

House Bill 786 (AS PASSED HOUSE AND SENATE)

By: Representatives Hembree of the 67th and Geisinger of the 48th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 33 of the Official Code of Georgia Annotated, relating to insurance, so as to
2 provide for comprehensive revision of the provisions relating to the Georgia Life and Health
3 Insurance Guaranty Association; so as to provide that, until such time as the consumers'
4 insurance advocate is appropriately funded, it shall not be necessary to file copies of
5 insurance rate filings with the consumers' insurance advocate; to provide for related matters;
6 to provide an effective date; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 SECTION 1.

9 Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended by
10 revising Chapter 38 of Title 33, relating to the Georgia Life and Health Insurance Guaranty
11 Association, as follows:

12 "CHAPTER 38

13 33-38-1.

14 The purpose of this chapter is to protect ~~policy owners, insureds, beneficiaries, annuitants,~~
15 ~~payees, and assignees of life insurance policies, health insurance policies, annuity~~
16 ~~contracts, and supplemental contracts; the persons specified in subsection (b) of Code~~
17 Section 33-38-2, subject to certain limitations, against failure in the performance of
18 contractual obligations, under life and health insurance policies and annuity contracts
19 specified in subsection (a) of Code Section 33-38-2, due to the impairment or insolvency
20 of the insurer issuing such policies or contracts. To provide this protection, (1) an
21 association of insurers is created to enable the guaranty of payment of benefits and
22 continuation of coverages as limited by this chapter, (2) members of the association are
23 subject to assessment to provide funds to carry out the purpose of this chapter, and (3) the

24 association is authorized to assist the Commissioner, in the prescribed manner, in the
25 detection and prevention of insurer impairments or insolvencies.

26 33-38-2.

27 (a) This chapter shall provide coverage to the persons specified in subsection (b) of this
28 Code section for direct, nongroup life, health, or annuity, ~~and supplemental~~ policies or
29 contracts, for certificates under direct group policies and contracts, and for supplemental
30 contracts to any of these, and for unallocated annuity contracts, in each case issued by
31 member insurers, except as limited by this chapter. Annuity contracts and certificates
32 under group annuity contracts include, but are not limited to, guaranteed investment
33 contracts, deposit administration contracts, unallocated funding agreements, allocated
34 funding agreements, structured settlement ~~agreements~~, ~~lottery contracts~~ annuities, annuities
35 issued to or in connection with government lotteries, and any immediate or deferred
36 annuity contracts.

37 (b)(1) Coverage under this chapter shall be provided only:

38 ~~(A)~~ (A) To persons who, regardless of where they reside, except for nonresident
39 certificate holders under group policies or contracts, are the beneficiaries, assignees, or
40 payees of the persons covered under ~~paragraph (2) of this subsection~~ subparagraph (B)
41 of this paragraph; and

42 ~~(B)~~ (B) To persons who are owners of or certificate holders under such policies or
43 contracts, ~~other than or, in the case of~~ unallocated annuity contracts and structured
44 settlement annuities, to the persons who are the contract holders and who:

45 ~~(A)~~(i) Are residents; or

46 ~~(B)~~(ii) Are not residents, but ~~only under all of the following conditions~~:

47 ~~(i)~~ ~~The~~ the insurers which issued such policies or contracts are domiciled in this state;

48 ~~(ii)~~ ~~Such insurers never held a license or certificate of authority in the~~ the states in
49 which such persons reside;

50 ~~(iii)~~ ~~Such states~~ have associations similar to the association created by this article;

51 and

52 ~~(iv)~~ ~~Such~~ such persons are not eligible for coverage by ~~such associations an~~
53 association in any other state due to the fact that the insurer was not licensed in the
54 state at the time specified in the state's guaranty association law.

55 (2) For unallocated annuity contracts specified in subsection (a) of this Code section,
56 subparagraphs (A) and (B) of paragraph (1) of this subsection shall not apply, and this
57 chapter shall, except as provided in paragraphs (4) and (5) of this subsection, provide
58 coverage to:

59 (A) Persons who are the owners of the unallocated annuity contracts if the contracts
 60 are issued to or in connection with a specific benefit plan whose plan sponsor has its
 61 principal place of business in this state; and

62 (B) Persons who are owners of unallocated annuity contracts issued to or in connection
 63 with government lotteries if the owners are residents.

64 (3) For structured settlement annuities specified in subsection (a) of this Code section,
 65 subparagraphs (A) and (B) of paragraph (1) of this subsection shall not apply, and this
 66 chapter shall, except as provided in paragraphs (4) and (5) of this subsection, provide
 67 coverage to a person who is a payee under a structured settlement annuity, or beneficiary
 68 of a payee if the payee is deceased, if the payee:

69 (A) Is a resident, regardless of where the contract owner resides; or

70 (B) Is not a resident, but only under both of the following conditions:

71 (i)(I) The contract owner of the structured settlement annuity is a resident; or

72 (II) The contract owner of the structured settlement annuity is not a resident, but the
 73 insurer that issued the structured settlement annuity is domiciled in this state and the
 74 state in which the contract owner resides has an association similar to the
 75 association created by this chapter; and

76 (ii) Neither the payee or beneficiary nor the contract owner is eligible for coverage
 77 by the association of the state in which the payee or contract owner resides.

78 (4) This chapter shall not provide coverage to:

79 (A) A person who is a payee or beneficiary of a contract owner who is a resident of this
 80 state, if the payee or beneficiary is afforded any coverage by the association of another
 81 state; or

82 (B) A person covered under paragraph (2) of this subsection, if any coverage is
 83 provided by the association of another state to that person.

84 (5) This chapter is intended to provide coverage to a person who is a resident of this state
 85 and, in special circumstances, to a nonresident. In order to avoid duplicate coverage, if
 86 a person who would otherwise receive coverage under this chapter is provided coverage
 87 under the laws of any other state, the person shall not be provided coverage under this
 88 chapter. In determining the application of the provisions of this subsection in situations
 89 where a person could be covered by the association of more than one state, whether as
 90 an owner, payee, beneficiary, or assignee, this chapter shall be construed in conjunction
 91 with other state laws to result in coverage by only one association.

92 (c) This chapter shall not apply provide coverage to:

93 (1) That portion or part of a ~~variable life insurance or variable annuity policy~~ or contract
 94 not guaranteed by an insurer; ~~or~~

- 95 ~~(2) That portion or part of any policy or contract under which the risk is borne by the~~
 96 ~~policyholder policy or contract owner;~~
- 97 ~~(3)(2) A policy or contract of reinsurance or any~~ Any policy or contract or part thereof
 98 assumed by the impaired or insolvent insurer under a contract of reinsurance, ~~other than~~
 99 ~~reinsurance for which~~ unless assumption certificates have been issued pursuant to the
 100 reinsurance policy or contract;
- 101 (3) A portion of a policy or contract to the extent that the rate of interest on which it is
 102 based, or the interest rate, crediting rate, or similar factor determined by use of an index
 103 or other external reference stated in the policy or contract employed in calculating returns
 104 or changes in value:
- 105 (A) Averaged over the period of four years prior to the date on which the member
 106 insurer becomes an impaired or insolvent insurer under this chapter, whichever is
 107 earlier, exceeds the rate of interest determined by subtracting two percentage points
 108 from Moody's Corporate Bond Yield Average averaged for that same four-year period
 109 or for such lesser period if the policy or contract was issued less than four years before
 110 the member insurer becomes an impaired or insolvent insurer under this chapter,
 111 whichever is earlier; and
- 112 (B) On and after the date on which the member insurer becomes an impaired or
 113 insolvent insurer under this chapter, whichever is earlier, exceeds the rate of interest
 114 determined by subtracting three percentage points from Moody's Corporate Bond Yield
 115 Average as most recently available;
- 116 (4) Any policy, contract, certificate, or subscriber agreement issued by a nonprofit
 117 hospital service corporation referred to in Chapter 19 of this title, a health care plan
 118 referred to in Chapter 20 of this title, a nonprofit medical service corporation referred to
 119 in Chapter 18 of this title, a prepaid legal services plan, as defined in Code Section
 120 33-35-2, and a health maintenance organization, as defined in Code Section 33-21-1;
- 121 (5) Any policy, contract, or certificate issued by a fraternal benefit society, as defined in
 122 Code Section 33-15-1;
- 123 (6) Accident and sickness insurance as defined in Code Section 33-7-2 when written by
 124 a property and casualty insurer as part of an automobile insurance contract;
- 125 (7) A portion of a policy or contract issued to a plan or program of an employer,
 126 association, or other person to provide life, health, or annuity benefits to its employees,
 127 members, or others, to the extent that the plan or program is self-funded or uninsured,
 128 including, but not limited to, benefits payable by an employer, association, or other
 129 person under:
- 130 (A) A multiple employer welfare arrangement as defined in 29 U.S.C. Section
 131 1002(40);

- 132 (B) A minimum premium group insurance plan;
 133 (C) A stop-loss insurance policy; or
 134 (D) An administrative services only contract;
 135 (8) A portion of a policy or contract to the extent that it provides for:
 136 (A) Dividends or experience rating credits;
 137 (B) Voting rights; or
 138 (C) Payment of any fees or allowances to any person, including the policy or contract
 139 owner, in connection with the service to or administration of the policy or contract;
 140 (9) A policy or contract issued in this state by a member insurer at a time when it was not
 141 licensed or did not have a certificate of authority to issue the policy or contract in this
 142 state;
 143 ~~(7)~~(10) Any unallocated annuity contract issued to an employee benefit plan protected
 144 under the federal Pension Benefit Guaranty Corporation, regardless of whether the federal
 145 Pension Benefit Guaranty Corporation has yet become liable to make any payments with
 146 respect to the benefit plan; or
 147 ~~(8)~~(11) Any portion of any unallocated annuity contract which is not issued to or in
 148 connection with a specific employee, union, or association of natural persons benefit plan
 149 or a government lottery;
 150 (12) A portion of a policy or contract to the extent that the assessments required by Code
 151 Section 33-38-15 with respect to the policy or contract are preempted by federal or state
 152 law;
 153 (13) An obligation that does not arise under the express written terms of the policy or
 154 contract issued by the insurer to the contract owner or policy owner, including without
 155 limitation:
 156 (A) Claims based on marketing materials;
 157 (B) Claims based on side letters, riders, or other documents that were issued by the
 158 insurer without meeting applicable policy form filing or approval requirements;
 159 (C) Misrepresentations of or regarding policy benefits;
 160 (D) Extra-contractual claims; or
 161 (E) A claim for penalties or consequential or incidental damages;
 162 (14) A contractual agreement that establishes the member insurer's obligations to provide
 163 a book value accounting guaranty for defined contribution benefit plan participants by
 164 reference to a portfolio of assets that is owned by the benefit plan or its trustee, which in
 165 each case is not an affiliate of the member insurer;
 166 (15) A portion of a policy or contract to the extent it provides for interest or other
 167 changes in value to be determined by the use of an index or other external reference
 168 stated in the policy or contract, but which have not been credited to the policy or contract,

169 or as to which the policy or contract owner's rights are subject to forfeiture, as of the date
 170 the member insurer becomes an impaired or insolvent insurer under this chapter,
 171 whichever is earlier. If a policy's or contract's interest or changes in value are credited
 172 less frequently than annually, then for purposes of determining the values that have been
 173 credited and are not subject to forfeiture under this paragraph, the interest or change in
 174 value determined by using the procedures defined in the policy or contract will be
 175 credited as if the contractual date of crediting interest or changing values was the date of
 176 impairment or insolvency, whichever is earlier, and will not be subject to forfeiture; or
 177 (16) A policy or contract providing any hospital, medical, prescription drug, or other
 178 health care benefits pursuant to Part C or Part D of Subchapter XVIII, Chapter 7 of Title
 179 42 of the United States Code, commonly known as Medicare Part C & D, or any
 180 regulations issued pursuant thereto.

181 (d) The provisions of this Code section shall apply only to coverage the guaranty
 182 association provides in connection with any member insurer that is placed under an order
 183 of liquidation with a finding of insolvency after the effective date of this Code section.

184 33-38-3.

185 This chapter shall be ~~liberally~~ construed to effect the purpose set forth in Code Section
 186 33-38-1, ~~which Code section shall constitute an aid and guide to interpretation.~~

187 33-38-4.

188 As used in this chapter, the term:

189 (1) 'Account' means any of the two accounts created under Code Section 33-38-5.

190 (2) 'Affiliate' means any person that directly, or indirectly through one or more
 191 intermediaries, controls, is controlled by, or is under common control with the person
 192 specified.

193 (3) 'Association' means the Georgia Life and Health Insurance Guaranty Association
 194 created under Code Section 33-38-5.

195 (4) 'Authorized assessment,' or 'authorized' when used in the context of assessments,
 196 means a resolution by the board of directors of the association has been passed whereby
 197 an assessment will be called immediately or in the future from member insurers for a
 198 specified amount. An assessment is authorized when the resolution is passed.

199 (5) 'Benefit plan' means a specific employee, union, or association of natural persons
 200 benefit plan.

201 (6) 'Called assessment,' or 'called' when used in the context of assessments, means that
 202 a notice has been issued by the association to member insurers requiring that an
 203 authorized assessment be paid within the time frame set forth within the notice. An

204 authorized assessment becomes a called assessment when notice is mailed by the
 205 association to member insurers.

206 ~~(4)(7)~~ 'Contractual obligation' means any obligation under a covered policies or contracts
 207 policy, contract, or certificate under a group policy or contract, or portion thereof for
 208 which coverage is provided under Code Section 33-38-2. ~~Notwithstanding any other~~
 209 ~~provision of this chapter, 'contractual obligation' shall not include a claim filed after the~~
 210 ~~final date set by the court for the filing of claims against the liquidator or other such court~~
 211 ~~appointed authority.~~

212 ~~(5)(8)~~ 'Control' or 'controlled' means the possession, direct or indirect, of the power to
 213 direct or cause the direction of the management and policies of a person, whether through
 214 ownership of voting securities, by contract other than a commercial contract for goods
 215 or nonmanagement services, or otherwise.

216 ~~(6)(9)~~ 'Covered policy' means any a policy or contract within the scope of this chapter
 217 or portion of a policy or contract for which coverage is provided under Code Section
 218 33-38-2.

219 ~~(7)~~ 'Health insurance' means ~~accident and sickness insurance, as that class of insurance~~
 220 ~~is defined in Code Section 33-7-2.~~

221 (10) 'Extra-contractual claims' shall include, for example, any claim not authorized by,
 222 or outside the scope of, the underlying policy or contract to include any claim based on
 223 bad faith, punitive or exemplary damages, treble damages, prejudgment or postjudgment
 224 interest, attorney's fees, or costs of litigation.

225 ~~(8)(11)~~ 'Impaired insurer' means a member insurer ~~deemed by the Commissioner~~ which
 226 is not an insolvent insurer and is placed under an order of rehabilitation or conservation
 227 by a court of competent jurisdiction on or after July 1, 1981, ~~to be potentially unable to~~
 228 ~~fulfill its contractual obligations but not an insolvent insurer.~~

229 ~~(9)(12)~~ 'Insolvent insurer' means a member insurer against which ~~a final~~ an order of
 230 liquidation containing a finding of insolvency has been entered by a court of competent
 231 jurisdiction on or after July 1, 1981.

232 ~~(10)(13)~~ 'Member insurer' means any insurer which is licensed or which holds a
 233 certificate of authority to transact in this state any kind of insurance for which coverage
 234 is provided under Code Section 33-38-2 and includes any insurer whose license or
 235 certificate of authority in this state may have been suspended, revoked, not renewed, or
 236 voluntarily withdrawn, but does not include:

- 237 (A) A ~~nonprofit~~ hospital or medical service corporation, whether profit or nonprofit;
- 238 (B) A health care corporation;
- 239 (C) A health maintenance organization;
- 240 (D) A fraternal benefit society;

- 241 (E) A mandatory state pooling plan;
- 242 (F) A mutual assessment company or any entity that operates on an assessment basis;
- 243 (G) An insurance exchange; or
- 244 (H) An organization that has a certificate or license limited to the issuance of charitable
- 245 gift annuities under Code Sections 33-58-1 through 33-58-6; or
- 246 (I) Any entity similar to those described in subparagraphs (A) through ~~(G)~~ (H) of this
- 247 paragraph.
- 248 (14) 'Moody's Corporate Bond Yield Average' means the Monthly Average Corporates
- 249 as published by Moody's Investors Service, Inc., or any successor thereto.
- 250 (15) 'Owner' of a policy or contract and 'policy owner' and 'contract owner' mean the
- 251 person who is identified as the legal owner under the terms of the policy or contract or
- 252 who is otherwise vested with legal title to the policy or contract through a valid
- 253 assignment completed in accordance with the terms of the policy or contract and properly
- 254 recorded as the owner on the books of the insurer. The terms 'owner,' 'contract owner,'
- 255 and 'policy owner' shall not include persons with a mere beneficial interest in a policy or
- 256 contract.
- 257 ~~(11)~~(16) 'Person' means any individual, corporation, limited liability company,
- 258 partnership, association, governmental body or entity, or voluntary organization.
- 259 (17) 'Plan sponsor' means:
- 260 (A) The employer in the case of a benefit plan established or maintained by a single
- 261 employer;
- 262 (B) The employee organization in the case of a benefit plan established or maintained
- 263 by an employee organization; or
- 264 (C) In a case of a benefit plan established or maintained by two or more employers or
- 265 jointly by one or more employers and one or more employee organizations, the
- 266 association, committee, joint board of trustees, or other similar group of representatives
- 267 of the parties who establish or maintain the benefit plan.
- 268 ~~(12)~~(18) 'Premiums' means direct gross insurance premiums and annuity amounts or
- 269 considerations, by whatever name called, received on covered policies or contracts, less
- 270 return returned premiums, and considerations and deposits thereon and less dividends
- 271 paid or credited to policyholders on such direct business and experience credits. The
- 272 term 'premiums' ~~does~~ shall not include ~~premiums and:~~
- 273 (A) Amounts or considerations on received for policies or contracts between insurers
- 274 and reinsurers; or for the portions of policies or contracts for which coverage is not
- 275 provided under this chapter except that assessable premium shall not be reduced on
- 276 account of paragraph (3) of subsection (c) of Code Section 33-38-2, relating to interest
- 277 limitations, and paragraph (12) of Code Section 33-38-7, relating to limitations with

278 respect to one individual, one participant, and one contract owner; The term 'premiums'
 279 does not include any premiums

280 (B) Premiums in excess of \$5 million on any an unallocated annuity contract; or

281 (C) With respect to multiple nongroup policies of life insurance owned by one owner,
 282 whether the policy owner is an individual, firm, corporation, or other person, and
 283 whether the persons insured are officers, managers, employees, or other persons,
 284 premiums in excess of \$5 million with respect to these policies or contracts, regardless
 285 of the number of policies or contracts held by the owner.

286 (19)(A) 'Principal place of business' of a plan sponsor or a person other than a natural
 287 person means the single state in which the natural persons who establish policy for the
 288 direction, control, and coordination of the operations of the entity as a whole primarily
 289 exercise that function, determined by the association in its reasonable judgment by
 290 considering the following factors:

291 (i) The state in which the primary executive and administrative headquarters of the
 292 entity is located;

293 (ii) The state in which the principal office of the chief executive officer of the entity
 294 is located;

295 (iii) The state in which the board of directors, or similar governing person or persons,
 296 of the entity conducts the majority of its meetings;

297 (iv) The state in which the executive or management committee of the board of
 298 directors, or similar governing person or persons, of the entity conducts the majority
 299 of its meetings;

300 (v) The state from which the management of the overall operations of the entity is
 301 directed; and

302 (vi) In the case of a benefit plan sponsored by affiliated companies comprising a
 303 consolidated corporation, the state in which the holding company or controlling
 304 affiliate has its principal place of business as determined using the above factors.

305 However, in the case of a plan sponsor, if more than 50 percent of the participants in
 306 the benefit plan are employed in a single state, that state shall be deemed to be the
 307 principal place of business of the plan sponsor.

308 (B) The principal place of business of a plan sponsor of a benefit plan described in
 309 subparagraph (C) of paragraph (17) of this Code section shall be deemed to be the
 310 principal place of business of the association, committee, joint board of trustees, or
 311 other similar group of representatives of the parties who establish or maintain the
 312 benefit plan that, in lieu of a specific or clear designation of a principal place of
 313 business, shall be deemed to be the principal place of business of the employer or
 314 employee organization that has the largest investment in the benefit plan in question.

315 (20) 'Receivership court' means the court in the insolvent or impaired insurer's state
 316 having jurisdiction over the conservation, rehabilitation, or liquidation of the insurer.

317 ~~(13)~~(21) 'Resident' means any person who is domiciled resides in this state at the time
 318 a member insurer is determined to be an impaired or insolvent insurer and to whom
 319 contractual obligations are owed. A person may be a resident of only one state, which,
 320 in the case of a person other than a natural person, shall be its principal place of business.
 321 Citizens of the United States who are either residents of foreign countries or residents of
 322 United States possessions, territories, or protectorates that do not have an association
 323 similar to the association created by this chapter shall be deemed residents of the state of
 324 domicile of the insurer that issued the policies or contracts.

325 (22) 'State' means a state, the District of Columbia, Puerto Rico, and a United States
 326 possession, territory, or protectorate.

327 (23) 'Structured settlement annuity' means an annuity purchased in order to fund periodic
 328 payments for a plaintiff or other claimant in payment for or with respect to personal
 329 injury suffered by the plaintiff or other claimant.

330 (24) 'Supplemental contract' means a written agreement entered into for the distribution
 331 of proceeds under a life, health, or annuity policy or contract.

332 (25) 'Unallocated annuity contract' means an annuity contract or group annuity certificate
 333 which is not issued to and owned by an individual, except to the extent of any annuity
 334 benefits guaranteed to an individual by an insurer under the contract or certificate.

335 33-38-5.

336 (a) There is created a nonprofit, unincorporated association to be known as the Georgia
 337 Life and Health Insurance Guaranty Association. All member insurers shall be and remain
 338 members of the association as a condition of their authority to transact insurance in this
 339 state. The association shall perform its functions under the plan of operation established
 340 and approved under Code Section 33-38-8 and shall exercise its powers through a board
 341 of directors established under Code Section 33-38-6.

342 (b) The association shall come under the immediate supervision of the Commissioner and
 343 shall be subject to the applicable provisions of the insurance laws of this state.

344 (c) For purposes of administration and assessment, the association shall maintain two
 345 accounts: (1) the health insurance account; and (2) the life insurance and annuity account.
 346 The life insurance and annuity account shall contain three subaccounts: (A) the life
 347 insurance account; (B) the annuity account; and (C) the unallocated annuity account ~~which~~
 348 ~~shall include contracts qualified under Section 403(b) of the United States Internal Revenue~~
 349 ~~Code.~~

350 (d) For purposes of assessment, ~~supplementary~~ supplemental contracts shall be covered
 351 under the account in which the basic policy is covered.

352 33-38-6.

353 ~~(a) The board of directors of the association shall consist of seven members and shall at
 354 all times contain at least one member from a domestic insurer. The members, who shall
 355 not be considered employees of the Insurance Department, shall be appointed as follows:~~

356 ~~(1) The Commissioner shall compile a list of the two stock insurers most likely to incur
 357 the largest assessment, per insurer, for each of the accounts under Code Section 33-38-5;
 358 he shall compile a list of the two nonstock insurers most likely to incur the largest
 359 assessment, per insurer, for each of the accounts under Code Section 33-38-5; and he
 360 shall compile a list of the two domestic insurers, either stock or nonstock, most likely to
 361 incur the largest assessment, for each of the accounts listed under Code Section 33-38-5.
 362 The Commissioner shall solicit from these 18 insurers the names of 18 individuals as
 363 nominees for members to the board of directors. The Commissioner shall thereupon
 364 separately certify in writing the nominations from stock and nonstock insurers and
 365 separately for each account;~~

366 ~~(2) From the nominations so certified for each such account, the Commissioner shall
 367 appoint one stock member and one nonstock member to the board of directors until six
 368 directors have been appointed. Then the Commissioner shall appoint from the remaining
 369 nominations the chairman of the board who shall also be its chief executive; and~~

370 (a) The board of directors of the association shall consist of not less than five nor more
 371 than nine member insurers serving terms as established in the plan of operation. The
 372 members of the board shall be selected by the Commissioner from a list provided to the
 373 Commissioner from the board. Vacancies on the board shall be filled for the remaining
 374 period of the term by a majority vote of the remaining board members, subject to the
 375 approval of the Commissioner.

376 ~~(3)(b) In approving selections or in appointing of members to the board, the Commissioner
 377 shall consider, among other things, whether all member insurers are fairly represented.~~

378 ~~(b) Any member may be removed from office by the Commissioner when, in his
 379 judgment, the public interest may so require.~~

380 ~~(c) Each member so appointed shall serve for a term of three years and until his successor
 381 has been appointed and qualified.~~

382 ~~(d) If there occurs, for any reason, a vacancy in the board of directors, the Commissioner
 383 shall appoint a member to fill the unexpired term of office from the nominations as
 384 heretofore described.~~

385 ~~(e)(c)~~ Members of the board may be reimbursed from the assets of the association for
 386 reasonable expenses incurred by them in their capacity as members of the board of
 387 directors, but members of the board shall not otherwise be compensated by the association
 388 for their services.

389 33-38-7.

390 (a) In addition to the powers and duties enumerated elsewhere in this chapter, the
 391 association shall have the following powers and duties:

392 (1) ~~Whenever~~ If a domestic member insurer is an impaired insurer, the association,
 393 subject to any conditions, other than those conditions which impair the contractual
 394 obligations of the impaired insurer, imposed by the association and approved by the
 395 ~~impaired insurer and the~~ Commissioner, may, in its discretion:

396 (A) ~~Guarantee, assume,~~ or reinsure, or cause to be guaranteed, assumed, or reinsured,
 397 any or all of the covered policies or contracts of the impaired insurer; and

398 (B) Provide such moneys, pledges, loans, notes, guarantees, or other means as are
 399 proper to effectuate subparagraph (A) of this paragraph and assure payment of the
 400 contractual obligations of the impaired insurer pending action under subparagraph (A)
 401 of this paragraph; and

402 ~~(C) Loan money to the impaired insurer;~~

403 (2) ~~Whenever~~ If a domestic member insurer is an insolvent insurer, the association shall,
 404 ~~subject to the approval of the Commissioner~~ in its discretion, either:

405 (A)(i)(I) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or
 406 reinsured, the covered policies or contracts of the insolvent insurer; or

407 ~~(B)(II)~~ Assure payment of the contractual obligations of the insolvent insurer; and

408 ~~(C)(ii)~~ Provide ~~such~~ moneys, pledges, loans, notes, guarantees, or other means as are
 409 reasonably necessary to discharge ~~such~~ the association's duties; or

410 ~~(3) Whenever a foreign or alien insurer is an insolvent insurer, the association shall,~~
 411 ~~subject to the approval of the Commissioner:~~

412 ~~(A) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured,~~
 413 ~~the covered policies of residents;~~

414 ~~(B) Assure payment of the contractual obligations of the insolvent insurer to residents;~~
 415 ~~and~~

416 ~~(C) Provide such moneys, pledges, notes, guarantees, or other means as are reasonably~~
 417 ~~necessary to discharge such duties.~~

418 This paragraph shall not apply where the Commissioner has determined that the foreign
 419 or alien insurer's domiciliary jurisdiction or state of entry provides protection by statute
 420 substantially similar to that provided by this chapter for residents of this state;

421 (B) Provide benefits and coverages in accordance with the following provisions:

422 (i) With respect to life and health insurance policies and annuities, assure payment
 423 of benefits for premiums identical to the premiums and benefits, except for terms of
 424 conversion and renewability, that would have been payable under the policies or
 425 contracts of the insolvent insurer, for claims incurred:

426 (I) With respect to group policies and contracts, not later than the earlier of the next
 427 renewal date under those policies or contracts or 45 days, but in no event less than
 428 30 days, after the date on which the association becomes obligated with respect to
 429 the policies and contracts; and

430 (II) With respect to nongroup policies, contracts, and annuities, not later than the
 431 earlier of the next renewal date, if any, under the policies or contracts or one year,
 432 but in no event less than 30 days, from the date on which the association becomes
 433 obligated with respect to the policies or contracts;

434 (ii) Make diligent efforts to provide all known insureds or annuitants, for nongroup
 435 policies and contracts, or group policy owners with respect to group policies and
 436 contracts, 30 days' notice of the termination, pursuant to division (i) of this
 437 subparagraph, of the benefits provided;

438 (iii) With respect to nongroup life and health insurance policies and annuities covered
 439 by the association, make available to each known insured or annuitant, or owner if
 440 other than the insured or annuitant, and with respect to an individual formerly insured
 441 or formerly an annuitant under a group policy who is not eligible for replacement
 442 group coverage, make available substitute coverage on an individual basis in
 443 accordance with the provisions of division (iv) of this subparagraph, if the insureds
 444 or annuitants had a right under law or the terminated policy or annuity to convert
 445 coverage to individual coverage or to continue an individual policy or annuity in force
 446 until a specified age or for a specified time, during which the insurer had no right
 447 unilaterally to make changes in any provision of the policy or annuity or had a right
 448 only to make changes in premium by class;

449 (iv) In providing the substitute coverage required under division (iii) of this
 450 subparagraph, the association may offer either to reissue the terminated coverage or
 451 to issue an alternative policy. Alternative or reissued policies shall be offered without
 452 requiring evidence of insurability and shall not provide for any waiting period or
 453 exclusion that would not have applied under the terminated policy. The association
 454 may reinsure any alternative or reissued policy;

455 (v)(I) Alternative policies adopted by the association shall be subject to the
 456 approval of the domiciliary insurance commissioner. The association may adopt

457 alternative policies of various types for future issuance without regard to any
458 particular impairment or insolvency.

459 (II) Alternative policies shall contain at least the minimum statutory provisions
460 required in this state and provide benefits that shall not be unreasonable in relation
461 to the premium charged. The association shall set the premium in accordance with
462 a table of rates that it shall adopt. The premium shall reflect the amount of
463 insurance to be provided and the age and class of risk of each insured, but shall not
464 reflect any changes in the health of the insured after the original policy was last
465 underwritten.

466 (III) Any alternative policy issued by the association shall provide coverage of a
467 type similar to that of the policy issued by the impaired or insolvent insurer, as
468 determined by the association;

469 (vi) If the association elects to reissue terminated coverage at a premium rate
470 different from that charged under the terminated policy, the premium shall be set by
471 the association in accordance with the amount of insurance provided and the age and
472 class of risk, subject to approval of the domiciliary insurance commissioner and the
473 receivership court;

474 (vii) The association's obligations with respect to coverage under any policy of the
475 impaired or insolvent insurer or under any reissued or alternative policy shall cease
476 on the date the coverage or policy is replaced by another similar policy by the policy
477 owner, the insured, or the association; and

478 (viii) When proceeding under this subparagraph with respect to a policy or contract
479 carrying guaranteed minimum interest rates, the association shall assure the payment
480 or crediting of a rate of interest consistent with paragraph (3) of subsection (c) of
481 Code Section 33-38-2;

482 (3) Nonpayment of premiums within 31 days after the date required under the terms of
483 any guaranteed, assumed, alternative, or reissued policy or contract or substitute coverage
484 shall terminate the association's obligations under the policy or coverage under this
485 chapter with respect to the policy or coverage, except with respect to any claims incurred
486 or any net cash surrender value which may be due in accordance with the provisions of
487 this chapter;

488 (4) Premiums due for coverage after entry of an order of liquidation of an insolvent
489 insurer shall belong to and be payable at the direction of the association. The association
490 shall be liable for unearned premiums due to policy or contract owners arising after the
491 entry of the order;

492 (5) The protection provided by this chapter shall not apply where any guaranty protection
 493 is provided to residents of this state by the laws of the domiciliary state or jurisdiction of
 494 the impaired or insolvent insurer other than this state;

495 ~~(4)(A)(6)~~ In carrying out its duties under ~~paragraphs~~ paragraph (2) and (3) of this Code
 496 section, the association may: ~~impose permanent policy liens or contract liens in~~
 497 ~~connection with any guarantee, assumption, or reinsurance agreement if the court:~~

498 ~~(i) Finds that the amounts which can be assessed under this chapter are less than the~~
 499 ~~amounts needed to assure full and prompt performance of the insolvent insurer's~~
 500 ~~contractual obligations or that the economic or financial conditions as they affect~~
 501 ~~member insurers are sufficiently adverse to render the imposition of policy or contract~~
 502 ~~liens to be in the public interest; and~~

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

504 (A) Subject to approval by a court in this state, impose permanent policy or contract
 505 liens in connection with a guarantee, assumption, or reinsurance agreement, if the
 506 association finds that the amounts which can be assessed under this chapter are less
 507 than the amounts needed to assure full and prompt performance of the association's
 508 duties under this chapter, or that the economic or financial conditions as they affect
 509 member insurers are sufficiently adverse to render the imposition of such permanent
 510 policy or contract liens, to be in the public interest; and

511 ~~(B) Before being obligated under paragraphs (2) and (3) of this Code section, the~~
 512 ~~association may request that there be imposed temporary moratoriums or liens on~~
 513 ~~payments of cash values and policy loans in addition to any contractual provisions for~~
 514 ~~deferral of such cash value payments or policy loans. Such temporary moratoriums and~~
 515 ~~liens may be imposed if they are approved by a court of competent jurisdiction. Subject~~
 516 ~~to approval by a court in this state, impose temporary moratoriums or liens on payments~~
 517 ~~of cash values and policy loans, or any other right to withdraw funds held in~~
 518 ~~conjunction with policies or contracts, in addition to any contractual provisions for~~
 519 ~~deferral of cash or policy loan value. In addition, in the event of a temporary~~
 520 ~~moratorium or moratorium charge imposed by the receivership court on payment of~~
 521 ~~cash values or policy loans, or on any other right to withdraw funds held in conjunction~~
 522 ~~with policies or contracts, out of the assets of the impaired or insolvent insurer, the~~
 523 ~~association may defer the payment of cash values, policy loans, or other rights by the~~
 524 ~~association for the period of the moratorium or moratorium charge imposed by the~~
 525 ~~receivership court, except for claims covered by the association to be paid in~~
 526 ~~accordance with a hardship procedure established by the liquidator or rehabilitator and~~
 527 ~~approved by the receivership court;~~

528 (7) A deposit in this state, held pursuant to law or required by the Commissioner for the
 529 benefit of creditors, including policy owners, not turned over to the domiciliary liquidator
 530 upon the entry of a final order of liquidation or order approving a rehabilitation plan of
 531 an insurer domiciled in this state or in a reciprocal state, pursuant to Code Sections 33-3-8
 532 through 33-3-10, shall be promptly paid to the association. The association shall be
 533 entitled to retain a portion of any amount so paid to it equal to the percentage determined
 534 by dividing the aggregate amount of policy owners claims related to that insolvency for
 535 which the association has provided statutory benefits by the aggregate amount of all
 536 policy owners' claims in this state related to that insolvency and shall remit to the
 537 domiciliary receiver the amount so paid to the association less the amount retained
 538 pursuant to this paragraph. Any amount so paid to the association and retained by it shall
 539 be treated as a distribution of estate assets pursuant to applicable state receivership law
 540 dealing with early access disbursements.

541 ~~(5)~~(8) If the association fails to act within a reasonable period of time with respect to an
 542 insolvent insurer, as provided in ~~paragraphs~~ paragraph (2) and (3) of this Code section,
 543 the Commissioner shall have the powers and duties of the association under this chapter
 544 with respect to the insolvent insurers;

545 ~~(6)~~(9) Upon ~~his~~ the Commissioner's request, the association may render assistance and
 546 advice to the Commissioner concerning rehabilitation, payment of claims, continuance
 547 of coverage, or the performance of other contractual obligations of any impaired or
 548 insolvent insurer;

549 ~~(7)~~(10) The association shall have standing to appear or intervene before any court or
 550 agency in this state with jurisdiction over an impaired or insolvent insurer concerning
 551 which the association is or may become obligated under this chapter or with jurisdiction
 552 over any person or property against which the association may have rights through
 553 subrogation or otherwise. Such standing shall extend to all matters germane to the
 554 powers and duties of the association, including but not limited to proposals for reinsuring,
 555 modifying, or guaranteeing the ~~covered~~ policies or contracts of the impaired or insolvent
 556 insurer and the determination of the ~~covered~~ policies or contracts and contractual
 557 obligations. The association shall also have the right to appear or intervene before a court
 558 or agency in another state with jurisdiction over an impaired or insolvent insurer for
 559 which the association is or may become obligated or with jurisdiction over any person or
 560 property against whom the association may have rights through subrogation or otherwise;

561 ~~(8)(A)~~(11)(A) Any person receiving benefits under this chapter shall be deemed to
 562 have assigned the rights under, and any causes of action against any person for losses
 563 arising under, resulting from, or otherwise relating to, the covered policy or contract to
 564 the association to the extent of the benefits received because of this chapter, whether

565 the benefits are payments of or on account of contractual obligations, ~~or~~ continuation
 566 of coverage, or provision of substitute or alternative coverages. The association may
 567 require an assignment to it of such rights and causes of action by any payee, policy or
 568 contract owner, beneficiary, insured, or annuitant as a condition precedent to the receipt
 569 of any rights or benefits conferred by this chapter upon such person. The association
 570 shall be subrogated to these rights against the assets of any impaired or insolvent
 571 insurer.

572 (B) The subrogation rights of the association under this paragraph shall have the same
 573 priority against the assets of the impaired or insolvent insurer as that possessed by the
 574 person entitled to receive benefits under this chapter;

575 (C) In addition to subparagraphs (A) and (B) of this paragraph, the association shall
 576 have all common law rights of subrogation and any other equitable or legal remedy that
 577 would have been available to the impaired or insolvent insurer or owner, beneficiary,
 578 or payee of a policy or contract with respect to the policy or contracts.

579 (D) If subparagraphs (A) through (C) of this paragraph are invalid or ineffective with
 580 respect to any person or claim for any reason, the amount payable by the association
 581 with respect to the related covered obligations shall be reduced by the amount realized
 582 by any other person with respect to the person or claim that is attributable to the
 583 policies, or portion thereof, covered by the association.

584 (E) If the association has provided benefits with respect to a covered obligation and a
 585 person recovers amounts as to which the association has rights as described in this
 586 paragraph, the person shall pay to the association the portion of the recovery
 587 attributable to the policies, or portion thereof, covered by the association;

588 ~~(9) The contractual obligations of the insolvent insurer for which the association~~
 589 ~~becomes or may become liable shall be as great as, but no greater than, the contractual~~
 590 ~~obligations of the insolvent insurer would have been in the absence of an insolvency,~~
 591 ~~unless such obligations are reduced as permitted by paragraph (4) of this Code section.~~
 592 ~~With respect to any one contract holder covered by an unallocated annuity contract, the~~
 593 ~~association shall be liable for not more than \$5 million in benefits irrespective of the~~
 594 ~~number of such contracts held by that contract holder. With respect to any other covered~~
 595 ~~policy, the aggregate liability of the association on any one life shall not exceed~~
 596 ~~\$100,000.00 with respect to the payment of cash values or \$300,000.00 for all benefits~~
 597 ~~including cash values; provided, however, that with respect to claims under policies~~
 598 ~~written to provide benefits as required under Chapter 9 of Title 34, relating to workers'~~
 599 ~~compensation, such claims shall be in the full amount as provided by such chapter; and~~

600 (12) The benefits that the association may become obligated to cover shall in no event
 601 exceed the lesser of:

602 (A) The contractual obligations for which the insurer is liable or would have been
603 liable if it were not an impaired or insolvent insurer;

604 (B) With respect to one life, regardless of the number of policies or contracts:

605 (i) The amount of \$300,000.00 in life insurance death benefits, but not more than
606 \$100,000.00 in net cash surrender and net cash withdrawal values for life insurance;

607 (ii) In health insurance benefits, \$300,000.00 for disability insurance; \$300,000.00
608 for long-term care insurance; \$300,000.00 for health insurance other than disability
609 insurance as referenced above, long-term care insurance as referenced above, and
610 basic hospital, medical, and surgical insurance or major medical insurance as
611 referenced below, including any net cash surrender and net cash withdrawal values;
612 and \$500,000.00 for basic hospital, medical, and surgical insurance or major medical
613 insurance; and

614 (iii) The amount of \$300,000.00 in the present value of annuity benefits, but not more
615 than \$250,000.00 in net cash surrender and net cash withdrawal values for an annuity;

616 (C) With respect to each payee of a structured settlement annuity, or beneficiary or
617 beneficiaries of the payee if deceased, \$300,000.00 in present value annuity benefits,
618 in the aggregate, including net cash surrender and net cash withdrawal values, if any;

619 (D) However, in no event shall the association be obligated to cover more than:

620 (i) An aggregate of \$300,000.00 in benefits with respect to any one life under
621 subparagraph (B) of this paragraph except with respect to benefits for basic hospital,
622 medical, and surgical insurance and major medical insurance under division (ii) of
623 this subparagraph, in which case the aggregate liability of the association shall not
624 exceed \$500,000.00 with respect to any one individual; or

625 (ii) With respect to one owner of multiple nongroup policies of life insurance,
626 whether the policy owner is an individual, firm, corporation, or other person, and
627 whether the persons insured are officers, managers, employees, or other persons, more
628 than \$5 million in benefits, regardless of the number of policies and contracts held by
629 the owner;

630 (E) With respect to either one contract owner provided coverage under subparagraph
631 (b)(2)(B) of Code Section 33-38-2 or one plan sponsor whose plans own directly or in
632 trust one or more unallocated annuity contracts, \$5 million in benefits, regardless of the
633 number of contracts with respect to the contract owner or plan sponsor. However, in
634 the case where one or more unallocated annuity contracts are covered contracts under
635 this chapter and are owned by a trust or other entity for the benefit of two or more plan
636 sponsors, coverage shall be afforded by the association if the largest interest in the trust
637 or entity owning the contract or contracts is held by a plan sponsor whose principal
638 place of business is in this state and in no event shall the association be obligated to

639 cover more than \$5 million in benefits with respect to all these unallocated contracts;
 640 and
 641 (F) The limitations set forth in this paragraph are limitations on the benefits for which
 642 the association is obligated before taking into account either its subrogation and
 643 assignment rights or the extent to which those benefits could be provided out of the
 644 assets of the impaired or insolvent insurer attributable to covered policies. The costs
 645 of the association's obligations under this chapter may be met by the use of assets
 646 attributable to covered policies or reimbursed to the association pursuant to its
 647 subrogation and assignment rights;
 648 (13) In performing its obligations to provide coverage under Code Section 33-38-7, the
 649 association shall not be required to guarantee, assume, reinsure, or perform, or cause to
 650 be guaranteed, assumed, reinsured, or performed, the contractual obligations of the
 651 insolvent or impaired insurer under a covered policy or contract that do not materially
 652 affect the economic values or economic benefits of the covered policy or contract;
 653 ~~(10)~~(14) In addition to the rights and powers elsewhere in this chapter, the ~~The~~
 654 association may:
 655 (A) Enter into such contracts as are necessary or proper to carry out the provisions and
 656 purposes of this chapter;
 657 (B) ~~Bring or defend actions~~ Sue or be sued, including the right to seek a declaratory
 658 judgment in any superior court of this state as to uncertainties with respect to the
 659 payment of benefits under this Code section. The association may also take ~~taking~~ any
 660 legal actions necessary or proper for recovery of any unpaid assessments under Code
 661 Section 33-38-15 and may settle claims or potential claims against it;
 662 (C) Borrow money to effect the purposes of this chapter. Any notes or other evidence
 663 of indebtedness of the association not in default shall be legal investments for domestic
 664 insurers and may be carried as admitted assets;
 665 (D) Employ or retain such persons as are necessary to handle the financial transactions
 666 of the association and to perform such other functions as become necessary or proper
 667 under this chapter;
 668 (E) Negotiate and contract with any liquidator, rehabilitator, conservator, or ancillary
 669 receiver to carry out the powers and duties of the association;
 670 (F) Take such legal action as may be necessary to avoid payment of improper claims;
 671 and
 672 (G) Exercise, for the purposes of this chapter and to the extent approved by the
 673 Commissioner, the powers of a domestic life or health insurer; but in no case may the
 674 association issue insurance policies or annuity contracts other than those ~~necessary~~

675 issued to perform the contractual its obligations of the impaired or insolvent insurer.
676 under this chapter;

677 (15) Organize itself as a corporation or in other legal form permitted by the laws of the
678 state;

679 (16) Request information from a person seeking coverage from the association in order
680 to aid the association in determining its obligations under this chapter with respect to the
681 person, and the person shall promptly comply with the request;

682 (17) Take other necessary or appropriate action to discharge its duties and obligations
683 under this chapter or to exercise its powers under this chapter;

684 (18) The association may join an organization of one or more other state associations of
685 similar purposes, to further the purposes and administer the powers and duties of the
686 association;

687 (19) With respect to covered policies for which the association becomes obligated after
688 an entry of an order of liquidation, the association may elect to succeed to the rights of
689 the insolvent insurer arising after the order of liquidation under any contract of
690 reinsurance to which the insolvent insurer was a party, to the extent such contract
691 provides coverage for losses occurring after the date of the order of liquidation. As a
692 condition to making such election, the association must pay all unpaid premiums due
693 under the contract for coverage relating to periods before and after the date on which the
694 order of liquidation was entered;

695 (20) The board of directors shall have discretion and may exercise reasonable business
696 judgment to determine the means by which the association is to provide the benefits of
697 this chapter in an economical and efficient manner;

698 (21) Where the association has arranged or offered to provide the benefits of this chapter
699 to a covered person under a plan or arrangement that fulfills the association's obligations
700 under this chapter, the person shall not be entitled to benefits from the association in
701 addition to or other than those provided under the plan or arrangement;

702 (22) Exclusive venue in any action by or against the association is in the Superior Court
703 of DeKalb County. The association may, at its option, waive such venue as to specific
704 actions. The association shall not be required to give an appeal bond in an appeal that
705 relates to a cause of action arising under this chapter; and

706 (23) In carrying out its duties in connection with guaranteeing, assuming, or reinsuring
707 policies or contracts under paragraph (1) or (2) of this Code section, the association may,
708 subject to approval of the receivership court, issue substitute coverage for a policy or
709 contract that provides an interest rate, crediting rate, or similar factor determined by use
710 of an index or other external reference stated in the policy or contract employed in

711 calculating returns or changes in value by issuing an alternative policy or contract in
 712 accordance with the following provisions:

713 (A) In lieu of the index or other external reference provided for in the original policy
 714 or contract, the alternative policy or contract provides for a fixed interest rate, payment
 715 of dividends with minimum guarantees, or a different method for calculating interest
 716 or changes in value;

717 (B) There is no requirement for evidence of insurability, waiting period, or other
 718 exclusion that would not have applied under the replaced policy or contract; and

719 (C) The alternative policy or contract is substantially similar to the replaced policy or
 720 contract in all other material terms.

721 (b) The provisions of this Code section shall apply only to coverage the guaranty
 722 association provides in connection with any member insurer that is placed under an order
 723 of liquidation with a finding of insolvency after the effective date of this Code section.

724 33-38-8.

725 (a) The association shall submit to the Commissioner a plan of operation and any
 726 amendments thereto necessary or suitable to assure the fair, reasonable, and equitable
 727 administration of the association. The plan of operation and any amendments thereto shall
 728 become effective upon approval in writing by the Commissioner. If the association fails
 729 to submit a suitable plan of operation within 180 days following July 1, 1981, or, if at any
 730 time thereafter the association fails to submit suitable amendments to the plan, the
 731 Commissioner shall, after notice and hearing, adopt and promulgate such reasonable rules
 732 as are necessary or advisable to effectuate the provisions of this chapter. Such rules shall
 733 continue in force until modified by the Commissioner or superseded by a plan submitted
 734 by the association and approved in writing by the Commissioner.

735 (b) All member insurers shall comply with the plan of operation.

736 (c) The plan of operation shall, in addition to requirements enumerated elsewhere in this
 737 chapter:

738 (1) Establish procedures for handling the assets of the association;

739 (2) Establish the amount and method of reimbursing members of the board of directors
 740 under Code Section 33-38-6;

741 (3) Establish regular places and times for meetings of the board of directors;

742 (4) Establish procedures for records to be kept of all financial transactions of the
 743 association, its agents, and the board of directors;

744 (5) Establish any additional procedures for assessments under Code Section 33-38-15;

745 and

746 (6) Contain additional provisions necessary or proper for the execution of the powers and
747 duties of the association.

748 33-38-9.

749 The plan of operation described in Code Section 33-38-8 may provide that any or all
750 powers and duties of the association, except those under subparagraph (C) of paragraph
751 ~~(10)~~(14) of Code Section 33-38-7 and Code Section 33-38-15, shall be delegated to a
752 corporation, association, or other organization which performs or will perform functions
753 similar to those of this association or its equivalent in two or more states. Such a
754 corporation, association, or organization shall be reimbursed for any payments made on
755 behalf of the association and shall be paid for its performance of any function of the
756 association. A delegation under this Code section shall take effect only with the approval
757 of both the board of directors and the Commissioner and may be made only to a
758 corporation, association, or organization which extends protection not substantially less
759 favorable and effective than that provided for by this chapter.

760 33-38-10.

761 In addition to the duties and powers enumerated elsewhere in this chapter:

762 (1) The Commissioner shall:

763 (A) Upon request of the board of directors, provide the association with a statement of
764 the premiums in the appropriate states for each member insurer; and

765 (B) When an impairment is declared and the amount of the impairment is determined,
766 serve a demand upon the impaired insurer to make good the impairment within a
767 reasonable time. Notice to the impaired insurer shall constitute notice to its
768 shareholders, if any. The failure of the insurer to comply promptly with such demand
769 shall not excuse the association from the performance of its powers and duties under
770 this chapter; and

771 (2) The Commissioner may suspend or revoke, after notice and hearing, the certificate
772 of authority to transact insurance in this state of any member insurer which fails to pay
773 an assessment when due or fails to comply with the plan of operation.

774 33-38-11.

775 Records shall be kept of all negotiations and meetings in which the association or its
776 representatives are involved to discuss the activities of the association in carrying out its
777 powers and duties under Code Section 33-38-7. ~~Records~~ The records of such negotiations
778 ~~or meetings shall be made public only upon~~ the association with respect to an impaired or
779 insolvent insurer shall not be disclosed prior to the termination of a liquidation,

780 rehabilitation, or conservation proceeding involving the impaired or insolvent insurer,
 781 except (a) upon the termination of the impairment or insolvency of the insurer, or (b) upon
 782 the order of a court of competent jurisdiction. Nothing in this Code section shall limit the
 783 duty of the association to render a report of its activities under Code Section 33-38-12.

784 33-38-12.

785 The association shall be subject to examination and regulation by the Commissioner.
 786 Notwithstanding the foregoing, whether such examinations shall be conducted and the
 787 frequency of any such examination shall be at the sole discretion of the Commissioner.
 788 The board of directors shall submit to the Commissioner not later than May 1 of each year
 789 a financial report and a report of its activities for the preceding calendar year on forms
 790 approved by the Commissioner.

791 33-38-13.

792 The association shall be exempt from all taxation in this state based upon income or gross
 793 receipts and shall likewise be exempt from all state and local occupation license and
 794 business fees and occupation license and business taxes.

795 33-38-14.

796 There shall be no liability on the part of and no cause of action of any nature shall arise
 797 against any member insurer or its agents or employees, the association or its agents or
 798 employees, members of the board of directors, or the Commissioner or his or her
 799 representatives, for any action ~~taken~~ or omission by them in the performance of their
 800 powers and duties under this chapter. This immunity shall extend to the participation in
 801 any organization of one or more other state associations of similar purposes and to any such
 802 organization and its agents or employees.

803 33-38-15.

804 (a) For the purpose of providing the funds necessary to carry out the powers and duties of
 805 the association, the board of directors shall assess the member insurers separately for the
 806 health account and for each subaccount of the life insurance and annuity account at such
 807 time and for such amounts as the board finds necessary. Assessment shall be due not less
 808 than 30 days after prior written notice to the member insurers.

809 (b) There shall be two classes of assessments, as follows:

810 (1) Class A assessments shall be ~~made~~ authorized and called for the purpose of meeting
 811 administrative costs and legal and other general expenses not related to a particular

812 impaired or insolvent insurer, and examinations conducted under the authority of
813 subsection (c) of Code Section 33-38-16; and

814 (2) Class B assessments shall be ~~made~~ authorized and called to the extent necessary to
815 carry out the powers and duties of the association under Code Section 33-38-7 with
816 regard to an impaired or insolvent insurer.

817 (c)(1) The amount of any Class A assessment shall be determined by the board of
818 directors and may be made on a pro rata or non-pro rata basis. If a Class A assessment
819 is made on a pro rata basis, the board may provide that it be credited against future Class
820 B assessments. An assessment for costs and expenses other than for examinations which
821 is made on a non-pro rata basis shall not exceed ~~\$150.00~~ \$300.00 per company in any one
822 calendar year. The amount of any Class B assessment shall be allocated for assessment
823 purposes among the accounts or subaccounts in subsection (c) of Code Section 33-38-5
824 pursuant to an allocation formula which may be based on the premiums or reserves of the
825 impaired or insolvent insurer or any other standard deemed by the board in its sole
826 discretion as being fair and reasonable under the circumstances.

827 (2) Class B assessments against member insurers for each account or subaccount shall
828 be in the proportion that the premiums received on business in this state by each assessed
829 member insurer on policies or contracts covered by each account or subaccount for the
830 three most recent calendar years for which information is available preceding the year in
831 which the insurer became impaired or insolvent, as the case may be, bears to such
832 premiums received on business in this state for such calendar years by all assessed
833 member insurers.

834 (3) Assessments for funds to meet the requirements of the association with respect to an
835 impaired or insolvent insurer shall not be ~~made~~ authorized or called until necessary to
836 implement the purposes of this chapter. Classification of assessments under subsection
837 (b) of this Code section and computation of assessments under this subsection shall be
838 made with a reasonable degree of accuracy, recognizing that exact determinations may
839 not always be possible. The association shall notify each member insurer of its
840 anticipated pro rata share of an authorized assessment not yet called within 180 days after
841 the assessment is authorized.

842 (d) The association may abate or defer in whole or in part the assessment of a member
843 insurer if, in the opinion of the board of directors, payment of the assessment would
844 endanger the ability of the member insurer to fulfill its contractual obligations. In the event
845 an assessment against a member insurer is abated or deferred in whole or in part, the
846 amount by which such assessment is abated or deferred may be assessed against the other
847 member insurers in a manner consistent with the basis for assessments set forth in this
848 Code section. Once the conditions that caused a deferral have been removed or rectified,

849 the member insurer shall pay all assessments that were deferred pursuant to a repayment
850 plan approved by the association.

851 (e)(1) The total of all assessments upon a member insurer for each account shall not in
852 any one calendar year exceed 2 percent of such insurer's premiums received in this state
853 on the policies covered by the account during the calendar year preceding the assessment.
854 If the maximum assessment in any account, together with the other assets of the
855 association, does not provide in any one year in such account an amount sufficient to
856 carry out the responsibilities of the association, the necessary additional funds shall be
857 assessed as soon thereafter as permitted by this chapter.

858 (2) The total of all assessments upon a member insurer for each subaccount of the life
859 insurance and annuity account shall not in any one calendar year exceed 2 percent of such
860 insurer's premiums received in this state on the policies covered by the subaccount during
861 the calendar year preceding the assessment. If the maximum assessment for any
862 subaccount of the life insurance and annuity account in any one year does not provide an
863 amount sufficient to carry out the responsibilities of the association, then the board shall
864 assess the other subaccounts of the life insurance and annuity account for the necessary
865 additional amount up to the maximum assessment level provided in paragraph (1) of this
866 subsection.

867 (f) The board may, by an equitable method as established in the plan of operation, refund
868 to member insurers, in proportion to the contribution of each insurer to that account or
869 subaccount, the amount by which the assets of the account or subaccount exceed the
870 amount the board finds is necessary to carry out the obligations of the association during
871 the coming year with regard to that account or subaccount, including assets accruing from
872 net realized gains and income from investments. A reasonable amount may be retained in
873 any account or subaccount to provide funds for the continuing expenses of the association
874 and for future losses if the board determines that refunds are impractical.

875 (g) It shall be proper for any member insurer in determining its premium rates and policy
876 owner dividends as to any kind of insurance within the scope of this chapter to consider the
877 amount reasonably necessary to meet its assessment obligations under this chapter.

878 (h) The association shall issue to each insurer paying an assessment under this chapter,
879 other than a Class A assessment, a certificate of contribution, in a form prescribed by the
880 Commissioner for the amount of the assessment paid. All outstanding certificates shall be
881 of equal dignity and priority without reference to amounts or dates of issue. A certificate
882 of contribution may be shown by the insurer in its financial statement as an asset in such
883 form, for such an amount and for such period of time, not to exceed five years from the
884 date of assessment, as the Commissioner may approve.

885 (i)(1) A member insurer that wishes to protest all or part of an assessment shall pay when
 886 due the full amount of the assessment as set forth in the notice provided by the
 887 association. The payment shall be available to meet association obligations during the
 888 pendency of the protest or any subsequent appeal. Payment shall be accompanied by a
 889 statement in writing that the payment is made under protest and setting forth a brief
 890 statement of the grounds for the protest.

891 (2) Within 60 days following the payment of an assessment under protest by a member
 892 insurer, the association shall notify the member insurer in writing of its determination
 893 with respect to the protest unless the association notifies the member insurer that
 894 additional time is required to resolve the issues raised by the protest.

895 (3) Within 30 days after a final decision has been made, the association shall notify the
 896 protesting member insurer in writing of that final decision. Within 60 days of receipt of
 897 notice of the final decision, the protesting member insurer may appeal that final action
 898 to the Commissioner.

899 (4) In the alternative to rendering a final decision with respect to a protest based on a
 900 question regarding the assessment base, the association may refer protests to the
 901 Commissioner for a final decision, with or without a recommendation from the
 902 association.

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

906 (j) The association may request information of member insurers in order to aid in the
 907 exercise of its power under this Code section and member insurers shall promptly comply
 908 with a request.

909 33-38-16.

910 (a) The board of directors may, upon majority vote, make reports and recommendations
 911 to the Commissioner upon any matter germane to the solvency, liquidation, rehabilitation,
 912 or conservation of any member insurer, or to the solvency of any company seeking to do
 913 an insurance business in this state. Such reports and recommendations shall not be
 914 considered public documents.

915 (b) ~~It shall be the duty of the~~ The board of directors may, upon majority vote, ~~to~~ notify the
 916 Commissioner of any information indicating any member insurer may be an impaired or
 917 insolvent insurer.

918 (c) The board of directors may, upon majority vote, request that the Commissioner order
 919 an examination of any member insurer which the board in good faith believes may be an
 920 impaired or insolvent insurer. Within 30 days of the receipt of such request, the

921 Commissioner shall begin such examination. The examination may be conducted as a
 922 National Association of Insurance Commissioners' examination or may be conducted by
 923 such persons as the Commissioner designates. The cost of such examination shall be paid
 924 by the association and the examination report shall be treated the same as other
 925 examination reports. In no event shall such examination report be released to the board of
 926 directors prior to its release to the public, but this shall not preclude the Commissioner
 927 from complying with subsection (a) of this Code section. The Commissioner shall notify
 928 the board of directors when the examination is completed. The request for an examination
 929 shall be kept on file by the Commissioner, but it shall not be open to public inspection prior
 930 to the release of the examination report to the public.

931 (d) The board of directors may, upon majority vote, make recommendations to the
 932 Commissioner for the detection and prevention of insurer insolvencies.

933 (e) The board of directors shall, at the conclusion of any insurer insolvency in which the
 934 association was obligated to pay covered claims, prepare a report to the Commissioner
 935 containing such information as it may have in its possession bearing on the history and
 936 causes of such insolvency. The board shall cooperate with the board of directors of
 937 guaranty associations in other states in preparing a report on the history and causes of
 938 insolvency of a particular insurer and may adopt by reference any report prepared by such
 939 other associations.

940 33-38-17.

941 (a) This chapter shall not be construed to reduce the liability for unpaid assessments of the
 942 insureds of an impaired or insolvent insurer operating under a plan with assessment
 943 liability.

944 (b) For the purpose of carrying out its obligations under this chapter, the association shall
 945 be deemed to be a creditor of the impaired or insolvent insurer to the extent of the assets
 946 attributable to covered policies, reduced by any amounts to which the association is entitled
 947 as subrogee pursuant to paragraph ~~(8)~~ (11) of Code Section 33-38-7. ~~All~~ The assets of the
 948 impaired or insolvent insurer attributable to covered policies shall be used by the
 949 association to continue ~~all~~ the covered policies and pay ~~all~~ the contractual obligations of
 950 the impaired or insolvent insurer as required by this chapter. For purposes of this
 951 subsection, that portion of the total assets of an impaired or insolvent insurer that is
 952 attributable to covered policies shall be determined by using the same proportion as the
 953 reserves that should have been established for such policies bears to the reserves that
 954 should have been established for all policies of insurance written by the impaired or
 955 insolvent insurer.

956 (c) As a creditor of the impaired or insolvent insurer as established in subsection (b) of this
 957 Code section and consistent with Code Section 33-37-33, the association and other similar
 958 associations shall be entitled to receive a disbursement of assets out of the marshaled
 959 assets, from time to time as the assets become available to reimburse it, as a credit against
 960 contractual obligations under this chapter. If the liquidator has not, within 120 days of a
 961 final determination of insolvency of an insurer by the receivership court, made an
 962 application to the court for the approval of a proposal to disburse assets out of marshaled
 963 assets to guaranty associations having obligations because of the insolvency, then the
 964 association shall be entitled to make application to the receivership court for approval of
 965 its own proposal to disburse these assets.

966 ~~(b)(1)(d)(1)~~ Prior to the termination of any liquidation, rehabilitation, or conservation
 967 proceeding, the court may take into consideration the contributions of the respective
 968 parties, including the association, the shareholders, policy owners of the insolvent insurer,
 969 and any other party with a bona fide interest, in making an equitable distribution of the
 970 ownership rights of such insolvent insurer. In such a determination, consideration shall
 971 be given to the welfare of the policyholders of the continuing or successor insurer.

972 (2) No distribution to stockholders of an impaired or insolvent insurer shall be made until
 973 and unless the total amount of valid claims of the association with interest thereon for
 974 funds expended in carrying out its powers and duties under Code Section 33-38-7, with
 975 respect to such insurer, has been fully recovered by the association.

976 (3) No insurer that is subject to any delinquency proceedings, whether formal or
 977 informal, administrative or judicial, shall have any of its assets returned to the control of
 978 its shareholders or private management until all payments of or on account of the insurer's
 979 contractual obligations by all guaranty associations, along with all expenses thereof and
 980 interest on all such payments and expenses, shall have been repaid to the guaranty
 981 associations or a plan of repayment by the insurer shall have been approved by the
 982 guaranty association.

983 ~~(c)(1)(e)(1)~~ If an order for liquidation or rehabilitation of an insurer domiciled in this
 984 state has been entered, the receiver appointed under such order shall have a right on
 985 behalf of the insurer to recover from any affiliate the amount of distributions, other than
 986 stock dividends paid by the insurer on its capital stock, made at any time during the five
 987 years preceding the petition for liquidation or rehabilitation, subject to the limitations of
 988 this ~~subsection and subsections (a) and (b)~~ of this Code section.

989 (2) No such distribution shall be recoverable if the insurer shows that the distribution
 990 was lawful and reasonable when paid and that the insurer did not know and could not
 991 reasonably have known that the distribution might adversely affect the ability of the
 992 insurer to fulfill its contractual obligations.

993 (3) Any person who was an affiliate that controlled the insurer at the time the
 994 distributions were paid shall be liable to the extent of the distributions received. Any
 995 person who was an affiliate that controlled the insurer at the time the distributions were
 996 declared shall be liable to the extent of the distributions that would have been received
 997 if such distributions had been paid immediately. Whenever two persons are liable with
 998 respect to the same distribution, they shall be jointly and severally liable.

999 (4) The maximum amount recoverable under this subsection shall be the amount needed,
 1000 in excess of all other available assets of the insolvent insurer, to pay the contractual
 1001 obligations of the insolvent insurer.

1002 (5) Whenever any person liable under paragraph (3) of this subsection is insolvent, all
 1003 affiliates that controlled it at the time the distribution was paid shall be jointly and
 1004 severally liable for any resulting deficiency in the amount recovered from the insolvent
 1005 affiliate.

1006 33-38-18.

1007 All proceedings in any court in this state in which the insolvent insurer is a party shall be
 1008 stayed ~~60~~ 180 days from the date of a final order of liquidation, rehabilitation, or
 1009 conservation to permit proper legal action by the association on any matters germane to its
 1010 powers or duties. As to judgment entered under any decision, order, verdict, or finding
 1011 based on default, the association may apply to have such judgment set aside by the same
 1012 court that made such judgment and shall be permitted to defend against such action on the
 1013 merits.

1014 33-38-19.

1015 The liquidator, rehabilitator, or conservator of any impaired insurer may notify all
 1016 interested persons of the effect of this chapter.

1017 33-38-20.

1018 Any action of the board of directors may be appealed to the Commissioner by any member
 1019 insurer if such appeal is taken within ~~30~~ 60 days of its receipt of notice of the action being
 1020 appealed. Any final action or order of the Commissioner shall be subject to judicial review
 1021 in a court of competent jurisdiction in accordance with the laws of this state that may apply
 1022 to the actions or orders of the Commissioner.

1023 33-38-21.

1024 (a) No person, including an insurer or agent or affiliate of an insurer, shall make, publish,
 1025 disseminate, circulate, or place before the public or cause directly or indirectly to be made,

1026 published, disseminated, circulated, or placed before the public, in any newspaper,
 1027 magazine, or other publication; in the form of a notice, circular, pamphlet, letter, or poster;
 1028 over any radio station or television station; or in any other way, any advertisement,
 1029 announcement, or statement which uses the existence of the association for the purposes
 1030 of sales, solicitation, or inducement to purchase any form of insurance covered by this
 1031 chapter. This Code section shall not apply to the association or any other entity which does
 1032 not sell or solicit insurance.

1033 (b) Any person who violates subsection (a) of this Code section may, after notice and
 1034 hearing and upon order of the Commissioner, be subject to one or more of the following:

- 1035 (1) A monetary penalty of not more than \$1,000.00 for each act or violation, but not to
 1036 exceed an aggregate penalty of \$10,000.00; or
 1037 (2) Suspension or revocation of his or her license or certificate of authority.

1038 33-38-22.

1039 (a) A member insurer may offset against its premium tax liability to this state an
 1040 assessment described in Code Section 33-38-15 to the extent of 20 percent of the amount
 1041 of such assessment for each of the five calendar years following the year in which such
 1042 assessment was paid. In the event a member insurer should cease doing business, all
 1043 uncredited assessments may be credited against its premium tax liability for the year it
 1044 ceases doing business.

1045 (b) Any sums which are acquired by refund, pursuant to subsection (f) of Code Section
 1046 33-38-15, from the association by member insurers and which have theretofore been offset
 1047 against premium taxes as provided in subsection (a) of this Code section shall be paid by
 1048 such insurers to this state in such manner as the Commissioner may require. The
 1049 association shall notify the Commissioner that such refunds have been made."

1050

SECTION 2.

1051 Said title is further amended by revising subsection (a) of Code Section 33-57-5, relating to
 1052 additional service and notice requirements for rate increases and depositions and discovery,
 1053 as follows:

1054 "(a) In addition to other requirements of service and notice imposed by law, a copy of any
 1055 request for insurance or health benefit plan rate filing:

1056 (1) Which alone or in combination with any previous rate filing would result in a rate
 1057 increase of:

1058 (A) Any amount, but no decrease shall be subject to such provisions; provided,
 1059 however, that

1060 (B) Rate information, including information submitted, requested for submission, or
 1061 required to be submitted to the Commissioner or department for purposes of
 1062 determining whether insurance rates are excessive, inadequate, or unfairly
 1063 discriminatory, and any correspondence or paper filed with or issued by the department
 1064 or by the Commissioner in connection with such rate information shall be served by
 1065 copy upon the advocate, and the Office of Consumer Affairs shall require by rule or
 1066 regulation that financial information of insurers, including a summary of products
 1067 offered, basic rates applicable to such products, financial statements, officers' salaries,
 1068 notifications of rate increases, and, as to health insurers, actuarial summaries and
 1069 opinions relating to consumer choice options on managed care products shall be
 1070 submitted to the department and the advocate on a quarterly basis; or

1071 (2) Made within 36 months after any rate filing described by paragraph (1) of this
 1072 subsection

1073 shall also be served on the advocate, and the advocate shall be notified of any other
 1074 correspondence or paper filed with or issued by the department or by the Commissioner in
 1075 connection with such rate filing. A notice of such filing shall be sent to the advocate
 1076 certified mail or statutory overnight delivery, return receipt requested. The department or
 1077 the Commissioner shall not proceed to hear or determine any petition, complaint,
 1078 proceeding, or request for rate filing in which the advocate is entitled to appear unless it
 1079 shall affirmatively appear that the advocate was given at least ten days' written notice
 1080 thereof, unless such notice is affirmatively waived in writing or the advocate appears and
 1081 specifically waives such notice. The advocate may also request copies of any application,
 1082 complaint, pleading, notice, or other document filed with or issued by the department or
 1083 by the Commissioner. Until such time as the General Assembly specifically appropriates
 1084 funds in an appropriations Act for the consumers' insurance advocate and such funds are
 1085 available for expenditure, the filings required by this subsection shall not be required and
 1086 shall not be made."

1087 **SECTION 3.**

1088 This Act shall become effective July 1, 2012.

1089 **SECTION 4.**

1090 All laws and parts of laws in conflict with this Act are repealed.