

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

ENGROSSED

A BILL
TO BE ENTITLED
AN ACT

Relating to insurance; to provide the scope and purpose of the Alabama Life and Disability Insurance Guaranty Association; to provide that payees under a structured settlement annuity would be covered based on the residency of the payee and not the residency of the owner of the contract; to avoid duplication of coverage by coordinating with applicable guaranty associations in other states; to specify the limits of coverage for life insurance policies to be \$300,000 in death benefits and \$100,000 in cash surrender values; to specify the limits of coverage for disability insurance benefits to be \$300,000 for disability income and long-term care insurance, \$500,000 for basic hospital, medical, and surgical insurance or major medical insurance, and \$100,000 for any coverage other than disability income, long-term care, basic hospital, medical, and surgical insurance or major medical insurance; to specify the limits of coverage of annuity contracts to be \$250,000 of the present value of annuity benefits; to provide a maximum Class A assessment of \$300 per year per member insurer; to permit a member insurer to appeal a decision of the association to the

1 commissioner within 60 days; to provide a stay of 180 days on
2 all proceedings in which an insolvent insurer is a party; and
3 thus conform Alabama law to be substantially similar to the
4 current model law developed by the National Association of
5 Insurance Commissioners, and for those purposes to amend
6 Sections 27-44-2, 27-44-3, 27-44-5, 27-44-8, 27-44-9,
7 27-44-11, and 27-44-18, Code of Alabama 1975.

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

9 Section 1. Sections 27-44-2, 27-44-3, 27-44-5,
10 27-44-8, 27-44-9, 27-44-11, and 27-44-18, Code of Alabama
11 1975, are amended to read as follows:

12 "§27-44-2.

13 "(a) The purpose of this chapter is to protect
14 ~~policyowners, insureds, beneficiaries, annuitants, payees, and~~
15 ~~the assignees of life insurance policies, disability insurance~~
16 ~~policies, annuity contracts, and supplemental contracts,~~
17 subject to certain limitations, the persons specified in
18 Section 27-44-3(a) against failure in the performance of
19 contractual obligations ~~due to,~~ under life and disability
20 insurance policies and annuity contracts specified in Section
21 27-44-3(b), because of the impairment or insolvency of the
22 member insurer issuing such that issued the policies or
23 contracts.

24 "(b) To provide this protection, ~~(1)~~ an association
25 of insurers is created to ~~enable the guaranty of payment of~~
26 pay benefits and of continuation of to continue coverages, ~~(2)~~
27 as limited by this chapter, and members of the association are

1 subject to assessment to provide funds to carry out the
2 purpose of this chapter, ~~and (3) the association is authorized~~
3 ~~to assist the commissioner, in the prescribed manner, in the~~
4 ~~detection and prevention of insurer impairments or~~
5 ~~insolvencies.~~

6 "§27-44-3.

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

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

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

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

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

23 "~~(4) Any policy or contract issued by non-profit~~
24 ~~hospital and medical service plans, fraternal benefit~~
25 ~~societies, cooperative hospital associations, or health~~
26 ~~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 ~~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
26 ~~providing protection substantially similar to that provided by~~
27 ~~this chapter for residents of this state~~ due to the fact the

1 insurer was not licensed in the state at the time specified in
2 the state's guaranty association law.

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

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

15 "a. A resident, regardless of where the contract
16 owner resides.

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

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

21 "(i) A resident.

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

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

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

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

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

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

23 "(b) (1) This chapter shall provide coverage to the
24 persons specified in subsection (a) for direct, non-group
25 life, disability, or annuity policies or contracts, and for
26 certificates under direct group policies and contracts, and
27 for supplemental contracts to any of these, in each case

1 issued by member insurers, except as limited by this chapter.
2 Annuity contracts and certificates under group annuity
3 contracts include allocated funding agreements, structured
4 settlement annuities, and any immediate or deferred annuity
5 contracts.

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

8 "a. A portion of a policy or contract not guaranteed
9 by the insurer, or under which the risk is borne by the policy
10 or contract owner.

11 "b. A policy or contract of reinsurance, unless
12 assumption certificates have been issued pursuant to the
13 reinsurance policy or contract.

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

20 "1. Averaged over the period of four years prior to
21 the date on which the member insurer becomes an impaired or
22 insolvent insurer under this chapter, whichever is earlier,
23 exceeds the rate of interest determined by subtracting two
24 percentage points from Moody's Corporate Bond Yield Average
25 averaged for that same four-year period or for such lesser
26 period if the policy or contract was issued less than four

1 years before the member insurer becomes an impaired or
2 insolvent insurer under this chapter, whichever is earlier.

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

8 "d. A portion of a policy or contract issued to a
9 plan or program of an employer, association or other person to
10 provide life, disability, or annuity benefits to its
11 employees, members or others, to the extent that the plan or
12 program is self-funded or uninsured, including, but not
13 limited to, benefits payable by an employer, association, or
14 other person under any of the following:

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

18 "2. A minimum premium group insurance plan.

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

20 "4. An administrative services only contract.

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

23 "1. Dividends or experience rating credits.

24 "2. Voting rights.

25 "3. Payment of any fees or allowances to any person,
26 including the policy or contract owner, in connection with the
27 service to or administration of the policy or contract.

1 "f. A policy or contract issued in this state by a
2 member insurer at a time when it was not licensed or did not
3 have a certificate of authority to issue the policy or
4 contract in this state.

5 "g. A portion of a policy or contract to the extent
6 that the assessments required by Section 27-44-9 with respect
7 to the policy or contract are preempted by federal or state
8 law.

9 "h. An obligation that does not arise under the
10 express written terms of the policy or contract issued by the
11 insurer to the contract owner or policy owner, including
12 without limitation:

13 "1. Claims based on marketing materials.

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

17 "3. Misrepresentations of or regarding policy
18 benefits.

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

23 "5. A claim for penalties or consequential or
24 incidental damages.

25 "i. A contractual agreement that establishes the
26 member insurer's obligations to provide a book value
27 accounting guaranty for defined contribution benefit plan

1 participants by reference to a portfolio of assets that is
2 owned by the benefit plan or its trustee, which in each case
3 is not an affiliate of the member insurer.

4 "j. An unallocated annuity contract.

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

22 "l. A policy or contract providing any hospital,
23 medical, prescription drug, or other health care benefits
24 pursuant to Part C or Part D of Subchapter XVIII, Chapter 7 of
25 Title 42 of the United States Code (commonly known as Medicare
26 Part C and D) or any regulations issued pursuant thereto.

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

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

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

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

12 "2. In disability insurance benefits:

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

18 "(ii) Three hundred thousand dollars (\$300,000) for
19 disability income insurance and three hundred thousand dollars
20 (\$300,000) for long-term care insurance.

21 "(iii) Five hundred thousand dollars (\$500,000) for
22 basic hospital, medical, and surgical insurance or major
23 medical insurance.

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

1 "b. With respect to each payee of a structured
2 settlement annuity (or beneficiary or beneficiaries if the
3 payee is deceased), two hundred fifty thousand dollars
4 (\$250,000) in present value annuity benefits, in the
5 aggregate, including net cash surrender and net cash
6 withdrawal values, if any.

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

9 "1. An aggregate of three hundred thousand dollars
10 (\$300,000) in benefits with respect to any one life under
11 paragraphs a. and b. except with respect to benefits for basic
12 hospital, medical, and surgical insurance and major medical
13 insurance under paragraph a.2., in which case the aggregate
14 liability of the association shall not exceed five hundred
15 thousand dollars (\$500,000) with respect to any one
16 individual.

17 "2. With respect to one owner of multiple non-group
18 policies of life insurance, whether the policy owner is an
19 individual, firm, corporation, or other person, and whether
20 the persons insured are officers, managers, employees, or
21 other persons, more than five million dollars (\$5,000,000) in
22 benefits, regardless of the number of policies and contracts
23 held by the owner.

24 "d. The limitations set forth in this subsection are
25 limitations on the benefits for which the association is
26 obligated before taking into account either its subrogation
27 and assignment rights or the extent to which those benefits

1 could be provided out of the assets of the impaired or
2 insolvent insurer attributable to covered policies. The costs
3 of the association's obligations under this chapter may be met
4 by the use of assets attributable to covered policies or
5 reimbursed to the association pursuant to its subrogation and
6 assignment rights.

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

15 "§27-44-5.

16 "As used in this chapter, the following terms shall
17 have the following meanings, respectively, unless the context
18 clearly indicates otherwise:

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

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

23 "(3) AUTHORIZED ASSESSMENT or the term AUTHORIZED
24 when used in the context of assessments. A resolution by the
25 board of directors has been passed whereby an assessment will
26 be called immediately or in the future from member insurers

1 for a specified amount. An assessment is authorized when the
2 resolution is passed.

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

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

12 "~~(3)~~(6) COMMISSIONER. The Commissioner of Insurance
13 of this state.

14 "~~(4)~~(7) CONTRACTUAL OBLIGATION. ~~Any~~ An obligation
15 under ~~covered policies~~ a policy or contract, or certificate
16 under a group policy or contract, or portion thereof for which
17 coverage is provided under Section 27-44-3.

18 "~~(5)~~(8) COVERED POLICY. ~~Any~~ A policy or contract
19 ~~within the scope of this chapter~~ or portion of a policy or
20 ~~contract for which coverage is provided~~ under Section 27-44-3.

21 "~~(6)~~(9) IMPAIRED INSURER. A member insurer ~~deemed by~~
22 ~~the commissioner~~ which, after January 1, 1983 to be
23 ~~potentially unable to fulfill its contractual obligations and~~
24 ~~the effective date of this act,~~ is not an insolvent insurer
25 ~~and is placed under an order of rehabilitation or conservation~~
26 ~~by a court of competent jurisdiction.~~

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

6 "~~(8)~~ (11) MEMBER INSURER. ~~Any~~ An insurer licensed or
7 that holds a certificate of authority to transact in this
8 state any kind of insurance ~~to for~~ which this chapter applies
9 coverage is provided under Section 27-44-3-, and includes an
10 insurer whose license or certificate of authority in this
11 state may have been suspended, revoked, not renewed, or
12 voluntarily withdrawn, but does not include any of the
13 following:

14 "a. A hospital or medical service organization,
15 whether profit or non-profit.

16 "b. A health care services plan.

17 "c. A cooperative hospital association.

18 "d. A health maintenance organization.

19 "e. A fraternal benefit society.

20 "f. A mandatory state pooling plan.

21 "g. A mutual assessment company or other person that
22 operates on an assessment basis.

23 "h. An insurance exchange.

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

26 "j. An entity substantially similar to any of the
27 above.

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

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

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

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

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

1 "(16) PRINCIPAL PLACE OF BUSINESS. When referring to
2 a person other than a natural person, the single state in
3 which the natural persons who establish policy for the
4 direction, control, and coordination of the operations of the
5 entity as a whole primarily exercise that function, determined
6 by the association in its reasonable judgment by considering
7 the following factors:

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

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

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

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

19 "e. The state from which the management of the
20 overall operations of the entity is directed.

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

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

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

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

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

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

1 "(22) UNALLOCATED ANNUITY CONTRACT. An annuity
2 contract or group annuity certificate which is not issued to
3 and owned by an individual, except to the extent of any
4 annuity benefits guaranteed to an individual by an insurer
5 under the contract or certificate.

6 "§27-44-8.

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

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

15 "~~a.~~ (1) Guarantee or reinsure, or cause to be
16 guaranteed, assumed, or reinsured, any or all of the covered
17 policies of the impaired insurers~~7.~~

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

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

24 "~~(2)~~ (b) If a ~~domestic~~ member insurer is an insolvent
25 insurer, the association shall, in its discretion and subject
26 to the approval of the commissioner, do either of the
27 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~~7.~~

4 "b. Assure payment of the contractual obligations of
5 the insolvent insurer~~7.~~ ~~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
26 association becomes obligated with respect to the policies or
27 contracts.

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

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

21 "d.1. In providing the substitute coverage required
22 under paragraph c., the association may offer either to
23 reissue the terminated coverage or to issue an alternative
24 policy.

25 "2. Alternative or reissued policies shall be
26 offered without requiring evidence of insurability, and shall

1 not provide for any waiting period or exclusion that would not
2 have applied under the terminated policy.

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

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

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

19 "3. Any alternative policy issued by the association
20 shall provide coverage of a type similar to that of the policy
21 issued by the impaired or insolvent insurer, as determined by
22 the association.

23 "f. If the association elects to reissue terminated
24 coverage at a premium rate different from that charged under
25 the terminated policy, the premium shall be set by the
26 association in accordance with the amount of insurance

1 provided and the age and class of risk, subject to approval of
2 the commissioner.

3 "g. The association's obligations with respect to
4 coverage under any policy of the impaired or insolvent insurer
5 or under any reissued or alternative policy shall cease on the
6 date the coverage or policy is replaced by another similar
7 policy by the policy owner, the insured, or the association.

8 "h. When proceeding under this subdivision (2) with
9 respect to a policy or contract carrying guaranteed minimum
10 interest rates, the association shall assure the payment or
11 crediting of a rate of interest consistent with Section
12 27-44-3(b) (2) c.

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

16 ~~"a. Guarantee, assume, or reinsure or cause to be~~
17 ~~guaranteed, assumed, or reinsured the covered policies of~~
18 ~~residents;~~

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

21 ~~"c. Provide such moneys, pledges, notes, guarantees,~~
22 ~~or other means as are reasonably necessary to discharge such~~
23 ~~duties.~~

24 ~~"Provided, however, that this subdivision shall not~~
25 ~~apply where the commissioner has determined that the foreign~~
26 ~~or alien insurer's domiciliary jurisdiction or state of entry~~

1 ~~provides, by statute, protection substantially similar to that~~
2 ~~provided by this chapter for residents of this state.~~

3 "(c) Nonpayment of premiums within 31 days after the
4 date required under the terms of any guaranteed, assumed,
5 alternative, or reissued policy or contract or substitute
6 coverage shall terminate the association's obligations under
7 the policy or coverage under this chapter with respect to the
8 policy or coverage, except with respect to any claims incurred
9 or any net cash surrender value which may be due in accordance
10 with the provisions of this chapter.

11 "(d) Premiums due for coverage after entry of an
12 order of liquidation of an insolvent insurer shall belong to
13 and be payable at the direction of the association. If the
14 liquidator of an insolvent insurer requests, the association
15 shall provide a report to the liquidator regarding such
16 premium collected by the association. The association shall be
17 liable for unearned premiums due to policy or contract owners
18 arising after the entry of the order.

19 "(e) The protection provided by this chapter shall
20 not apply where any guaranty protection is provided to
21 residents of this state by the laws of the domiciliary state
22 or jurisdiction of the impaired or insolvent insurer other
23 than this state.

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

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

4 "~~1. Finds~~ association finds that the amounts which
5 can be assessed under this chapter are less than the amounts
6 needed to assure full and prompt performance of the ~~insolvent~~
7 ~~insurer's contractual obligations~~ association's duties under
8 this chapter, or that the economic or financial conditions as
9 they affect member insurers are sufficiently adverse to render
10 the imposition of such permanent policy or contract liens, to
11 be in the public interest; ~~and.~~

12 "~~2. Approves the specific policy liens or contract~~
13 ~~liens to be used.~~

14 "~~b. Before being obligated under subdivisions (2)~~
15 ~~and (3) the association may request that there be imposed~~ (2)
16 Impose temporary moratoriums or liens on payments of cash
17 values and policy loans, or any other right to withdraw funds
18 held in conjunction with policies or contracts, in addition to
19 any contractual provisions for deferral of cash or policy loan
20 values, ~~and such temporary moratoriums and liens may be~~
21 ~~imposed if they are approved by the court.~~ In addition, in the
22 event of a temporary moratorium or moratorium charge imposed
23 by the receivership court on payment of cash values or policy
24 loans, or on any other right to withdraw funds held in
25 conjunction with policies or contracts, out of the assets of
26 the impaired or insolvent insurer, the association may defer
27 the payment of cash values, policy loans, or other rights by

1 the association for the period of the moratorium or moratorium
2 charge imposed by the receivership court, except for claims
3 covered by the association to be paid in accordance with a
4 hardship procedure established by the liquidator or
5 rehabilitator and approved by the receivership court.

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

11 ~~"(6)(h)~~ The association may render assistance and
12 advice to the commissioner, upon ~~his~~ the commissioner's
13 request, concerning rehabilitation, payment of claims,
14 continuance of coverage, or the performance of other
15 contractual obligations of ~~any~~ an impaired or insolvent
16 insurer.

17 ~~"(7)(i)~~ The association shall have standing to
18 appear or intervene before ~~any~~ a court or agency in this state
19 with jurisdiction over an impaired or insolvent insurer
20 concerning which the association is or may become obligated
21 under this chapter. ~~Such standing~~ Standing shall extend to all
22 matters germane to the powers and duties of the association,
23 including, but not limited to, proposals for reinsuring,
24 modifying, or guaranteeing the ~~covered~~ policies or contracts
25 of the impaired or insolvent insurer and the determination of
26 the covered policies or contracts and contractual obligations.
27 The association shall also have the right to appear or

1 intervene before a court or agency in another state with
2 jurisdiction over an impaired or insolvent insurer for which
3 the association is or may become obligated or with
4 jurisdiction over any person or property against whom the
5 association may have rights through subrogation or otherwise.

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

21 ~~"b.(2)~~ The subrogation rights of the association
22 under this ~~subdivision~~ subsection shall have the same priority
23 against the assets of the impaired or insolvent insurer as
24 that possessed by the person entitled to receive benefits
25 under this chapter.

26 "(3) In addition to subdivisions (1) and (2), the
27 association shall have all common law rights of subrogation

1 and any other equitable or legal remedy that would have been
2 available to the impaired or insolvent insurer or owner,
3 beneficiary, or payee of a policy or contract with respect to
4 the policy or contract.

5 "(4) If the preceding provisions of this subsection
6 are invalid or ineffective with respect to any person or claim
7 for any reason, the amount payable by the association with
8 respect to the related covered obligations shall be reduced by
9 the amount realized by any other person with respect to the
10 person or claim that is attributable to the policies (or
11 portion thereof) covered by the association.

12 "(5) If the association has provided benefits with
13 respect to a covered obligation and a person recovers amounts
14 as to which the association has rights as described in the
15 preceding subdivisions of this subsection, the person shall
16 pay to the association the portion of the recovery
17 attributable to the policies (or portion thereof) covered by
18 the association.

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

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

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

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

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

14 "d.(4) Employ or retain such persons as are
15 necessary to handle the financial transactions of the
16 association, and to perform such other functions as become
17 necessary or proper under this chapter7.

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

21 "f.(5) Take such legal action as may be necessary to
22 avoid payment of improper claims7.

23 "g.(6) Exercise, for the ~~purpose~~ purposes of this
24 chapter7 and to the extent approved by the commissioner, the
25 powers of a domestic life or health insurer, but in no case
26 may the association issue insurance policies or annuity
27 contracts other than those issued to perform ~~the contractual~~

1 ~~obligations of the impaired or insolvent insurer its~~
2 ~~obligations under this chapter.~~

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

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

10 "(9) Take other necessary or appropriate action to
11 discharge its duties and obligations under this chapter or to
12 exercise its powers under this chapter.

13 "(l) The association may join an organization of one
14 or more other state associations of similar purposes, to
15 further the purposes and administer the powers and duties of
16 the association.

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

1 Guaranty Associations (NOLHGA) on its behalf sending written
2 notice, return receipt requested, to the affected reinsurers.

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

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

18 "(i) The association shall be responsible for all
19 unpaid premiums due under the reinsurance contracts for
20 periods both before and after the date of the order of
21 liquidation, and shall be responsible for the performance of
22 all other obligations to be performed after the date of the
23 order of liquidation, in each case which relate to policies or
24 annuities covered, in whole or in part, by the association.
25 The association may charge policies or annuities covered in
26 part by the association, through reasonable allocation
27 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
26 reinsurer prior to the election date. The reinsurer shall pay
27 the receiver any amounts due for losses or events prior to the

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

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

25 "(2) During the period from the date of the order of
26 liquidation until the election date (or, if the election date

1 does not occur, until 180 days after the date of the order of
2 liquidation),

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

8 "2. The reinsurer, the receiver, and the association
9 shall, to the extent practicable, provide each other data and
10 records reasonably requested;

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

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

20 "(4) When policies or annuities, or covered
21 obligations with respect thereto, are transferred to an
22 assuming insurer, reinsurance on the policies or annuities may
23 also be transferred by the association, in the case of
24 contracts assumed under subdivision (1), subject to all of the
25 following:

26 "a. Unless the reinsurer and the assuming insurer
27 agree otherwise, the reinsurance contract transferred shall

1 not cover any new policies of insurance or annuities in
2 addition to those transferred.

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

6 "c. Notice shall be given in writing, return receipt
7 requested, by the transferring party to the affected reinsurer
8 not less than 30 days prior to the effective date of the
9 transfer.

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

21 "(6) Except as otherwise provided in this section,
22 nothing in subsection ~~(n)~~ (m) shall alter or modify the terms
23 and conditions of any reinsurance contract. Nothing in this
24 section shall abrogate or limit any rights of any reinsurer to
25 claim that it is entitled to rescind a reinsurance contract.
26 Nothing in this section shall give a policyholder or
27 beneficiary an independent cause of action against a reinsurer

1 that is not otherwise set forth in the reinsurance contract.
2 Nothing in this section shall limit or affect the
3 association's rights as a creditor of the estate against the
4 assets of the estate. Nothing in this section shall apply to
5 reinsurance agreements covering property or casualty risks.

6 "(n) The board of directors of the association shall
7 have discretion and may exercise reasonable business judgment
8 to determine the means by which the association is to provide
9 the benefits of this chapter in an economical and efficient
10 manner.

11 "(o) Where the association has arranged or offered
12 to provide the benefits of this chapter to a covered person
13 under a plan or arrangement that fulfills the association's
14 obligations under this chapter, the person shall not be
15 entitled to benefits from the association in addition to or
16 other than those provided under the plan or arrangement.

17 "(p) Venue in a suit against the association arising
18 under this chapter shall be in Jefferson County, Alabama. The
19 association shall not be required to give an appeal bond in an
20 appeal that relates to a cause of action arising under this
21 chapter.

22 "(q) In carrying out its duties in connection with
23 guaranteeing, assuming or reinsuring policies or contracts
24 under subsection (a) or (b), the association may, subject to
25 approval of the receivership court, issue substitute coverage
26 for a policy or contract that provides an interest rate,
27 crediting rate, or similar factor determined by use of an

1 index or other external reference stated in the policy or
2 contract employed in calculating returns or changes in value
3 by issuing an alternative policy or contract in accordance
4 with all of the following provisions:

5 "(1) In lieu of the index or other external
6 reference provided for in the original policy or contract, the
7 alternative policy or contract provides for (i) a fixed
8 interest rate or (ii) payment of dividends with minimum
9 guarantees or (iii) a different method for calculating
10 interest or changes in value.

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

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

17 "§27-44-9.

18 "(a) For the purpose of providing the funds
19 necessary to carry out the powers and duties of the
20 association, the board of directors shall assess the member
21 insurers, separately for each account, at such time and for
22 such amounts as the board finds necessary. Assessments shall
23 be due not less than 30 days after prior written notice to the
24 member insurers and shall accrue interest at six percent per
25 annum on and after the due date.

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

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

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

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

15 "(c) (1) The amount of ~~any~~ a Class A assessment shall
16 be determined by the board and may be ~~made~~ authorized and
17 called on a non-pro rata basis. ~~Such assessment~~ The total of
18 all Class A assessments shall not exceed ~~\$50.00~~ three hundred
19 dollars (\$300) per ~~company~~ member insurer in any one calendar
20 year. The amount of ~~any~~ a Class B ~~or C~~ assessment shall be
21 allocated for assessment purposes among the accounts ~~in the~~
22 ~~proportion that the~~ pursuant to an allocation formula which
23 may be based on the premiums received by or reserves of the
24 impaired or insolvent insurer on the policies covered by each
25 account for the last calendar year preceding the assessment in
26 which the impaired or insolvent insurer received premiums
27 bears to the premiums received by such insurer for such

1 ~~calendar year on all covered policies~~ or any other standard
2 deemed by the board in its sole discretion as being fair and
3 reasonable under the circumstances.

4 "(2) Class ~~C~~ B assessments against member insurers
5 for each account shall be in the proportion that the premiums
6 received on business in this state by each assessed member
7 insurer on policies or contracts covered by each account for
8 the three most recent calendar ~~year~~ years for which
9 information is available preceding the year in which the
10 insurer became insolvent (or, in the case of an assessment
11 with respect to an impaired insurer, the three most recent
12 calendar years for which information is available preceding
13 the year in which the insurer became impaired) bears to ~~such~~
14 premiums received on business in this state for ~~the~~ those
15 calendar ~~year preceding the assessment~~ years by all assessed
16 member insurers.

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

1 ~~received on business in each such state by each assessed~~
2 ~~member insurer on policies covered by each account for the~~
3 ~~calendar year preceding the assessment bears to such premiums~~
4 ~~received on business in each state for the calendar year~~
5 ~~preceding assessment by all assessed member insurers.~~

6 "~~(4)~~ (3) Assessments for funds to meet the
7 requirements of the association with respect to an impaired or
8 insolvent insurer shall not be ~~made~~ authorized or called until
9 necessary to implement the purposes of this chapter.

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

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

1 assessments that were deferred pursuant to a repayment plan
2 approved by the association.

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

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

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

26 "(2) The board may provide in the plan of operation
27 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
26 dates of issue. A certificate of contribution may be shown by
27 the insurer in its financial statement as an asset in such

1 form and for such amount, if any, and period of time as the
2 commissioner may approve.

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

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

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

23 "(4) In the alternative to rendering a final
24 decision with respect to a protest based on a question
25 regarding the assessment base, the association may refer
26 protests to the commissioner for a final decision, with or
27 without a recommendation from the association.

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

6 "(j) The association may request information of
7 member insurers in order to aid in the exercise of its power
8 under this section and member insurers shall promptly comply
9 with a request.

10 "\$27-44-11.

11 "In addition to the duties and powers enumerated
12 elsewhere in this chapter:

13 "(1) The commissioner shall:

14 "a. Upon request of the board of directors, provide
15 the association with a statement of the premiums in the
16 appropriate states for each member insurer.

17 "b. When an impairment is declared and the amount of
18 the impairment is determined, serve a demand upon the impaired
19 insurer to make good the impairment within a reasonable time.
20 Notice to the impaired insurer shall constitute notice to its
21 shareholders, if any. The failure of the insurer to promptly
22 comply with such demand shall not excuse the association from
23 the performance of its powers and duties under this chapter.

24 "c. In any liquidation or rehabilitation proceeding
25 involving a domestic insurer, petition the court of competent
26 jurisdiction to have the chief of the receivership division
27 appointed as the liquidator or rehabilitator. If a foreign or

1 alien member insurer is subject to a liquidation proceeding in
2 its domiciliary jurisdiction or state of entry, the chief of
3 the receivership division shall be appointed conservator.

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

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

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

22 "§27-44-18.

23 "All proceedings in which the insolvent insurer is a
24 party in any court in this state shall be stayed ~~60~~ 180 days
25 from the date an order of liquidation, rehabilitation, or
26 conservation is final to permit proper legal action by the
27 association on any matters germane to its powers or duties. As

1 to judgment under any decision, order, verdict, or finding
2 based on default the association may apply to have such
3 judgment set aside by the same court that made such judgment
4 and shall be permitted to defend against such suit on the
5 merits."

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

1
2
3

4
5
6
7
8
9
10
11
12
13

14
15
16
17

House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Insurance 23-FEB-12

Read for the second time and placed
on the calendar 1 amendment 08-MAR-12

Read for the third time and passed
as amended..... 17-APR-12

Yeas 98, Nays 0, Abstains 0

Greg Pappas
Clerk