

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

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8 SYNOPSIS: Under existing law, the Alabama Life and
9 Disability Insurance Guaranty Association (ALDIGA)
10 protects policyholders, insureds, beneficiaries,
11 annuitants, payees, and the assignees of life
12 insurance policies, disability insurance policies,
13 annuity contracts, and supplemental contracts,
14 subject to certain exceptions, against failure in
15 the performance of contractual obligations due to
16 the impairment or insolvency of the insurer that
17 issued the policies or contracts.

18 This bill would conform Alabama law to be
19 substantially similar to the current model law
20 developed by the National Association of Insurance
21 Commissioners by specifying the persons covered by
22 the act and the policies and contracts covered. In
23 particular, this bill would specify that payees
24 under a structured settlement annuity would be
25 covered based on the residency of the payee and not
26 of the owner of the annuity. This bill would also
27 seek to avoid duplication of coverage by

1 coordinating with applicable guaranty association
2 coverage in other states.

3 Under existing law, the limits of coverage
4 provided by ALDIGA is \$100,000 for cash benefits
5 and \$300,000 for all benefits.

6 This bill would specify that for life
7 insurance policies, the coverage would be limited
8 to \$300,000 in death benefits and \$100,000 in cash
9 surrender values; for disability insurance
10 benefits, the coverage would be limited to \$300,000
11 for disability income and long-term care insurance,
12 \$500,000 for basic hospital, medical, and surgical
13 insurance or major medical insurance, and \$100,000
14 for any coverage other than disability income,
15 long-term care, basic hospital, medical, and
16 surgical insurance or major medical insurance; and
17 \$250,000 in the present value of annuity benefits.

18 Under existing law, the association has
19 authority to make Class A assessments to cover the
20 general expenses of operating the association, not
21 to exceed \$50 per year per member insurer.

22 This bill would increase Class A assessments
23 to a maximum of \$300 per year per member insurer.

24 Under existing law, a member insurer can
25 appeal a decision of the association to the
26 commissioner within 30 days.

1 This bill would increase the time period to
2 appeal a decision of the association to the
3 commissioner to 60 days.

4 Under existing law, all proceedings in which
5 an insolvent insurer is a party are stayed for 60
6 days from the date of an order of liquidation,
7 rehabilitation, or conservation to permit proper
8 legal action by the association.

9 This bill would increase the number of days
10 of the stay to 180.

11
12 A BILL
13 TO BE ENTITLED
14 AN ACT
15

16 Relating to insurance; to provide the scope and
17 purpose of the Alabama Life and Disability Insurance Guaranty
18 Association; to provide that payees under a structured
19 settlement annuity would be covered based on the residency of
20 the payee and not the residency of the owner of the contract;
21 to avoid duplication of coverage by coordinating with
22 applicable guaranty associations in other states; to specify
23 the limits of coverage for life insurance policies to be
24 \$300,000 in death benefits and \$100,000 in cash surrender
25 values; to specify the limits of coverage for disability
26 insurance benefits to be \$300,000 for disability income and
27 long-term care insurance, \$500,000 for basic hospital,

1 medical, and surgical insurance or major medical insurance,
2 and \$100,000 for any coverage other than disability income,
3 long-term care, basic hospital, medical, and surgical
4 insurance or major medical insurance; to specify the limits of
5 coverage of annuity contracts to be \$250,000 of the present
6 value of annuity benefits; to provide a maximum Class A
7 assessment of \$300 per year per member insurer; to permit a
8 member insurer to appeal a decision of the association to the
9 commissioner within 60 days; to provide a stay of 180 days on
10 all proceedings in which an insolvent insurer is a party; and
11 thus conform Alabama law to be substantially similar to the
12 current model law developed by the National Association of
13 Insurance Commissioners, and for those purposes to amend
14 Sections 27-44-2, 27-44-3, 27-44-5, 27-44-8, 27-44-9,
15 27-44-11, and 27-44-18, Code of Alabama 1975.

16 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

17 Section 1. Sections 27-44-2, 27-44-3, 27-44-5,
18 27-44-8, 27-44-9, 27-44-11, and 27-44-18, Code of Alabama
19 1975, are amended to read as follows:

20 "§27-44-2.

21 "(a) The purpose of this chapter is to protect
22 ~~policyowners, insureds, beneficiaries, annuitants, payees, and~~
23 ~~the assignees of life insurance policies, disability insurance~~
24 ~~policies, annuity contracts, and supplemental contracts,~~
25 subject to certain limitations, the persons specified in
26 Section 27-44-3(a) against failure in the performance of
27 contractual obligations ~~due to,~~ under life and disability

1 insurance policies and annuity contracts specified in Section
2 27-44-3(b), because of the impairment or insolvency of the
3 member insurer issuing such that issued the policies or
4 contracts.

5 "(b) To provide this protection, ~~(1) an association~~
6 of insurers is created to ~~enable the guaranty of payment of~~
7 pay benefits and ~~of continuation of~~ to continue coverages, ~~(2)~~
8 as limited by this chapter, and members of the association are
9 subject to assessment to provide funds to carry out the
10 purpose of this chapter, ~~and (3) the association is authorized~~
11 ~~to assist the commissioner, in the prescribed manner, in the~~
12 ~~detection and prevention of insurer impairments or~~
13 ~~insolvencies.~~

14 "§27-44-3.

15 "~~(a) This chapter shall apply to direct life~~
16 ~~insurance policies, disability insurance policies, annuity~~
17 ~~contracts, and contracts supplemental to life and disability~~
18 ~~insurance policies, and annuity contracts issued by persons~~
19 ~~licensed to transact insurance in this state at any time,~~
20 ~~except as limited by this section.~~

21 "~~(b) This chapter shall not apply to:~~

22 "~~(1) That portion or part of a variable life~~
23 ~~insurance or variable annuity contract not guaranteed by an~~
24 ~~insurer.~~

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

1 ~~"(3) Any policy or contract or part thereof assumed~~
2 ~~by the impaired or insolvent insurer under a contract of~~
3 ~~reinsurance, other than reinsurance for which assumption~~
4 ~~certificates have been issued.~~

5 ~~"(4) Any policy or contract issued by non-profit~~
6 ~~hospital and medical service plans, fraternal benefit~~
7 ~~societies, cooperative hospital associations, or health~~
8 ~~maintenance organizations.~~

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

11 ~~"(c) (a)~~ This chapter shall provide coverage for the
12 policies and contracts specified in subsection ~~(a)~~ (b) as
13 follows:

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

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

22 "a. Residents

23 "b. Not residents, but only under all of the
24 following conditions:

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

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

6 ~~"c.3. The persons are not eligible for coverage by a~~
7 ~~guaranty~~ an association of another in any other state
8 ~~providing protection substantially similar to that provided by~~
9 ~~this chapter for residents of this state~~ due to the fact the
10 insurer was not licensed in the state at the time specified in
11 the state's guaranty association law.

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

17 "(3) For structured settlement annuities specified
18 in subsection (b), subdivision (1) and (2) of this subsection
19 shall not apply, and this chapter, except as provided in
20 subdivisions (4) and (5) of this subsection, shall provide
21 coverage to a person who is a payee under a structured
22 settlement annuity (or beneficiary of a payee if the payee is
23 deceased), if the payee is either of the following:

24 "a. A resident, regardless of where the contract
25 owner resides.

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

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

3 "(i) A resident.

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

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

8 "(II) The state in which the contract owner resides
9 has an association similar to the association created by this
10 chapter.

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

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

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

1 be construed in conjunction with other state laws to result in
2 coverage by only one association.

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

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

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

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

21 "c. A portion of a policy or contract to the extent
22 that the rate of interest on which it is based, or the
23 interest rate, crediting rate or similar factor determined by
24 use of an index or other external reference stated in the
25 policy or contract employed in calculating returns or changes
26 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.

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

27 "4. An administrative services only contract.

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

3 "1. Dividends or experience rating credits.

4 "2. Voting rights.

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

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

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

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

20 "1. Claims based on marketing materials.

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

24 "3. Misrepresentations of or regarding policy
25 benefits.

26 "4. Extra-contractual claims, including, without
27 limitation, claims relating to bad faith in the payment of

1 claims, punitive or exemplary damages or attorneys' fees and
2 costs.

3 "5. A claim for penalties or consequential or
4 incidental damages.

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

11 "j. An unallocated annuity contract.

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

1 impairment or insolvency, whichever is earlier, and will not
2 be subject to forfeiture.

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

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

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

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

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

19 "2. In disability insurance benefits:

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

25 "(ii) Three hundred thousand dollars (\$300,000) for
26 disability income insurance and three hundred thousand dollars
27 (\$300,000) for long-term care insurance.

1 "(iii) Five hundred thousand dollars (\$500,000) for
2 basic hospital, medical, and surgical insurance or major
3 medical insurance.

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

7 "b. With respect to each payee of a structured
8 settlement annuity (or beneficiary or beneficiaries if the
9 payee is deceased), two hundred fifty thousand dollars
10 (\$250,000) in present value annuity benefits, in the
11 aggregate, including net cash surrender and net cash
12 withdrawal values, if any.

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

15 "1. An aggregate of three hundred thousand dollars
16 (\$300,000) in benefits with respect to any one life under
17 paragraphs a. and b. except with respect to benefits for basic
18 hospital, medical, and surgical insurance and major medical
19 insurance under paragraph a.2., in which case the aggregate
20 liability of the association shall not exceed five hundred
21 thousand dollars (\$500,000) with respect to any one
22 individual.

23 "2. With respect to one owner of multiple non-group
24 policies of life insurance, whether the policy owner is an
25 individual, firm, corporation, or other person, and whether
26 the persons insured are officers, managers, employees, or
27 other persons, more than five million dollars (\$5,000,000) in

1 benefits, regardless of the number of policies and contracts
2 held by the owner.

3 "d. The limitations set forth in this subsection are
4 limitations on the benefits for which the association is
5 obligated before taking into account either its subrogation
6 and assignment rights or the extent to which those benefits
7 could be provided out of the assets of the impaired or
8 insolvent insurer attributable to covered policies. The costs
9 of the association's obligations under this chapter may be met
10 by the use of assets attributable to covered policies or
11 reimbursed to the association pursuant to its subrogation and
12 assignment rights.

13 "(d) In performing its obligations to provide
14 coverage under Section 27-44-8, the association shall not be
15 required to guarantee, assume, reinsure or perform, or cause
16 to be guaranteed, assumed, reinsured or performed, the
17 contractual obligations of the insolvent or impaired insurer
18 under a covered policy or contract that do not materially
19 affect the economic values or economic benefits of the covered
20 policy or contract.

21 "§27-44-5.

22 "As used in this chapter, the following terms shall
23 have the following meanings, respectively, unless the context
24 clearly indicates otherwise:

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

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

3 "(3) AUTHORIZED ASSESSMENT or the term AUTHORIZED
4 when used in the context of assessments. A resolution by the
5 board of directors has been passed whereby an assessment will
6 be called immediately or in the future from member insurers
7 for a specified amount. An assessment is authorized when the
8 resolution is passed.

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

11 "(5) CALLED ASSESSMENT or the term CALLED when used
12 in the context of assessments. A notice that has been issued
13 by the association to member insurers requiring that an
14 authorized assessment be paid within the time frame set forth
15 within the notice. An authorized assessment becomes a called
16 assessment when notice is mailed by the association to member
17 insurers.

18 "~~(3)~~ (6) COMMISSIONER. The Commissioner of Insurance
19 of this state.

20 "~~(4)~~ (7) CONTRACTUAL OBLIGATION. Any An obligation
21 under covered policies a policy or contract, or certificate
22 under a group policy or contract, or portion thereof for which
23 coverage is provided under Section 27-44-3.

24 "~~(5)~~ (8) COVERED POLICY. Any A policy or contract
25 within the scope of this chapter or portion of a policy or
26 contract for which coverage is provided under Section 27-44-3.

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

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

12 "~~(8)~~(11) MEMBER INSURER. ~~Any~~ An insurer licensed or
13 that holds a certificate of authority to transact in this
14 state any kind of insurance to for which this chapter applies
15 coverage is provided under Section 27-44-3-, and includes an
16 insurer whose license or certificate of authority in this
17 state may have been suspended, revoked, not renewed, or
18 voluntarily withdrawn, but does not include any of the
19 following:

20 "a. A hospital or medical service organization,
21 whether profit or non-profit.

22 "b. A health care services plan.

23 "c. A cooperative hospital association.

24 "d. A health maintenance organization.

25 "e. A fraternal benefit society.

26 "f. A mandatory state pooling plan.

1 "g. A mutual assessment company or other person that
2 operates on an assessment basis.

3 "h. An insurance exchange.

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

6 "j. An entity substantially similar to any of the
7 above.

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

11 "(13) OWNER of a policy or contract and POLICY OWNER
12 and CONTRACT OWNER. The person who is identified as the legal
13 owner under the terms of the policy or contract or who is
14 otherwise vested with legal title to the policy or contract
15 through a valid assignment completed in accordance with the
16 terms of the policy or contract and properly recorded as the
17 owner on the books of the insurer. For policies or contracts
18 which do not contractually provide for the designation of an
19 owner, the owner shall be deemed to be the person who has the
20 right to exercise the traditional incidents of ownership of a
21 policy or contract. The terms owner, contract owner, and
22 policy owner do not include person with a mere beneficial
23 interest in a policy or contract.

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

1 "~~(9)~~ (15) PREMIUMS. Direct gross insurance premiums
2 and annuity considerations received on covered policies or
3 contracts, less ~~return~~ returned premiums and considerations
4 thereon and dividends paid or credited to policyholders on
5 such direct business. "Premiums" do not include premiums and
6 considerations on contracts between insurers and reinsurers.

7 "~~(10)~~ PERSON. Any individual, corporation,
8 partnership, association or voluntary organization.

9 "(16) PRINCIPAL PLACE OF BUSINESS. When referring to
10 a person other than a natural person, the single state in
11 which the natural persons who establish policy for the
12 direction, control, and coordination of the operations of the
13 entity as a whole primarily exercise that function, determined
14 by the association in its reasonable judgment by considering
15 the following factors:

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

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

20 "c. The state in which the board of directors (or
21 similar governing person or persons) of the entity conducts
22 the majority of its meetings.

23 "d. The state in which the executive or management
24 committee of the board of directors (or similar governing
25 person or persons) of the entity conducts the majority of its
26 meetings.

1 "e. The state from which the management of the
2 overall operations of the entity is directed.

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

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

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

24 "(19) STATE. A state, the District of Columbia,
25 Puerto Rico, and a United States possession, territory, or
26 protectorate.

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

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

8 "(22) UNALLOCATED ANNUITY CONTRACT. An annuity
9 contract or group annuity certificate which is not issued to
10 and owned by an individual, except to the extent of any
11 annuity benefits guaranteed to an individual by an insurer
12 under the contract or certificate.

13 "\$27-44-8.

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

16 ~~"(1)(a) If a domestic member insurer is an impaired~~
17 ~~insurer, the association may, in its discretion and subject to~~
18 ~~any conditions imposed by the association other than those~~
19 ~~which that do not impair the contractual obligations of the~~
20 ~~impaired insurer, and that are approved by the impaired~~
21 ~~insurer and the commissioner:~~

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

25 ~~"b.(2) Provide such moneys, pledges, notes,~~
26 ~~guarantees, or other means as are proper to effectuate~~
27 ~~paragraph a. subdivision (1), and assure payment of the~~

1 contractual obligations of the impaired insurer pending action
2 under ~~paragraph a.~~ subdivision (1).

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

4 "~~(2)(b)~~ If a ~~domestic member~~ insurer is an insolvent
5 insurer, the association shall, in its discretion and subject
6 to the approval of the commissioner, do either of the
7 following:

8 "(1)a. Guarantee, assume, or reinsure, or cause to
9 be guaranteed, assumed, or reinsured, the covered policies of
10 the insolvent insurer.

11 "b. Assure payment of the contractual obligations of
12 the insolvent insurer, ~~and.~~

13 "c. Provide such moneys, pledges, notes, guarantees,
14 or other means as are reasonably necessary to discharge such
15 duties.

16 "(2) Provide benefits and coverages in accordance
17 with the following provisions:

18 "a. With respect to life and disability insurance
19 policies and annuities, assure payment of benefits for
20 premiums identical to the premiums and benefits (except for
21 terms of conversion and renewability) that would have been
22 payable under the policies or contracts of the insolvent
23 insurer, for claims incurred:

24 "1. With respect to group policies and contracts,
25 not later than the earlier of the next renewal date under
26 those policies or contracts or 45 days, but in no event less

1 than 30 days, after the date on which the association becomes
2 obligated with respect to the policies and contracts.

3 "2. With respect to non-group policies, contracts,
4 and annuities not later than the earlier of the next renewal
5 date (if any) under the policies or contracts or one year, but
6 in no event less than 30 days, from the date on which the
7 association becomes obligated with respect to the policies or
8 contracts.

9 "b. Make diligent efforts to provide all known
10 insureds or annuitants (for non-group policies and contracts),
11 or group policy owners with respect to group policies and
12 contracts, 30 days' notice of the termination (pursuant to
13 paragraph a.) of the benefits provided.

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

1 any provision of the policy or annuity or had a right only to
2 make changes in premium by class.

3 "d.1. In providing the substitute coverage required
4 under paragraph c., the association may offer either to
5 reissue the terminated coverage or to issue an alternative
6 policy.

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

11 "3. The association may reinsure any alternative or
12 reissued policy.

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

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

1 "3. Any alternative policy issued by the association
2 shall provide coverage of a type similar to that of the policy
3 issued by the impaired or insolvent insurer, as determined by
4 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 of
10 the commissioner.

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

16 "h. When proceeding under this subdivision (2) with
17 respect to a policy or contract carrying guaranteed minimum
18 interest rates, the association shall assure the payment or
19 crediting of a rate of interest consistent with Section
20 27-44-3(b) (2) c.

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

24 ~~"a. Guarantee, assume, or reinsure or cause to be~~
25 ~~guaranteed, assumed, or reinsured the covered policies of~~
26 ~~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
25 liable for unearned premiums due to policy or contract owners
26 arising after the entry of the order.

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

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

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

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

20 ~~"2. Approves the specific policy liens or contract~~
21 ~~liens to be used.~~

22 ~~"b. Before being obligated under subdivisions (2)~~
23 ~~and (3) the association may request that there be imposed~~ (2)
24 Impose temporary moratoriums or liens on payments of cash
25 values and policy loans, or any other right to withdraw funds
26 held in conjunction with policies or contracts, in addition to
27 any contractual provisions for deferral of cash or policy loan

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

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

19 "~~(6)~~ (h) The association may render assistance and
20 advice to the commissioner, upon ~~his~~ the commissioner's
21 request, concerning rehabilitation, payment of claims,
22 continuance of coverage, or the performance of other
23 contractual obligations of ~~any~~ an impaired or insolvent
24 insurer.

25 "~~(7)~~ (i) The association shall have standing to
26 appear or intervene before ~~any~~ a court or agency in this state
27 with jurisdiction over an impaired or insolvent insurer

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

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

1 ~~shall be subrogated to these rights against the assets of any~~
2 ~~insolvent insurer.~~

3 ~~"b.~~(2) The subrogation rights of the association
4 under this ~~subdivision~~ subsection shall have the same priority
5 against the assets of the impaired or insolvent insurer as
6 that possessed by the person entitled to receive benefits
7 under this chapter.

8 "(3) In addition to subdivisions (1) and (2), the
9 association shall have all common law rights of subrogation
10 and any other equitable or legal remedy that would have been
11 available to the impaired or insolvent insurer or owner,
12 beneficiary, or payee of a policy or contract with respect to
13 the policy or contract.

14 "(4) If the preceding provisions of this subsection
15 are invalid or ineffective with respect to any person or claim
16 for any reason, the amount payable by the association with
17 respect to the related covered obligations shall be reduced by
18 the amount realized by any other person with respect to the
19 person or claim that is attributable to the policies (or
20 portion thereof) covered by the association.

21 "(5) If the association has provided benefits with
22 respect to a covered obligation and a person recovers amounts
23 as to which the association has rights as described in the
24 preceding subdivisions of this subsection, the person shall
25 pay to the association the portion of the recovery
26 attributable to the policies (or portion thereof) covered by
27 the association.

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

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

12 "a.(1) Enter into such contracts as are necessary or
13 proper to carry out the provisions and purposes of this
14 chapter7.

15 "b.(2) Sue or be sued, including taking any legal
16 actions necessary or proper for recovery of any unpaid
17 assessments under Section 27-44-97 and to settle claims or
18 potential claims against it.

19 "c.(3) Borrow money to effect the purposes of this
20 chapter. Any notes or other evidence of indebtedness of the
21 association not in default shall be legal investments for
22 domestic insurers and may be carried as admitted assets7.

23 "d.(4) Employ or retain such persons as are
24 necessary to handle the financial transactions of the
25 association, and to perform such other functions as become
26 necessary or proper under this chapter7.

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

4 "f.(5) Take such legal action as may be necessary to
5 avoid payment of improper claims;.

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

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

15 "(8) Request information from a person seeking
16 coverage from the association in order to aid the association
17 in determining its obligations under this chapter with respect
18 to the person, and the person shall promptly comply with the
19 request.

20 "(9) Take other necessary or appropriate action to
21 discharge its duties and obligations under this chapter or to
22 exercise its powers under this chapter.

23 "(1) The association may join an organization of one
24 or more other state associations of similar purposes, to
25 further the purposes and administer the powers and duties of
26 the association.

1 "(m) (1)a. At any time within 180 days of the date of
2 the order of liquidation, the association may elect to succeed
3 to the rights and obligations of the ceding member insurer
4 that relate to policies or annuities covered, in whole or in
5 part, by the association, in each case under any one or more
6 reinsurance contracts entered into by the insolvent insurer
7 and its reinsurers and selected by the association. Any such
8 assumption shall be effective as of the date of the order of
9 liquidation. The election shall be effected by the association
10 or the National Organization of Life and Health Insurance
11 Guaranty Associations (NOLHGA) on its behalf sending written
12 notice, return receipt requested, to the affected reinsurers.

13 "b. To facilitate the earliest practicable decision
14 about whether to assume any of the contracts of reinsurance,
15 and in order to protect the financial position of the estate,
16 the receiver and each reinsurer of the ceding member insurer
17 shall make available upon request to the association or to
18 NOLHGA on its behalf as soon as possible after commencement of
19 formal delinquency proceedings (i) copies of in-force
20 contracts of reinsurance and all related files and records
21 relevant to the determination of whether such contracts should
22 be assumed, and (ii) notices of any defaults under the
23 reinsurance contracts or any known event or condition which
24 with the passage of time could become a default under the
25 reinsurance contracts.

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

1 "(i) The association shall be responsible for all
2 unpaid premiums due under the reinsurance contracts for
3 periods both before and after the date of the order of
4 liquidation, and shall be responsible for the performance of
5 all other obligations to be performed after the date of the
6 order of liquidation, in each case which relate to policies or
7 annuities covered, in whole or in part, by the association.
8 The association may charge policies or annuities covered in
9 part by the association, through reasonable allocation
10 methods, the costs for reinsurance in excess of the
11 obligations of the association and shall provide notice and an
12 accounting of these charges to the liquidator.

13 "(ii) The association shall be entitled to any
14 amounts payable by the reinsurer under the reinsurance
15 contracts with respect to losses or events that occur in
16 periods after the date of the order of liquidation and that
17 relate to policies or annuities covered, in whole or in part,
18 by the association, provided that, upon receipt of any such
19 amounts, the association shall be obliged to pay to the
20 beneficiary under the policy or annuity on account of which
21 the amounts were paid a portion of the amount equal to the
22 lesser of:

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

24 "(II) The excess of the amount received by the
25 association over the amount equal to the benefits paid by the
26 association on account of the policy or annuity less the
27 retention of the insurer applicable to the loss or event.

1 "(iii) Within 30 days following the association's
2 election (the "election date"), the association and each
3 reinsurer under contracts assumed by the association shall
4 calculate the net balance due to or from the association under
5 each reinsurance contract as of the election date with respect
6 to policies or annuities covered, in whole or in part, by the
7 association, which calculation shall give full credit to all
8 items paid by either the insurer or its receiver or the
9 reinsurer prior to the election date. The reinsurer shall pay
10 the receiver any amounts due for losses or events prior to the
11 date of the order of liquidation, subject to any set-off for
12 premiums unpaid for periods prior to the date, and the
13 association or reinsurer shall pay any remaining balance due
14 the other, in each case within five days of the completion of
15 the aforementioned calculation. Any disputes over the amounts
16 due to either the association or the reinsurer shall be
17 resolved by arbitration pursuant to the terms of the affected
18 reinsurance contracts or, if the contract contains no
19 arbitration clause, as otherwise provided by law. If the
20 receiver has received any amounts due the association pursuant
21 to paragraph (ii), the receiver shall remit the same to the
22 association as promptly as practicable.

23 "(iv) If the association or receiver, on the
24 association's behalf, within 60 days of the election date,
25 pays the unpaid premiums due for periods both before and after
26 the election date that relate to policies or annuities
27 covered, in whole or in part, by the association, the

1 reinsurer shall not be entitled to terminate the reinsurance
2 contracts for failure to pay premium insofar as the
3 reinsurance contracts relate to policies and annuities
4 covered, in whole or in part, by the association, and shall
5 not be entitled to set off any unpaid amounts due under other
6 contracts, or unpaid amounts due from parties other than the
7 association, against amounts due the association.

8 "(2) During the period from the date of the order of
9 liquidation until the election date (or, if the election date
10 does not occur, until 180 days after the date of the order of
11 liquidation),

12 "a.1. Neither the association nor the reinsurer
13 shall have any rights or obligations under reinsurance
14 contracts that the association has the right to assume under
15 subdivision (1), whether for periods prior to or after the
16 date of the order of liquidation; and

17 "2. The reinsurer, the receiver, and the association
18 shall, to the extent practicable, provide each other data and
19 records reasonably requested;

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

23 "(3) If the association does not elect to assume a
24 reinsurance contract by the election date pursuant to
25 subdivision (1), the association shall have no rights or
26 obligations, in each case for periods both before and after

1 the date of the order of liquidation, with respect to the
2 reinsurance contract.

3 "(4) When policies or annuities, or covered
4 obligations with respect thereto, are transferred to an
5 assuming insurer, reinsurance on the policies or annuities may
6 also be transferred by the association, in the case of
7 contracts assumed under subdivision (1), subject to all of the
8 following:

9 "a. Unless the reinsurer and the assuming insurer
10 agree otherwise, the reinsurance contract transferred shall
11 not cover any new policies of insurance or annuities in
12 addition to those transferred.

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

16 "c. Notice shall be given in writing, return receipt
17 requested, by the transferring party to the affected reinsurer
18 not less than 30 days prior to the effective date of the
19 transfer.

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

1 losses or events that occur in periods prior to the date of
2 the order of liquidation, subject to applicable setoff
3 provisions.

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

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

21 "(o) Where the association has arranged or offered
22 to provide the benefits of this chapter to a covered person
23 under a plan or arrangement that fulfills the association's
24 obligations under this chapter, the person shall not be
25 entitled to benefits from the association in addition to or
26 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.

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

1 "§27-44-9.

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

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

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

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

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

26 "(c) (1) The amount of ~~any~~ a Class A assessment shall
27 be determined by the board and may be ~~made~~ authorized and

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

15 "(2) Class ~~C~~ B assessments against member insurers
16 for each account shall be in the proportion that the premiums
17 received on business in this state by each assessed member
18 insurer on policies or contracts covered by each account for
19 the three most recent calendar ~~year~~ years for which
20 information is available preceding the year in which the
21 insurer became insolvent (or, in the case of an assessment
22 with respect to an impaired insurer, the three most recent
23 calendar years for which information is available preceding
24 the year in which the insurer became impaired) bears to ~~such~~
25 premiums received on business in this state for ~~the~~ those
26 calendar ~~year preceding the assessment~~ years by all assessed
27 member insurers.

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

17 ~~"(4)~~ (3) Assessments for funds to meet the
18 requirements of the association with respect to an impaired or
19 insolvent insurer shall not be ~~made~~ authorized or called until
20 necessary to implement the purposes of this chapter.
21 Classification of assessments under subsection (b) and
22 computation of assessments under this subsection shall be made
23 with a reasonable degree of accuracy, recognizing that exact
24 determinations may not always be possible. The association
25 shall notify each member insurer of its anticipated pro rata
26 share of an authorized assessment not yet called within 180
27 days after the assessment is authorized.

1 "(d) The association may abate or defer, in whole or
2 in part, the assessment of a member insurer if, in the opinion
3 of the board, payment of the assessment would endanger the
4 ability of the member insurer to fulfill its contractual
5 obligations. In the event an assessment against a member
6 insurer is abated, or deferred in whole or in part, the amount
7 by which ~~such~~ the assessment is abated or deferred may be
8 assessed against the other member insurers in a manner
9 consistent with the basis for assessments set forth in this
10 section. Once the conditions that caused a deferral have been
11 removed or rectified, the member insurer shall pay all
12 assessments that were deferred pursuant to a repayment plan
13 approved by the association.

14 "(e) ~~The~~ (1)a. Subject to the provisions of paragraph
15 b., the total of all assessments upon authorized by the
16 association with respect to a member insurer for each account
17 shall not in ~~any~~ one calendar year exceed one percent of ~~such~~
18 that member insurer's average annual premiums received in this
19 state on the policies and contracts covered by the account
20 during the three calendar year years preceding the ~~assessment~~
21 ~~on the policies covered by the account~~ year in which the
22 insurer became an impaired or insolvent insurer.

23 "b. If two or more assessments are authorized in one
24 calendar year with respect to insurers that become impaired or
25 insolvent in different calendar years, the average annual
26 premiums for purposes of the aggregate assessment percentage
27 limitation referenced in paragraph a. shall be equal and

1 limited to the higher of the three-year average annual
2 premiums for the applicable account as calculated pursuant to
3 this section.

4 "c. If the maximum assessment, together with the
5 other assets of the association in ~~either~~ an account, does not
6 provide in ~~any~~ one year in ~~either~~ the account an amount
7 sufficient to carry out the responsibilities of the
8 association, the necessary additional funds shall be assessed
9 as soon thereafter as permitted by this chapter.

10 "(2) The board may provide in the plan of operation
11 a method of allocating funds among claims, whether relating to
12 one or more impaired or insolvent insurers, when the maximum
13 assessment will be insufficient to cover anticipated claims.

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

26 "(g) It shall be proper for any member insurer, in
27 determining its premium rates and policyowner dividends as to

1 any kind of insurance within the scope of this chapter, to
2 consider the amount reasonably necessary to meet its
3 assessment obligations under this chapter.

4 "(g)(h) The association shall issue to each insurer
5 paying an assessment under this chapter, other than a Class A
6 assessment, a certificate of contribution, in a form
7 prescribed by the commissioner, for the amount of the
8 assessment so paid. All outstanding certificates shall be of
9 equal dignity and priority without reference to amounts or
10 dates of issue. A certificate of contribution may be shown by
11 the insurer in its financial statement as an asset in such
12 form and for such amount, if any, and period of time as the
13 commissioner may approve.

14 "(i)(1) A member insurer that wishes to protest all
15 or part of an assessment shall pay when due the full amount of
16 the assessment as set forth in the notice provided by the
17 association. The payment shall be available to meet
18 association obligations during the pendency of the protest or
19 any subsequent appeal. Payment shall be accompanied by a
20 statement in writing that the payment is made under protest
21 and setting forth a brief statement of the grounds for the
22 protest.

23 "(2) Within 60 days following the payment of an
24 assessment under protest by a member insurer, the association
25 shall notify the member insurer in writing of its
26 determination with respect to the protest unless the

1 association notifies the member insurer that additional time
2 is required to resolve the issues raised by the protest.

3 "(3) Within 30 days after a final decision has been
4 made, the association shall notify the protesting member
5 insurer in writing of that final decision. Within 60 days of
6 receipt of notice of the final decision, the protesting member
7 insurer may appeal that final action to the commissioner.

8 "(4) In the alternative to rendering a final
9 decision with respect to a protest based on a question
10 regarding the assessment base, the association may refer
11 protests to the commissioner for a final decision, with or
12 without a recommendation from the association.

13 "(5) If the protest or appeal on the assessment is
14 upheld, the amount paid in error or excess shall be returned
15 to the member company. Interest on a refund due a protesting
16 member shall be paid at the rate actually earned by the
17 association.

18 "(j) The association may request information of
19 member insurers in order to aid in the exercise of its power
20 under this section and member insurers shall promptly comply
21 with a request.

22 "§27-44-11.

23 "In addition to the duties and powers enumerated
24 elsewhere in this chapter:

25 "(1) The commissioner shall:

1 "a. Upon request of the board of directors, provide
2 the association with a statement of the premiums in the
3 appropriate states for each member insurer.

4 "b. When an impairment is declared and the amount of
5 the impairment is determined, serve a demand upon the impaired
6 insurer to make good the impairment within a reasonable time.
7 Notice to the impaired insurer shall constitute notice to its
8 shareholders, if any. The failure of the insurer to promptly
9 comply with such demand shall not excuse the association from
10 the performance of its powers and duties under this chapter.

11 "c. In any liquidation or rehabilitation proceeding
12 involving a domestic insurer, petition the court of competent
13 jurisdiction to have the chief of the receivership division
14 appointed as the liquidator or rehabilitator. If a foreign or
15 alien member insurer is subject to a liquidation proceeding in
16 its domiciliary jurisdiction or state of entry, the chief of
17 the receivership division shall be appointed conservator.

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

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

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

10 "§27-44-18.

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

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