

The House Committee on Insurance offers the following substitute to HB 955:

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; to provide for related matters; to provide for an effective  
4 date; to repeal conflicting laws; and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

6 SECTION 1.

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

10 "CHAPTER 38

11 33-38-1.

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

24 33-38-2.

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

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

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

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

43 ~~(i)~~ (i) Are residents; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

93 (2) ~~That portion or part of any policy or contract~~ under which the risk is borne by the  
 94 ~~policyholder~~ policy or contract owner;

95 (3)~~(2)~~ A policy or contract of reinsurance or any ~~Any~~ policy or contract or part thereof  
 96 assumed by the impaired or insolvent insurer under a contract of reinsurance, ~~other than~~

97 ~~reinsurance for which~~ unless assumption certificates have been issued pursuant to the  
 98 reinsurance policy or contract;

99 (3) A portion of a policy or contract to the extent that the rate of interest on which it is  
 100 based, or the interest rate, crediting rate, or similar factor determined by use of an index  
 101 or other external reference stated in the policy or contract employed in calculating returns  
 102 or changes in value:

103 (A) Averaged over the period of four years prior to the date on which the member  
 104 insurer becomes an impaired or insolvent insurer under this chapter, whichever is  
 105 earlier, exceeds the rate of interest determined by subtracting two percentage points  
 106 from Moody's Corporate Bond Yield Average averaged for that same four-year period  
 107 or for such lesser period if the policy or contract was issued less than four years before  
 108 the member insurer becomes an impaired or insolvent insurer under this chapter,  
 109 whichever is earlier; and

110 (B) On and after the date on which the member insurer becomes an impaired or  
 111 insolvent insurer under this chapter, whichever is earlier, exceeds the rate of interest  
 112 determined by subtracting three percentage points from Moody's Corporate Bond Yield  
 113 Average as most recently available;

114 (4) Any policy, contract, certificate, or subscriber agreement issued by a nonprofit  
 115 hospital service corporation referred to in Chapter 19 of this title, a health care plan  
 116 referred to in Chapter 20 of this title, a nonprofit medical service corporation referred to  
 117 in Chapter 18 of this title, a prepaid legal services plan, as defined in Code Section  
 118 33-35-2, and a health maintenance organization, as defined in Code Section 33-21-1;

119 (5) Any policy, contract, or certificate issued by a fraternal benefit society, as defined in  
 120 Code Section 33-15-1;

121 (6) Accident and sickness insurance as defined in Code Section 33-7-2 when written by  
 122 a property and casualty insurer as part of an automobile insurance contract;

123 (7) A portion of a policy or contract issued to a plan or program of an employer,  
 124 association, or other person to provide life, health, or annuity benefits to its employees,  
 125 members, or others, to the extent that the plan or program is self-funded or uninsured,  
 126 including, but not limited to, benefits payable by an employer, association, or other  
 127 person under:

128 (A) A multiple employer welfare arrangement as defined in 29 U.S.C. Section  
 129 1002(40);

130 (B) A minimum premium group insurance plan;

131 (C) A stop-loss insurance policy; or

132 (D) An administrative services only contract;

133 (8) A portion of a policy or contract to the extent that it provides for:

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

171 credited and are not subject to forfeiture under this paragraph, the interest or change in  
 172 value determined by using the procedures defined in the policy or contract will be  
 173 credited as if the contractual date of crediting interest or changing values was the date of  
 174 impairment or insolvency, whichever is earlier, and will not be subject to forfeiture; or  
 175 (16) A policy or contract providing any hospital, medical, prescription drug, or other  
 176 health care benefits pursuant to Part C or Part D of Subchapter XVIII, Chapter 7 of Title  
 177 42 of the United States Code, commonly known as Medicare Part C & D, or any  
 178 regulations issued pursuant thereto.

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

182 33-38-3.

183 This chapter shall be ~~liberally~~ construed to effect the purpose set forth in Code Section  
 184 33-38-1, ~~which Code section shall constitute an aid and guide to interpretation.~~

185 33-38-4.

186 As used in this chapter, the term:

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

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

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

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

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

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

204 ~~(4)(7)~~ (7) 'Contractual obligation' means any obligation under a covered policies or contracts  
 205 policy, contract, or certificate under a group policy or contract, or portion thereof for

206 which coverage is provided under Code Section 33-38-2. ~~Notwithstanding any other~~  
 207 ~~provision of this chapter, 'contractual obligation' shall not include a claim filed after the~~  
 208 ~~final date set by the court for the filing of claims against the liquidator or other such court~~  
 209 ~~appointed authority.~~

210 ~~(5)~~(8) 'Control' or 'controlled' means the possession, direct or indirect, of the power to  
 211 direct or cause the direction of the management and policies of a person, whether through  
 212 ownership of voting securities, by contract other than a commercial contract for goods  
 213 or nonmanagement services, or otherwise.

214 ~~(6)~~(9) 'Covered policy' means any a policy or contract within the scope of this chapter  
 215 or portion of a policy or contract for which coverage is provided under Code Section  
 216 33-38-2.

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

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

223 ~~(8)~~(11) 'Impaired insurer' means a member insurer deemed by the Commissioner which  
 224 is not an insolvent insurer and is placed under an order of rehabilitation or conservation  
 225 by a court of competent jurisdiction on or after July 1, 1981, ~~to be potentially unable to~~  
 226 ~~fulfill its contractual obligations but not an insolvent insurer.~~

227 ~~(9)~~(12) 'Insolvent insurer' means a member insurer against which ~~a final~~ an order of  
 228 liquidation containing a finding of insolvency has been entered by a court of competent  
 229 jurisdiction on or after July 1, 1981.

230 ~~(10)~~(13) 'Member insurer' means any insurer which is licensed or which holds a  
 231 certificate of authority to transact in this state any kind of insurance for which coverage  
 232 is provided under Code Section 33-38-2 and includes any insurer whose license or  
 233 certificate of authority in this state may have been suspended, revoked, not renewed, or  
 234 voluntarily withdrawn, but does not include:

- 235 (A) A ~~nonprofit~~ hospital or medical service corporation, whether profit or nonprofit;
- 236 (B) A health care corporation;
- 237 (C) A health maintenance organization;
- 238 (D) A fraternal benefit society;
- 239 (E) A mandatory state pooling plan;
- 240 (F) A mutual assessment company or any entity that operates on an assessment basis;
- 241 (G) An insurance exchange; ~~or~~

242 (H) An organization that has a certificate or license limited to the issuance of charitable  
 243 gift annuities under Code Sections 33-58-1 through 33-58-6; or

244 (I) Any entity similar to those described in subparagraphs (A) through ~~(G)~~ (H) of this  
 245 paragraph.

246 (14) 'Moody's Corporate Bond Yield Average' means the Monthly Average Corporates  
 247 as published by Moody's Investors Service, Inc., or any successor thereto.

248 (15) 'Owner' of a policy or contract and 'policy owner' and 'contract owner' mean the  
 249 person who is identified as the legal owner under the terms of the policy or contract or  
 250 who is otherwise vested with legal title to the policy or contract through a valid  
 251 assignment completed in accordance with the terms of the policy or contract and properly  
 252 recorded as the owner on the books of the insurer. The terms 'owner,' 'contract owner,'  
 253 and 'policy owner' shall not include persons with a mere beneficial interest in a policy or  
 254 contract.

255 ~~(11)~~(16) 'Person' means any individual, corporation, limited liability company,  
 256 partnership, association, governmental body or entity, or voluntary organization.

257 (17) 'Plan sponsor' means:

258 (A) The employer in the case of a benefit plan established or maintained by a single  
 259 employer;

260 (B) The employee organization in the case of a benefit plan established or maintained  
 261 by an employee organization; or

262 (C) In a case of a benefit plan established or maintained by two or more employers or  
 263 jointly by one or more employers and one or more employee organizations, the  
 264 association, committee, joint board of trustees, or other similar group of representatives  
 265 of the parties who establish or maintain the benefit plan.

266 ~~(12)~~(18) 'Premiums' means ~~direct gross insurance premiums and annuity amounts or~~  
 267 ~~considerations, by whatever name called,~~ received on covered policies or contracts, less  
 268 ~~return~~ returned premiums, ~~and~~ considerations and deposits thereon and less dividends  
 269 ~~paid or credited to policyholders on such direct business~~ and experience credits. The  
 270 term 'premiums' ~~does~~ shall not include ~~premiums and:~~

271 (A) Amounts or considerations on received for policies or contracts between insurers  
 272 and reinsurers; or for the portions of policies or contracts for which coverage is not  
 273 provided under this chapter except that assessable premium shall not be reduced on  
 274 account of paragraph (3) of subsection (c) of Code Section 33-38-2, relating to interest  
 275 limitations, and paragraph (12) of Code Section 33-38-7, relating to limitations with  
 276 respect to one individual, one participant, and one contract owner; The term 'premiums'  
 277 does not include any premiums

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

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

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

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

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

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

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

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

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

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

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

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

315 ~~(13)~~(21) 'Resident' means any person who ~~is domiciled~~ resides in this state at the time  
 316 a member insurer is determined to be an impaired or insolvent insurer and to whom  
 317 contractual obligations are owed. A person may be a resident of only one state, which,  
 318 in the case of a person other than a natural person, shall be its principal place of business.  
 319 Citizens of the United States who are either residents of foreign countries or residents of  
 320 United States possessions, territories, or protectorates that do not have an association  
 321 similar to the association created by this chapter shall be deemed residents of the state of  
 322 domicile of the insurer that issued the policies or contracts.

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

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

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

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

333 33-38-5.

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

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

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

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

350 33-38-6.

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

354 ~~(1) The Commissioner shall compile a list of the two stock insurers most likely to incur~~  
 355 ~~the largest assessment, per insurer, for each of the accounts under Code Section 33-38-5;~~  
 356 ~~he shall compile a list of the two nonstock insurers most likely to incur the largest~~  
 357 ~~assessment, per insurer, for each of the accounts under Code Section 33-38-5; and he~~  
 358 ~~shall compile a list of the two domestic insurers, either stock or nonstock, most likely to~~  
 359 ~~incur the largest assessment, for each of the accounts listed under Code Section 33-38-5.~~

360 ~~The Commissioner shall solicit from these 18 insurers the names of 18 individuals as~~  
 361 ~~nominees for members to the board of directors. The Commissioner shall thereupon~~  
 362 ~~separately certify in writing the nominations from stock and nonstock insurers and~~  
 363 ~~separately for each account;~~

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

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

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

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

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

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

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

387 33-38-7.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

453 (v)(I) Alternative policies adopted by the association shall be subject to the  
 454 approval of the domiciliary insurance commissioner. The association may adopt  
 455 alternative policies of various types for future issuance without regard to any  
 456 particular impairment or insolvency.

457 (II) Alternative policies shall contain at least the minimum statutory provisions  
 458 required in this state and provide benefits that shall not be unreasonable in relation  
 459 to the premium charged. The association shall set the premium in accordance with  
 460 a table of rates that it shall adopt. The premium shall reflect the amount of

461 insurance to be provided and the age and class of risk of each insured, but shall not  
 462 reflect any changes in the health of the insured after the original policy was last  
 463 underwritten.

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

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

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

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

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

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

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

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

496 ~~(i) Finds that the amounts which can be assessed under this chapter are less than the~~  
 497 ~~amounts needed to assure full and prompt performance of the insolvent insurer's~~

498 ~~contractual obligations or that the economic or financial conditions as they affect~~  
 499 ~~member insurers are sufficiently adverse to render the imposition of policy or contract~~  
 500 ~~liens to be in the public interest; and~~

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

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

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

526 (7) A deposit in this state, held pursuant to law or required by the Commissioner for the  
 527 benefit of creditors, including policy owners, not turned over to the domiciliary liquidator  
 528 upon the entry of a final order of liquidation or order approving a rehabilitation plan of  
 529 an insurer domiciled in this state or in a reciprocal state, pursuant to Code Sections 33-3-8  
 530 through 33-3-10, shall be promptly paid to the association. The association shall be  
 531 entitled to retain a portion of any amount so paid to it equal to the percentage determined  
 532 by dividing the aggregate amount of policy owners claims related to that insolvency for  
 533 which the association has provided statutory benefits by the aggregate amount of all  
 534 policy owners' claims in this state related to that insolvency and shall remit to the

535 domiciliary receiver the amount so paid to the association less the amount retained  
 536 pursuant to this paragraph. Any amount so paid to the association and retained by it shall  
 537 be treated as a distribution of estate assets pursuant to applicable state receivership law  
 538 dealing with early access disbursements.

539 ~~(5)~~(8) If the association fails to act within a reasonable period of time with respect to an  
 540 insolvent insurer, as provided in ~~paragraphs~~ paragraph (2) and (3) of this Code section,  
 541 the Commissioner shall have the powers and duties of the association under this chapter  
 542 with respect to the insolvent insurers;

543 ~~(6)~~(9) Upon ~~his~~ the Commissioner's request, the association may render assistance and  
 544 advice to the Commissioner concerning rehabilitation, payment of claims, continuance  
 545 of coverage, or the performance of other contractual obligations of any impaired or  
 546 insolvent insurer;

547 ~~(7)~~(10) The association shall have standing to appear or intervene before any court or  
 548 agency in this state with jurisdiction over an impaired or insolvent insurer concerning  
 549 which the association is or may become obligated under this chapter or with jurisdiction  
 550 over any person or property against which the association may have rights through  
 551 subrogation or otherwise. Such standing shall extend to all matters germane to the  
 552 powers and duties of the association, including but not limited to proposals for reinsuring,  
 553 modifying, or guaranteeing the ~~covered~~ policies or contracts of the impaired or insolvent  
 554 insurer and the determination of the ~~covered~~ policies or contracts and contractual  
 555 obligations. The association shall also have the right to appear or intervene before a court  
 556 or agency in another state with jurisdiction over an impaired or insolvent insurer for  
 557 which the association is or may become obligated or with jurisdiction over any person or  
 558 property against whom the association may have rights through subrogation or otherwise;

559 ~~(8)(A)~~(11)(A) Any person receiving benefits under this chapter shall be deemed to  
 560 have assigned the rights under, and any causes of action against any person for losses  
 561 arising under, resulting from, or otherwise relating to, the covered policy or contract to  
 562 the association to the extent of the benefits received because of this chapter, whether  
 563 the benefits are payments of or on account of contractual obligations, ~~or~~ continuation  
 564 of coverage, or provision of substitute or alternative coverages. The association may  
 565 require an assignment to it of such rights and causes of action by any payee, policy or  
 566 contract owner, beneficiary, insured, or annuitant as a condition precedent to the receipt  
 567 of any rights or benefits conferred by this chapter upon such person. The association  
 568 shall be subrogated to these rights against the assets of any impaired or insolvent  
 569 insurer.

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

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

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

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

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

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

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

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

603 (i) The amount of \$300,000.00 in life insurance death benefits, but not more than  
 604 \$100,000.00 in net cash surrender and net cash withdrawal values for life insurance;

605 (ii) In health insurance benefits, \$300,000.00 for disability insurance; \$300,000.00  
 606 for long-term care insurance; \$300,000.00 for health insurance other than disability

607 insurance as referenced above, long-term care insurance as referenced above, and  
608 basic hospital, medical, and surgical insurance or major medical insurance as  
609 referenced below, including any net cash surrender and net cash withdrawal values;  
610 and \$500,000.00 for basic hospital, medical, and surgical insurance or major medical  
611 insurance; and

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

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

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

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

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

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

639 (F) The limitations set forth in this paragraph are limitations on the benefits for which  
640 the association is obligated before taking into account either its subrogation and  
641 assignment rights or the extent to which those benefits could be provided out of the  
642 assets of the impaired or insolvent insurer attributable to covered policies. The costs  
643 of the association's obligations under this chapter may be met by the use of assets

644 attributable to covered policies or reimbursed to the association pursuant to its  
 645 subrogation and assignment rights;

646 (13) In performing its obligations to provide coverage under Code Section 33-38-7, the  
 647 association shall not be required to guarantee, assume, reinsure, or perform, or cause to  
 648 be guaranteed, assumed, reinsured, or performed, the contractual obligations of the  
 649 insolvent or impaired insurer under a covered policy or contract that do not materially  
 650 affect the economic values or economic benefits of the covered policy or contract;

651 ~~(10)~~(14) In addition to the rights and powers elsewhere in this chapter, the ~~The~~  
 652 association may:

653 (A) Enter into such contracts as are necessary or proper to carry out the provisions and  
 654 purposes of this chapter;

655 (B) ~~Bring or defend actions~~ Sue or be sued, including the right to seek a declaratory  
 656 judgment in any superior court of this state as to uncertainties with respect to the  
 657 payment of benefits under this Code section. The association may also take ~~taking~~ any  
 658 legal actions necessary or proper for recovery of any unpaid assessments under Code  
 659 Section 33-38-15 and may settle claims or potential claims against it;

660 (C) Borrow money to effect the purposes of this chapter. Any notes or other evidence  
 661 of indebtedness of the association not in default shall be legal investments for domestic  
 662 insurers and may be carried as admitted assets;

663 (D) Employ or retain such persons as are necessary to handle the financial transactions  
 664 of the association and to perform such other functions as become necessary or proper  
 665 under this chapter;

666 (E) Negotiate and contract with any liquidator, rehabilitator, conservator, or ancillary  
 667 receiver to carry out the powers and duties of the association;

668 (F) Take such legal action as may be necessary to avoid payment of improper claims;  
 669 and

670 (G) Exercise, for the purposes of this chapter and to the extent approved by the  
 671 Commissioner, the powers of a domestic life or health insurer; but in no case may the  
 672 association issue insurance policies or annuity contracts other than those ~~necessary~~  
 673 issued to perform the contractual its obligations of the impaired or insolvent insurer.  
 674 under this chapter;

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

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

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

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

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

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

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

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

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

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

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

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

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

722 33-38-8.

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

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

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

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

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

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

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

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

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

746 33-38-9.

747 The plan of operation described in Code Section 33-38-8 may provide that any or all  
 748 powers and duties of the association, except those under subparagraph (C) of paragraph  
 749 ~~(10)~~ (14) of Code Section 33-38-7 and Code Section 33-38-15, shall be delegated to a  
 750 corporation, association, or other organization which performs or will perform functions  
 751 similar to those of this association or its equivalent in two or more states. Such a

752 corporation, association, or organization shall be reimbursed for any payments made on  
 753 behalf of the association and shall be paid for its performance of any function of the  
 754 association. A delegation under this Code section shall take effect only with the approval  
 755 of both the board of directors and the Commissioner and may be made only to a  
 756 corporation, association, or organization which extends protection not substantially less  
 757 favorable and effective than that provided for by this chapter.

758 33-38-10.

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

760 (1) The Commissioner shall:

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

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

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

772 33-38-11.

773 Records shall be kept of all negotiations and meetings in which the association or its  
 774 representatives are involved to discuss the activities of the association in carrying out its  
 775 powers and duties under Code Section 33-38-7. ~~Records~~ The records of such negotiations  
 776 ~~or meetings shall be made public only upon~~ the association with respect to an impaired or  
 777 insolvent insurer shall not be disclosed prior to the termination of a liquidation,  
 778 rehabilitation, or conservation proceeding involving the impaired or insolvent insurer,  
 779 except (a) upon the termination of the impairment or insolvency of the insurer, or (b) upon  
 780 the order of a court of competent jurisdiction. Nothing in this Code section shall limit the  
 781 duty of the association to render a report of its activities under Code Section 33-38-12.

782 33-38-12.

783 The association shall be subject to examination and regulation by the Commissioner.  
 784 Notwithstanding the foregoing, whether such examinations shall be conducted and the  
 785 frequency of any such examination shall be at the sole discretion of the Commissioner.

786 The board of directors shall submit to the Commissioner not later than May 1 of each year  
 787 a financial report and a report of its activities for the preceding calendar year on forms  
 788 approved by the Commissioner.

789 33-38-13.

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

793 33-38-14.

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

801 33-38-15.

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

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

808 (1) Class A assessments shall be ~~made~~ authorized and called for the purpose of meeting  
 809 administrative costs and legal and other general expenses not related to a particular  
 810 impaired or insolvent insurer, and examinations conducted under the authority of  
 811 subsection (c) of Code Section 33-38-16; and

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

815 (c)(1) The amount of any Class A assessment shall be determined by the board of  
 816 directors and may be made on a pro rata or non-pro rata basis. If a Class A assessment  
 817 is made on a pro rata basis, the board may provide that it be credited against future Class  
 818 B assessments. An assessment for costs and expenses other than for examinations which  
 819 is made on a non-pro rata basis shall not exceed ~~\$150.00~~ \$300.00 per company in any one

820 calendar year. The amount of any Class B assessment shall be allocated for assessment  
821 purposes among the accounts or subaccounts in subsection (c) of Code Section 33-38-5  
822 pursuant to an allocation formula which may be based on the premiums or reserves of the  
823 impaired or insolvent insurer or any other standard deemed by the board in its sole  
824 discretion as being fair and reasonable under the circumstances.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

907 33-38-16.

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

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

916 (c) The board of directors may, upon majority vote, request that the Commissioner order  
 917 an examination of any member insurer which the board in good faith believes may be an  
 918 impaired or insolvent insurer. Within 30 days of the receipt of such request, the  
 919 Commissioner shall begin such examination. The examination may be conducted as a  
 920 National Association of Insurance Commissioners' examination or may be conducted by  
 921 such persons as the Commissioner designates. The cost of such examination shall be paid  
 922 by the association and the examination report shall be treated the same as other  
 923 examination reports. In no event shall such examination report be released to the board of  
 924 directors prior to its release to the public, but this shall not preclude the Commissioner  
 925 from complying with subsection (a) of this Code section. The Commissioner shall notify  
 926 the board of directors when the examination is completed. The request for an examination  
 927 shall be kept on file by the Commissioner, but it shall not be open to public inspection prior  
 928 to the release of the examination report to the public.

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

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

938 33-38-17.

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

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

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

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

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

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

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

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

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

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

1000 (5) Whenever any person liable under paragraph (3) of this subsection is insolvent, all  
 1001 affiliates that controlled it at the time the distribution was paid shall be jointly and  
 1002 severally liable for any resulting deficiency in the amount recovered from the insolvent  
 1003 affiliate.

1004 33-38-18.

1005 All proceedings in any court in this state in which the insolvent insurer is a party shall be  
 1006 stayed ~~60~~ 180 days from the date of a final order of liquidation, rehabilitation, or  
 1007 conservation to permit proper legal action by the association on any matters germane to its  
 1008 powers or duties. As to judgment entered under any decision, order, verdict, or finding  
 1009 based on default, the association may apply to have such judgment set aside by the same  
 1010 court that made such judgment and shall be permitted to defend against such action on the  
 1011 merits.

1012 33-38-19.

1013 The liquidator, rehabilitator, or conservator of any impaired insurer may notify all  
 1014 interested persons of the effect of this chapter.

1015 33-38-20.

1016 Any action of the board of directors may be appealed to the Commissioner by any member  
 1017 insurer if such appeal is taken within ~~30~~ 60 days of its receipt of notice of the action being  
 1018 appealed. Any final action or order of the Commissioner shall be subject to judicial review  
 1019 in a court of competent jurisdiction in accordance with the laws of this state that may apply  
 1020 to the actions or orders of the Commissioner.

1021 33-38-21.

1022 (a) No person, including an insurer or agent or affiliate of an insurer, shall make, publish,  
 1023 disseminate, circulate, or place before the public or cause directly or indirectly to be made,  
 1024 published, disseminated, circulated, or placed before the public, in any newspaper,  
 1025 magazine, or other publication; in the form of a notice, circular, pamphlet, letter, or poster;  
 1026 over any radio station or television station; or in any other way, any advertisement,  
 1027 announcement, or statement which uses the existence of the association for the purposes  
 1028 of sales, solicitation, or inducement to purchase any form of insurance covered by this  
 1029 chapter. This Code section shall not apply to the association or any other entity which does  
 1030 not sell or solicit insurance.

1031 (b) Any person who violates subsection (a) of this Code section may, after notice and  
 1032 hearing and upon order of the Commissioner, be subject to one or more of the following:

- 1033 (1) A monetary penalty of not more than \$1,000.00 for each act or violation, but not to  
1034 exceed an aggregate penalty of \$10,000.00; or  
1035 (2) Suspension or revocation of his or her license or certificate of authority.

1036 33-38-22.

1037 (a) A member insurer may offset against its premium tax liability to this state an  
1038 assessment described in Code Section 33-38-15 to the extent of 20 percent of the amount  
1039 of such assessment for each of the five calendar years following the year in which such  
1040 assessment was paid. In the event a member insurer should cease doing business, all  
1041 uncredited assessments may be credited against its premium tax liability for the year it  
1042 ceases doing business.

1043 (b) Any sums which are acquired by refund, pursuant to subsection (f) of Code Section  
1044 33-38-15, from the association by member insurers and which have theretofore been offset  
1045 against premium taxes as provided in subsection (a) of this Code section shall be paid by  
1046 such insurers to this state in such manner as the Commissioner may require. The  
1047 association shall notify the Commissioner that such refunds have been made."

1048 **SECTION 2.**

1049 This Act shall become effective upon its approval by the Governor or upon its becoming law  
1050 without such approval.

1051 **SECTION 3.**

1052 All laws and parts of laws in conflict with this Act are repealed.