits (except for
14 terms of conversion and renewability) that would have been
15 payable under the policies or contracts of the insolvent
16 insurer, for claims incurred:

17 "1. With respect to group policies and contracts,
18 not later than the earlier of the next renewal date under
19 those policies or contracts or 45 days, but in no event less
20 than 30 days, after the date on which the association becomes
21 obligated with respect to the policies and contracts.

22 "2. With respect to non-group policies, contracts,
23 and annuities not later than the earlier of the next renewal
24 date (if any) under the policies or contracts or one year, but
25 in no event less than 30 days, from the date on which the

1 association becomes obligated with respect to the policies or
2 contracts.

3 "b. Make diligent efforts to provide all known
4 insureds or annuitants (for non-group policies and contracts),
5 or group policy owners with respect to group policies and
6 contracts, 30 days' notice of the termination (pursuant to
7 paragraph a.) of the benefits provided.

8 "c. With respect to non-group life and disability
9 insurance policies and annuities covered by the association,
10 make available to each known insured or annuitant, or owner if
11 other than the insured or annuitant, and with respect to an
12 individual formerly insured or formerly an annuitant under a
13 group policy who is not eligible for replacement group
14 coverage, make available substitute coverage on an individual
15 basis in accordance with the provisions of paragraph d., if
16 the insureds or annuitants had a right under law or the
17 terminated policy or annuity to convert coverage to individual
18 coverage or to continue an individual policy or annuity in
19 force until a specified age or for a specified time, during
20 which the insurer had no right unilaterally to make changes in
21 any provision of the policy or annuity or had a right only to
22 make changes in premium by class.

23 "d.1. In providing the substitute coverage required
24 under paragraph c., the association may offer either to

1 reissue the terminated coverage or to issue an alternative
2 policy.

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

7 "3. The association may reinsure any alternative or
8 reissued policy.

9 "e.1. Alternative policies adopted by the
10 association shall be subject to the approval of the
11 commissioner. The association may adopt alternative policies
12 of various types for future issuance without regard to any
13 particular impairment or insolvency.

14 "2. Alternative policies shall contain at least the
15 minimum statutory provisions required in this state and
16 provide benefits that shall not be unreasonable in relation to
17 the premium charged. The association shall set the premium in
18 accordance with a table of rates that it shall adopt. The
19 premium shall reflect the amount of insurance to be provided
20 and the age and class of risk of each insured, but shall not
21 reflect any changes in the health of the insured after the
22 original policy was last underwritten.

23 "3. Any alternative policy issued by the association
24 shall provide coverage of a type similar to that of the policy

1 issued by the impaired or insolvent insurer, as determined by
 2 the association.

3 "f. If the association elects to reissue terminated
 4 coverage at a premium rate different from that charged under
 5 the terminated policy, the premium shall be set by the
 6 association in accordance with the amount of insurance
 7 provided and the age and class of risk, subject to approval of
 8 the commissioner.

9 "g. The association's obligations with respect to
 10 coverage under any policy of the impaired or insolvent insurer
 11 or under any reissued or alternative policy shall cease on the
 12 date the coverage or policy is replaced by another similar
 13 policy by the policy owner, the insured, or the association.

14 "h. When proceeding under this subdivision (2) with
 15 respect to a policy or contract carrying guaranteed minimum
 16 interest rates, the association shall assure the payment or
 17 crediting of a rate of interest consistent with Section
 18 27-44-3(b) (2) c.

19 ~~"(3) If a foreign or alien insurer is an insolvent~~
 20 ~~insurer, the association shall, subject to the approval of the~~
 21 ~~commissioner:~~

22 ~~"a. Guarantee, assume, or reinsure or cause to be~~
 23 ~~guaranteed, assumed, or reinsured the covered policies of~~
 24 ~~residents;~~

1 ~~"b. Assure payment of the contractual obligations of~~
 2 ~~the insolvent insurer to residents; and~~

3 ~~"c. Provide such moneys, pledges, notes, guarantees,~~
 4 ~~or other means as are reasonably necessary to discharge such~~
 5 ~~duties.~~

6 ~~"Provided, however, that this subdivision shall not~~
 7 ~~apply where the commissioner has determined that the foreign~~
 8 ~~or alien insurer's domiciliary jurisdiction or state of entry~~
 9 ~~provides, by statute, protection substantially similar to that~~
 10 ~~provided by this chapter for residents of this state.~~

11 ~~"(c) Nonpayment of premiums within 31 days after the~~
 12 ~~date required under the terms of any guaranteed, assumed,~~
 13 ~~alternative, or reissued policy or contract or substitute~~
 14 ~~coverage shall terminate the association's obligations under~~
 15 ~~the policy or coverage under this chapter with respect to the~~
 16 ~~policy or coverage, except with respect to any claims incurred~~
 17 ~~or any net cash surrender value which may be due in accordance~~
 18 ~~with the provisions of this chapter.~~

19 ~~"(d) Premiums due for coverage after entry of an~~
 20 ~~order of liquidation of an insolvent insurer shall belong to~~
 21 ~~and be payable at the direction of the association. If the~~
 22 ~~liquidator of an insolvent insurer requests, the association~~
 23 ~~shall provide a report to the liquidator regarding such~~
 24 ~~premium collected by the association. The association shall be~~

1 liable for unearned premiums due to policy or contract owners
 2 arising after the entry of the order.

3 "(e) The protection provided by this chapter shall
 4 not apply where any guaranty protection is provided to
 5 residents of this state by the laws of the domiciliary state
 6 or jurisdiction of the impaired or insolvent insurer other
 7 than this state.

8 "(4)a.(f) In carrying out its duties under
 9 subdivisions (2) and (3), subsection (b), the association may,
 10 subject to approval by a court in this state:

11 "(1) Impose permanent policy liens, or contract
 12 liens may be imposed in connection with any guarantee,
 13 assumption, or reinsurance agreement, if the court:

14 "1. Finds association finds that the amounts which
 15 can be assessed under this chapter are less than the amounts
 16 needed to assure full and prompt performance of the ~~insolvent~~
 17 ~~insurer's contractual obligations~~ association's duties under
 18 this chapter, or that the economic or financial conditions as
 19 they affect member insurers are sufficiently adverse to render
 20 the imposition of such permanent policy or contract liens, to
 21 be in the public interest; ~~and.~~

22 "2. Approves the specific policy liens or contract
 23 liens to be used.

24 "b. Before being obligated under subdivisions (2)
 25 and (3) the association may request that there be imposed (2)

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

18 ~~"(5)(g)~~ If the association fails to act within a
19 reasonable period of time as provided in ~~subdivisions (2) and~~
20 ~~(3) of this section~~ subsection (b), the commissioner shall
21 have the powers and duties of the association under this
22 chapter with respect to the insolvent insurers insurer.

23 ~~"(6)(h)~~ The association may render assistance and
24 advice to the commissioner, upon ~~his~~ the commissioner's
25 request, concerning rehabilitation, payment of claims,

1 continuation of coverage, or the performance of other
2 contractual obligations of ~~any~~ an impaired or insolvent
3 insurer.

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

20 "~~(8)~~ a. ~~Any~~ (j) (1) A person receiving benefits under
21 this chapter shall be deemed to have assigned the rights
22 under, and any causes of action against any person for losses
23 arising under, resulting from or otherwise relating to, the
24 covered policy or contract to the association to the extent of
25 the benefits received because of this chapter, l whether the

1 benefits are payments of or on account of contractual
2 obligations ~~or,~~ continuation of coverage or provision of
3 substitute or alternative coverage. The association may
4 require an assignment to it of such rights by any payee,
5 policy or contract owner, beneficiary, insured or annuitant as
6 a condition precedent to the receipt of any rights or benefits
7 conferred by this chapter upon such person. ~~The association~~
8 ~~shall be subrogated to these rights against the assets of any~~
9 ~~insolvent insurer.~~

10 "b.(2) The subrogation rights of the association
11 under this ~~subdivision~~ subsection shall have the same priority
12 against the assets of the impaired or insolvent insurer as
13 that possessed by the person entitled to receive benefits
14 under this chapter.

15 "(3) In addition to subdivisions (1) and (2), the
16 association shall have all common law rights of subrogation
17 and any other equitable or legal remedy that would have been
18 available to the impaired or insolvent insurer or owner,
19 beneficiary, or payee of a policy or contract with respect to
20 the policy or contract.

21 "(4) If the preceding provisions of this subsection
22 are invalid or ineffective with respect to any person or claim
23 for any reason, the amount payable by the association with
24 respect to the related covered obligations shall be reduced by
25 the amount realized by any other person with respect to the

1 person or claim that is attributable to the policies (or
 2 portion thereof) covered by the association.

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

10 ~~"(9) The contractual obligations of the insolvent~~
 11 ~~insurer for which the association becomes or may become liable~~
 12 ~~shall be as great as but no greater than the contractual~~
 13 ~~obligations of the insolvent insurer would have been in the~~
 14 ~~absence of an insolvency unless such obligations are reduced~~
 15 ~~as permitted by subdivision (4) but the aggregate liability of~~
 16 ~~the association shall not exceed \$100,000.00 in cash values,~~
 17 ~~or \$300,000.00 for all benefits, including cash values, with~~
 18 ~~respect to any one life.~~

19 ~~"(10) The~~ (k) In addition to the rights and powers
 20 elsewhere in this chapter, the association may:

21 ~~"a.~~ (1) Enter into such contracts as are necessary or
 22 proper to carry out the provisions and purposes of this
 23 chapter.

24 ~~"b.~~ (2) Sue or be sued, including taking any legal
 25 actions necessary or proper for recovery of any unpaid

1 assessments under Section 27-44-9~~7~~ and to settle claims or
 2 potential claims against it.

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

7 "~~d.~~(4) Employ or retain such persons as are
 8 necessary to handle the financial transactions of the
 9 association, and to perform such other functions as become
 10 necessary or proper under this chapter~~7.~~.

11 "~~e. Negotiate and contract with any liquidator,~~
 12 ~~rehabilitator, conservator, or ancillary receiver to carry out~~
 13 ~~the powers and duties of the association;~~

14 "~~f.~~(5) Take such legal action as may be necessary to
 15 avoid payment of improper claims~~7.~~.

16 "~~g.~~(6) Exercise, for the ~~purpose~~ purposes of this
 17 chapter~~7~~, and to the extent approved by the commissioner, the
 18 powers of a domestic life or health insurer, but in no case
 19 may the association issue insurance policies or annuity
 20 contracts other than those issued to perform ~~the contractual~~
 21 ~~obligations of the impaired or insolvent insurer~~ its
 22 obligations under this chapter.

23 "(7) Organize itself as a corporation or in other
 24 legal forms permitted by the laws of the state.

1 "(8) Request information from a person seeking
2 coverage from the association in order to aid the association
3 in determining its obligations under this chapter with respect
4 to the person, and the person shall promptly comply with the
5 request.

6 "(9) Take other necessary or appropriate action to
7 discharge its duties and obligations under this chapter or to
8 exercise its powers under this chapter.

9 "(l) The association may join an organization of one
10 or more other state associations of similar purposes, to
11 further the purposes and administer the powers and duties of
12 the association.

13 "(m) (1)a. At any time within 180 days of the date of
14 the order of liquidation, the association may elect to succeed
15 to the rights and obligations of the ceding member insurer
16 that relate to policies or annuities covered, in whole or in
17 part, by the association, in each case under any one or more
18 reinsurance contracts entered into by the insolvent insurer
19 and its reinsurers and selected by the association. Any such
20 assumption shall be effective as of the date of the order of
21 liquidation. The election shall be effected by the association
22 or the National Organization of Life and Health Insurance
23 Guaranty Associations (NOLHGA) on its behalf sending written
24 notice, return receipt requested, to the affected reinsurers.

1 "b. To facilitate the earliest practicable decision
2 about whether to assume any of the contracts of reinsurance,
3 and in order to protect the financial position of the estate,
4 the receiver and each reinsurer of the ceding member insurer
5 shall make available upon request to the association or to
6 NOLHGA on its behalf as soon as possible after commencement of
7 formal delinquency proceedings (i) copies of in-force
8 contracts of reinsurance and all related files and records
9 relevant to the determination of whether such contracts should
10 be assumed, and (ii) notices of any defaults under the
11 reinsurance contracts or any known event or condition which
12 with the passage of time could become a default under the
13 reinsurance contracts.

14 "c. The following paragraphs (i) through (iv) shall
15 apply to reinsurance contracts so assumed by the association:

16 "(i) The association shall be responsible for all
17 unpaid premiums due under the reinsurance contracts for
18 periods both before and after the date of the order of
19 liquidation, and shall be responsible for the performance of
20 all other obligations to be performed after the date of the
21 order of liquidation, in each case which relate to policies or
22 annuities covered, in whole or in part, by the association.
23 The association may charge policies or annuities covered in
24 part by the association, through reasonable allocation
25 methods, the costs for reinsurance in excess of the

1 obligations of the association and shall provide notice and an
2 accounting of these charges to the liquidator.

3 "(ii) The association shall be entitled to any
4 amounts payable by the reinsurer under the reinsurance
5 contracts with respect to losses or events that occur in
6 periods after the date of the order of liquidation and that
7 relate to policies or annuities covered, in whole or in part,
8 by the association, provided that, upon receipt of any such
9 amounts, the association shall be obliged to pay to the
10 beneficiary under the policy or annuity on account of which
11 the amounts were paid a portion of the amount equal to the
12 lesser of:

13 "(I) The amount received by the association.

14 "(II) The excess of the amount received by the
15 association over the amount equal to the benefits paid by the
16 association on account of the policy or annuity less the
17 retention of the insurer applicable to the loss or event.

18 "(iii) Within 30 days following the association's
19 election (the "election date"), the association and each
20 reinsurer under contracts assumed by the association shall
21 calculate the net balance due to or from the association under
22 each reinsurance contract as of the election date with respect
23 to policies or annuities covered, in whole or in part, by the
24 association, which calculation shall give full credit to all
25 items paid by either the insurer or its receiver or the

1 reinsurer prior to the election date. The reinsurer shall pay
2 the receiver any amounts due for losses or events prior to the
3 date of the order of liquidation, subject to any set-off for
4 premiums unpaid for periods prior to the date, and the
5 association or reinsurer shall pay any remaining balance due
6 the other, in each case within five days of the completion of
7 the aforementioned calculation. Any disputes over the amounts
8 due to either the association or the reinsurer shall be
9 resolved by arbitration pursuant to the terms of the affected
10 reinsurance contracts or, if the contract contains no
11 arbitration clause, as otherwise provided by law. If the
12 receiver has received any amounts due the association pursuant
13 to paragraph (ii), the receiver shall remit the same to the
14 association as promptly as practicable.

15 "(iv) If the association or receiver, on the
16 association's behalf, within 60 days of the election date,
17 pays the unpaid premiums due for periods both before and after
18 the election date that relate to policies or annuities
19 covered, in whole or in part, by the association, the
20 reinsurer shall not be entitled to terminate the reinsurance
21 contracts for failure to pay premium insofar as the
22 reinsurance contracts relate to policies and annuities
23 covered, in whole or in part, by the association, and shall
24 not be entitled to set off any unpaid amounts due under other

1 contracts, or unpaid amounts due from parties other than the
2 association, against amounts due the association.

3 "(2) During the period from the date of the order of
4 liquidation until the election date (or, if the election date
5 does not occur, until 180 days after the date of the order of
6 liquidation),

7 "a.1. Neither the association nor the reinsurer
8 shall have any rights or obligations under reinsurance
9 contracts that the association has the right to assume under
10 subdivision (1), whether for periods prior to or after the
11 date of the order of liquidation; and

12 "2. The reinsurer, the receiver, and the association
13 shall, to the extent practicable, provide each other data and
14 records reasonably requested;

15 "b. Provided that once the association has elected
16 to assume a reinsurance contract, the parties' rights and
17 obligations shall be governed by subdivision (1).

18 "(3) If the association does not elect to assume a
19 reinsurance contract by the election date pursuant to
20 subdivision (1), the association shall have no rights or
21 obligations, in each case for periods both before and after
22 the date of the order of liquidation, with respect to the
23 reinsurance contract.

24 "(4) When policies or annuities, or covered
25 obligations with respect thereto, are transferred to an

1 assuming insurer, reinsurance on the policies or annuities may
2 also be transferred by the association, in the case of
3 contracts assumed under subdivision (1), subject to all of the
4 following:

5 "a. Unless the reinsurer and the assuming insurer
6 agree otherwise, the reinsurance contract transferred shall
7 not cover any new policies of insurance or annuities in
8 addition to those transferred.

9 "b. The obligations described in subdivision (1)
10 shall no longer apply with respect to matters arising after
11 the effective date of the transfer.

12 "c. Notice shall be given in writing, return receipt
13 requested, by the transferring party to the affected reinsurer
14 not less than 30 days prior to the effective date of the
15 transfer.

16 "(5) The provisions of subsection ~~(n)~~ (m) shall
17 supersede the provisions of any state law or of any affected
18 reinsurance contract that provides for or requires any payment
19 of reinsurance proceeds, on account of losses or events that
20 occur in periods after the date of the order of liquidation,
21 to the receiver of the insolvent insurer or any other person.
22 The receiver, shall remain entitled to any amount payable by
23 the reinsurer under the reinsurance contracts with respect to
24 losses or events that occur in periods prior to the date of

1 the order of liquidation, subject to applicable setoff
2 provisions.

3 "(6) Except as otherwise provided in this section,
4 nothing in subsection ~~(n)~~ (m) shall alter or modify the terms
5 and conditions of any reinsurance contract. Nothing in this
6 section shall abrogate or limit any rights of any reinsurer to
7 claim that it is entitled to rescind a reinsurance contract.
8 Nothing in this section shall give a policyholder or
9 beneficiary an independent cause of action against a reinsurer
10 that is not otherwise set forth in the reinsurance contract.
11 Nothing in this section shall limit or affect the
12 association's rights as a creditor of the estate against the
13 assets of the estate. Nothing in this section shall apply to
14 reinsurance agreements covering property or casualty risks.

15 "(n) The board of directors of the association shall
16 have discretion and may exercise reasonable business judgment
17 to determine the means by which the association is to provide
18 the benefits of this chapter in an economical and efficient
19 manner.

20 "(o) Where the association has arranged or offered
21 to provide the benefits of this chapter to a covered person
22 under a plan or arrangement that fulfills the association's
23 obligations under this chapter, the person shall not be
24 entitled to benefits from the association in addition to or
25 other than those provided under the plan or arrangement.

1 "(p) Venue in a suit against the association arising
2 under this chapter shall be in Jefferson County, Alabama. The
3 association shall not be required to give an appeal bond in an
4 appeal that relates to a cause of action arising under this
5 chapter.

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

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

22 "(2) There is no requirement for evidence of
23 insurability, waiting period, or other exclusion that would
24 not have applied under the replaced policy or contract.

1 "(3) The alternative policy or contract is
2 substantially similar to the replaced policy or contract in
3 all other material terms.

4 "§27-44-9.

5 "(a) For the purpose of providing the funds
6 necessary to carry out the powers and duties of the
7 association, the board of directors shall assess the member
8 insurers, separately for each account, at such time and for
9 such amounts as the board finds necessary. Assessments shall
10 be due not less than 30 days after prior written notice to the
11 member insurers and shall accrue interest at six percent per
12 annum on and after the due date.

13 "(b) There shall be ~~three~~ two classes of
14 assessments, as follows:

15 "(1) Class A assessments shall be ~~made~~ authorized
16 and called for the purpose of meeting administrative and legal
17 costs and other ~~general~~ expenses ~~and examinations conducted~~
18 ~~under the authority of Section 27-44-12(5)~~. Class A assessment
19 may be authorized and called whether or not related to a
20 particular impaired or insolvent insurer.

21 "(2) Class B assessments shall be ~~made~~ authorized
22 and called to the extent necessary to carry out the powers and
23 duties of the association under Section 27-44-8 with regard to
24 an impaired or insolvent ~~domestic~~ insurer.

1 "~~(3) Class C assessments shall be made to the extent~~
 2 ~~necessary to carry out the powers and duties of the~~
 3 ~~association under Section 27-44-8 with regard to an insolvent~~
 4 ~~foreign or alien insurer.~~

5 "(c) (1) The amount of ~~any a~~ Class A assessment shall
 6 be determined by the board and may be ~~made~~ authorized and
 7 called on a non-pro rata basis. ~~Such assessment~~ The total of
 8 all Class A assessments shall not exceed ~~\$50.00~~ three hundred
 9 dollars (\$300) per ~~company member insurer~~ in any one calendar
 10 year. The amount of ~~any a~~ Class B ~~or C~~ assessment shall be
 11 allocated for assessment purposes among the accounts ~~in the~~
 12 ~~proportion that the~~ pursuant to an allocation formula which
 13 may be based on the premiums received by or reserves of the
 14 ~~impaired or insolvent insurer on the policies covered by each~~
 15 ~~account for the last calendar year preceding the assessment in~~
 16 ~~which the impaired or insolvent insurer received premiums~~
 17 ~~bears to the premiums received by such insurer for such~~
 18 ~~calendar year on all covered policies~~ or any other standard
 19 deemed by the board in its sole discretion as being fair and
 20 reasonable under the circumstances.

21 "(2) Class ~~C~~ B assessments against member insurers
 22 for each account shall be in the proportion that the premiums
 23 received on business in this state by each assessed member
 24 insurer on policies or contracts covered by each account for
 25 the three most recent calendar ~~year~~ years for which

1 information is available preceding the year in which the
2 insurer became insolvent (or, in the case of an assessment
3 with respect to an impaired insurer, the three most recent
4 calendar years for which information is available preceding
5 the year in which the insurer became impaired) bears to such
6 premiums received on business in this state for ~~the~~ those
7 ~~calendar year preceding the assessment years~~ by all assessed
8 member insurers.

9 ~~"(3) Class B assessments for each account shall be~~
10 ~~made separately for each state in which the impaired or~~
11 ~~insolvent domestic insurer was authorized to transact~~
12 ~~insurance at any time, in the proportion that the premiums~~
13 ~~received on business in such state by the impaired or~~
14 ~~insolvent insurer on policies covered by such account for the~~
15 ~~last calendar year preceding the assessment in which the~~
16 ~~impaired or insolvent insurer received premiums bears to such~~
17 ~~premiums received in all such states for such calendar year by~~
18 ~~the impaired or insolvent insurer. The assessments against~~
19 ~~member insurers shall be in the proportion that the premiums~~
20 ~~received on business in each such state by each assessed~~
21 ~~member insurer on policies covered by each account for the~~
22 ~~calendar year preceding the assessment bears to such premiums~~
23 ~~received on business in each state for the calendar year~~
24 ~~preceding assessment by all assessed member insurers.~~

1 "~~(4)~~(3) Assessments for funds to meet the
2 requirements of the association with respect to an impaired or
3 insolvent insurer shall not be ~~made~~ authorized or called until
4 necessary to implement the purposes of this chapter.

5 Classification of assessments under subsection (b) and
6 computation of assessments under this subsection shall be made
7 with a reasonable degree of accuracy, recognizing that exact
8 determinations may not always be possible. The association
9 shall notify each member insurer of its anticipated pro rata
10 share of an authorized assessment not yet called within 180
11 days after the assessment is authorized.

12 "(d) The association may abate or defer, in whole or
13 in part, the assessment of a member insurer if, in the opinion
14 of the board, payment of the assessment would endanger the
15 ability of the member insurer to fulfill its contractual
16 obligations. In the event an assessment against a member
17 insurer is abated, or deferred in whole or in part, the amount
18 by which ~~such~~ the assessment is abated or deferred may be
19 assessed against the other member insurers in a manner
20 consistent with the basis for assessments set forth in this
21 section. Once the conditions that caused a deferral have been
22 removed or rectified, the member insurer shall pay all
23 assessments that were deferred pursuant to a repayment plan
24 approved by the association.

1 "~~The~~(1)a. Subject to the provisions of paragraph
2 b., the total of all assessments upon authorized by the
3 association with respect to a member insurer for each account
4 shall not in any one calendar year exceed one percent of such
5 that member insurer's average annual premiums received in this
6 state on the policies and contracts covered by the account
7 during the three calendar year years preceding the assessment
8 on the policies covered by the account year in which the
9 insurer became an impaired or insolvent insurer.

10 "b. If two or more assessments are authorized in one
11 calendar year with respect to insurers that become impaired or
12 insolvent in different calendar years, the average annual
13 premiums for purposes of the aggregate assessment percentage
14 limitation referenced in paragraph a. shall be equal and
15 limited to the higher of the three-year average annual
16 premiums for the applicable account as calculated pursuant to
17 this section.

18 "c. If the maximum assessment, together with the
19 other assets of the association in either an account, does not
20 provide in any one year in either the account an amount
21 sufficient to carry out the responsibilities of the
22 association, the necessary additional funds shall be assessed
23 as soon thereafter as permitted by this chapter.

24 "(2) The board may provide in the plan of operation
25 a method of allocating funds among claims, whether relating to

1 one or more impaired or insolvent insurers, when the maximum
2 assessment will be insufficient to cover anticipated claims.

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

15 "(g) It shall be proper for any member insurer, in
16 determining its premium rates and policyowner dividends as to
17 any kind of insurance within the scope of this chapter, to
18 consider the amount reasonably necessary to meet its
19 assessment obligations under this chapter.

20 "~~(g)~~ (h) The association shall issue to each insurer
21 paying an assessment under this chapter, other than a Class A
22 assessment, a certificate of contribution, in a form
23 prescribed by the commissioner, for the amount of the
24 assessment so paid. All outstanding certificates shall be of
25 equal dignity and priority without reference to amounts or

1 dates of issue. A certificate of contribution may be shown by
2 the insurer in its financial statement as an asset in such
3 form and for such amount, if any, and period of time as the
4 commissioner may approve.

5 "(i) (1) A member insurer that wishes to protest all
6 or part of an assessment shall pay when due the full amount of
7 the assessment as set forth in the notice provided by the
8 association. The payment shall be available to meet
9 association obligations during the pendency of the protest or
10 any subsequent appeal. Payment shall be accompanied by a
11 statement in writing that the payment is made under protest
12 and setting forth a brief statement of the grounds for the
13 protest.

14 "(2) Within 60 days following the payment of an
15 assessment under protest by a member insurer, the association
16 shall notify the member insurer in writing of its
17 determination with respect to the protest unless the
18 association notifies the member insurer that additional time
19 is required to resolve the issues raised by the protest.

20 "(3) Within 30 days after a final decision has been
21 made, the association shall notify the protesting member
22 insurer in writing of that final decision. Within 60 days of
23 receipt of notice of the final decision, the protesting member
24 insurer may appeal that final action to the commissioner.

1 "(4) In the alternative to rendering a final
2 decision with respect to a protest based on a question
3 regarding the assessment base, the association may refer
4 protests to the commissioner for a final decision, with or
5 without a recommendation from the association.

6 "(5) If the protest or appeal on the assessment is
7 upheld, the amount paid in error or excess shall be returned
8 to the member company. Interest on a refund due a protesting
9 member shall be paid at the rate actually earned by the
10 association.

11 "(j) The association may request information of
12 member insurers in order to aid in the exercise of its power
13 under this section and member insurers shall promptly comply
14 with a request.

15 "§27-44-11.

16 "In addition to the duties and powers enumerated
17 elsewhere in this chapter:

18 "(1) The commissioner shall:

19 "a. Upon request of the board of directors, provide
20 the association with a statement of the premiums in the
21 appropriate states for each member insurer.

22 "b. When an impairment is declared and the amount of
23 the impairment is determined, serve a demand upon the impaired
24 insurer to make good the impairment within a reasonable time.
25 Notice to the impaired insurer shall constitute notice to its

1 shareholders, if any. The failure of the insurer to promptly
2 comply with such demand shall not excuse the association from
3 the performance of its powers and duties under this chapter.

4 "c. In any liquidation or rehabilitation proceeding
5 involving a domestic insurer, petition the court of competent
6 jurisdiction to have the chief of the receivership division
7 appointed as the liquidator or rehabilitator. If a foreign or
8 alien member insurer is subject to a liquidation proceeding in
9 its domiciliary jurisdiction or state of entry, the chief of
10 the receivership division shall be appointed conservator.

11 "(2) The commissioner may suspend or revoke, after
12 notice and hearing, the certificate of authority to transact
13 insurance in this state of any member insurer which fails to
14 pay an assessment when due or fails to comply with the plan of
15 operation. As an alternative the commissioner may levy a
16 forfeiture on any member insurer which fails to pay an
17 assessment when due. Such forfeiture shall not exceed five
18 percent of the unpaid assessment per month but no forfeiture
19 shall be less than \$100.00 per month.

20 "(3) Any action of the board of directors or the
21 association may be appealed to the commissioner by any member
22 insurer if such appeal is taken within ~~30~~ 60 days of the
23 action being appealed. Any final action or order of the
24 commissioner shall be subject to judicial review in a court of
25 competent jurisdiction.

1 "(4) The liquidator, rehabilitator, or conservator
2 of any impaired insurer may notify all interested persons of
3 the effect of this chapter.

4 "§27-44-18.

5 "All proceedings in which the insolvent insurer is a
6 party in any court in this state shall be stayed ~~60~~ 180 days
7 from the date an order of liquidation, rehabilitation, or
8 conservation is final to permit proper legal action by the
9 association on any matters germane to its powers or duties. As
10 to judgment under any decision, order, verdict, or finding
11 based on default the association may apply to have such
12 judgment set aside by the same court that made such judgment
13 and shall be permitted to defend against such suit on the
14 merits."

15 Section 2. This act shall become effective on the
16 first day of January next following its passage and approval
17 by the Governor, or its otherwise becoming law.

