

SENATE BILL 1003

C4

2lr2571
CF HB 1340

By: **Senator Middleton**

Introduced and read first time: February 17, 2012

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Life and Health Insurance Guaranty Corporation Act – Revisions**

3 FOR the purpose of revising the Life and Health Insurance Guaranty Corporation Act;
4 clarifying the purpose of the Act to protect certain persons against failure in the
5 performance of contractual obligations due to the impairment or insolvency of
6 certain insurers; clarifying the persons and circumstances under which certain
7 coverage shall be provided by the Life and Health Insurance Guaranty
8 Corporation; authorizing the Corporation to provide coverage to certain payees
9 or certain beneficiaries of payees under structured settlement annuities under
10 certain circumstances; specifying certain circumstances under which certain
11 persons are not provided coverage under the Act; specifying certain
12 circumstances under which certain policies and contracts issued by member
13 insurers are not provided coverage under the Act; specifying certain interest
14 and certain changes in value of certain policies or contracts that will not be
15 subject to forfeiture under certain circumstances; establishing the principal
16 place of business for certain entities for purposes of the Act; clarifying the
17 authority of the Corporation to take certain action for member insurers that are
18 impaired insurers; clarifying the authority of the Corporation to take certain
19 action for member insurers that are insolvent insurers; clarifying the powers
20 and duties of the Maryland Insurance Commissioner under certain
21 circumstances; authorizing the Corporation, subject to approval of the
22 Commissioner, to issue substitute coverage for certain policies and contracts
23 under certain circumstances; altering the maximum amounts of certain
24 contractual obligations of certain impaired or insolvent insurers for which the
25 Corporation may become liable under certain circumstances; authorizing the
26 Corporation to join an organization of certain state associations for a certain
27 purpose; authorizing the Corporation to elect to succeed to the rights and
28 obligations of certain insolvent insurers relating to certain reinsurance
29 contracts within a certain period of time after the date of an order of liquidation;
30 requiring a receiver and certain reinsurers to make certain information
31 available under certain circumstances for certain purposes after commencement

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 of certain delinquency proceedings; establishing certain rights and obligations of
 2 the Corporation relating to certain reinsurance contracts assumed by the
 3 Corporation under certain circumstances; requiring the Corporation and certain
 4 reinsurers to make certain calculations within a certain period of time after a
 5 certain election; requiring certain reinsurers and the Corporation to make
 6 certain payments to a receiver in a certain manner under certain circumstances;
 7 requiring a receiver to remit certain payments to the Corporation in a certain
 8 manner under a certain circumstance; prohibiting certain reinsurers from
 9 taking certain actions relating to reinsurance contracts under certain
 10 circumstances; establishing certain rights and obligations of the Corporation
 11 and certain reinsurers during a certain period of time after the date of an order
 12 of liquidation; authorizing the Corporation to transfer certain reinsurance on
 13 certain policies, annuities, or covered obligations under certain circumstances;
 14 providing for the application of this Act as it relates to certain laws and certain
 15 rights and obligations under certain reinsurance contracts; providing for the
 16 application of this Act as it relates to certain rights of the Corporation;
 17 extending a certain immunity to certain organizations and certain agents or
 18 employees of certain organizations; defining certain terms; altering certain
 19 defined terms; and generally relating to the Life and Health Insurance
 20 Guaranty Corporation Act.

21 BY repealing and reenacting, with amendments,
 22 Article – Insurance
 23 Section 9–401, 9–402, 9–403, 9–404, 9–407, 9–408, 9–414, and 9–417
 24 Annotated Code of Maryland
 25 (2011 Replacement Volume)

26 BY adding to
 27 Article – Insurance
 28 Section 9–407.1
 29 Annotated Code of Maryland
 30 (2011 Replacement Volume)

31 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 32 MARYLAND, That the Laws of Maryland read as follows:

33 **Article – Insurance**

34 9–401.

35 (a) In this subtitle the following words have the meanings indicated.

36 (b) “Account” means:

37 (1) the health insurance account;

38 (2) the life insurance account; or

1 (3) the annuity account.

2 (c) “Contractual obligation” means an obligation under a policy or contract or
3 certificate under a group policy or contract for which coverage is provided under §
4 9–403 of this subtitle.

5 (d) “Corporation” means the Life and Health Insurance Guaranty
6 Corporation.

7 (e) “Covered policy” means a policy or contract to which this subtitle applies.

8 (f) “Impaired insurer” means an insurer that:

9 (1) after July 1, 1971, is **NOT AN** insolvent **INSURER** and is placed
10 under an order of rehabilitation or conservation by a court of competent jurisdiction; or

11 (2) is determined by the Commissioner after July 1, 1971, to be unable
12 or potentially unable to fulfill its contractual obligations.

13 (g) “Individual” means a natural person covered under an individual policy
14 or covered as a member under a group policy.

15 (h) “Insolvent insurer” means a member insurer that, after July 1, 1971, is
16 placed under an order of liquidation by a court of competent jurisdiction [after] **WITH**
17 a finding of insolvency.

18 (i) (1) “Member insurer” means an authorized insurer that writes a kind
19 of insurance to which this subtitle applies.

20 (2) **“MEMBER INSURER” INCLUDES AN INSURER WHOSE LICENSE**
21 **OR CERTIFICATE OF AUTHORITY IN THE STATE MAY HAVE BEEN SUSPENDED,**
22 **REVOKED, NOT RENEWED, OR VOLUNTARILY WITHDRAWN.**

23 **[(2)](3)** “Member insurer” does not include:

24 (i) a health maintenance organization;

25 (ii) a fraternal benefit society;

26 (iii) a mandatory State pooling plan;

27 (iv) a mutual assessment company or other entity that operates
28 on an assessment basis; or

29 (v) an insurance exchange.

1 (j) “Moody’s corporate bond yield average” means the monthly average yield
2 on corporate bonds as published by Moody’s Investors Service, Inc.

3 (k) (1) “Premiums” means amounts received on covered policies or
4 contracts, less premiums, considerations, and deposits returned, and less dividends
5 and experience credits.

6 (2) “Premiums” does not include amounts for policies or contracts, or
7 for parts of policies or contracts, for which coverage is not provided under § 9–403(b) of
8 this subtitle.

9 (l) “Resident” means a person that resides in the State [when] **ON THE**
10 **DATE OF ENTRY OF A COURT ORDER THAT DETERMINES** a member insurer [is
11 determined] to be an impaired insurer or **A COURT ORDER THAT DETERMINES A**
12 **MEMBER INSURER TO BE AN** insolvent insurer and to whom a contractual obligation
13 is owed.

14 (m) **“STRUCTURED SETTLEMENT ANNUITY” MEANS AN ANNUITY**
15 **PURCHASED IN ORDER TO FUND PERIODIC PAYMENTS FOR A PLAINTIFF OR ANY**
16 **OTHER CLAIMANT IN PAYMENT FOR OR WITH RESPECT TO PERSONAL INJURY**
17 **SUFFERED BY THE PLAINTIFF OR OTHER CLAIMANT.**

18 (N) “Supplemental contract” means an agreement entered into for the
19 distribution of policy or contract proceeds.

20 9–402.

21 Subject to certain limitations, the purpose of this subtitle is to protect
22 [residents] **PERSONS SPECIFIED IN § 9–403(A) THROUGH (F) OF THIS SUBTITLE**
23 who are policyowners, [insureds,] **CONTRACT OWNERS, CERTIFICATE HOLDERS,**
24 beneficiaries, [annuitants,] payees, and assignees of life insurance policies, health
25 insurance policies, annuity contracts, and supplemental contracts **SPECIFIED IN §**
26 **9–403(G) OF THIS SUBTITLE** against failure in the performance of contractual
27 obligations due to the impairment **OR INSOLVENCY** of the insurer that issued the
28 policies or contracts.

29 9–403.

30 (a) **THIS SUBTITLE IS INTENDED TO PROVIDE COVERAGE TO A PERSON**
31 **WHO IS A RESIDENT OF THIS STATE AND, IN SPECIAL CIRCUMSTANCES, TO A**
32 **NONRESIDENT.**

33 (B) (1) [Subject] **FOR CONTRACTS OTHER THAN STRUCTURED**
34 **SETTLEMENT ANNUITIES, SUBJECT** to paragraph (2) of this subsection, coverage

1 shall be provided under this subtitle for the policies or contracts specified in subsection
2 **[(b)] (G)** of this section to **[an individual] A PERSON** who is:

3 (i) a resident and an owner of or certificate holder under the
4 policy or contract; or

5 (ii) a nonresident and an owner of or certificate holder under the
6 policy or contract, if:

7 1. the insurer that issued the policy or contract is
8 domiciled in this State;

9 [2. the insurer that issued the policy or contract has
10 never held a license or certificate of authority in the state in which the nonresident
11 resides;]

12 [3.] **2.** the state in which the nonresident resides has an
13 insurance guaranty corporation or its equivalent similar to the Corporation
14 established by § 9-405 of this subtitle; and

15 [4.] **3.** the nonresident is not eligible for coverage by the
16 insurance guaranty corporation or its equivalent in the state in which the nonresident
17 resides **BECAUSE THE INSURER WAS NOT LICENSED IN THAT STATE AT THE TIME**
18 **SPECIFIED IN THAT STATE'S GUARANTY CORPORATION OR ASSOCIATION LAW.**

19 (2) Coverage shall be provided under this subtitle for the policies or
20 contracts specified in paragraph (1) of this subsection to a beneficiary, assignee, or
21 payee of **[an individual] A PERSON** covered under paragraph (1) of this subsection,
22 regardless of the **[individual's] PERSON'S** residence.

23 **(C) EXCEPT AS PROVIDED IN SUBSECTIONS (A), (D), AND (E) OF THIS**
24 **SECTION, THIS SUBTITLE SHALL PROVIDE COVERAGE TO A PERSON WHO IS A**
25 **PAYEE UNDER A STRUCTURED SETTLEMENT ANNUITY OR BENEFICIARY OF A**
26 **PAYEE IF THE PAYEE IS DECEASED, IF:**

27 **(1) (I) THE PAYEE IS A RESIDENT, REGARDLESS OF WHERE THE**
28 **CONTRACT OWNER RESIDES; OR**

29 **(II) THE PAYEE IS NOT A RESIDENT AND:**

30 **1. THE CONTRACT OWNER OF THE STRUCTURED**
31 **SETTLEMENT ANNUITY IS A RESIDENT; OR**

32 **2. A. THE CONTRACT OWNER OF THE**
33 **STRUCTURED SETTLEMENT ANNUITY IS NOT A RESIDENT;**

1 **B. THE INSURER THAT ISSUED THE STRUCTURED**
2 **SETTLEMENT ANNUITY IS DOMICILED IN THIS STATE; AND**

3 **C. THE STATE IN WHICH THE CONTRACT OWNER**
4 **RESIDES HAS AN ASSOCIATION SIMILAR TO THE CORPORATION; AND**

5 **(2) THE PAYEE OR BENEFICIARY, AND THE CONTRACT OWNER**
6 **ARE NOT ELIGIBLE FOR COVERAGE BY THE ASSOCIATION OF THE STATE IN**
7 **WHICH THE PAYEE OR CONTRACT OWNER RESIDES.**

8 **(D) THIS SUBTITLE DOES NOT PROVIDE COVERAGE TO:**

9 **(1) A PERSON WHO IS A PAYEE OR BENEFICIARY OF A CONTRACT**
10 **OWNER WHO IS A RESIDENT OF THIS STATE, IF THE PAYEE OR BENEFICIARY IS**
11 **PROVIDED ANY COVERAGE BY THE ASSOCIATION OF ANOTHER STATE; OR**

12 **(2) A PERSON WHO OTHERWISE WOULD RECEIVE COVERAGE**
13 **UNDER THIS SUBTITLE, IF THE PERSON IS PROVIDED COVERAGE UNDER THE**
14 **LAWS OF ANOTHER STATE.**

15 **(E) TO DETERMINE COVERAGE UNDER THIS SECTION UNDER**
16 **CIRCUMSTANCES IN WHICH A PERSON COULD BE COVERED BY THE**
17 **ASSOCIATION OF MORE THAN ONE STATE, WHETHER AS AN OWNER, A PAYEE, A**
18 **BENEFICIARY, OR AN ASSIGNEE, THIS SUBTITLE SHALL BE CONSTRUED IN**
19 **CONJUNCTION WITH OTHER STATE LAWS TO RESULT IN COVERAGE BY ONLY**
20 **ONE ASSOCIATION.**

21 **(F) (1) TO DETERMINE COVERAGE UNDER THIS SECTION, A PERSON**
22 **MAY BE A RESIDENT OF ONLY ONE STATE.**

23 **(2) TO DETERMINE COVERAGE UNDER THIS SECTION, A PERSON**
24 **SHALL BE TREATED AS A RESIDENT OF THE STATE OF DOMICILE OF THE**
25 **INSURER THAT ISSUED THE RELEVANT POLICY OR CONTRACT IF:**

26 **(I) THE PERSON IS A CITIZEN OF THE UNITED STATES AND**
27 **IS A RESIDENT OF A FOREIGN COUNTRY; OR**

28 **(II) THE PERSON IS A RESIDENT OF A UNITED STATES**
29 **POSSESSION, TERRITORY, OR PROTECTORATE THAT DOES NOT HAVE AN**
30 **ASSOCIATION SIMILAR TO THE CORPORATION.**

1 **[(b)] (G)** (1) Except as provided in paragraph (2) of this subsection **OR**
2 **OTHERWISE LIMITED BY THIS SUBTITLE**, coverage shall be provided under this
3 subtitle to **[individuals] PERSONS** specified in **[subsection (a)] SUBSECTIONS (B)**
4 **AND (C)** of this section for **THE FOLLOWING POLICIES AND CONTRACTS ISSUED BY**
5 **MEMBER INSURERS:**

6 (i) direct, nongroup life, health, annuity, including structured
7 **[settlements] SETTLEMENT ANNUITIES**, and supplemental policies or contracts **TO**
8 **ANY OF THESE; or**

9 (ii) certificates under direct, group policies or contracts **[issued**
10 **by member insurers, except as limited by this subtitle], AND SUPPLEMENTAL**
11 **POLICIES OR CONTRACTS TO ANY OF THESE.**

12 (2) Coverage may not be provided under this subtitle for:

13 (i) any part of a policy or contract~~[:~~

14 1.] that is not guaranteed by the insurer, or under which
15 the risk is borne by the policyholder or contract holder; ~~[and~~

16 2. that, under subitem 1 of this item, includes the
17 following types of policies:

18 A. variable annuity contracts;

19 B. variable life insurance contracts, except to the extent
20 of guaranteed death benefits in the contract;

21 C. the value of an annuity contract in excess of the
22 values guaranteed in the contract; or

23 D. the value of a universal life and interest sensitive life
24 and similar products in excess of the values guaranteed in the contract;]

25 (ii) a policy or contract of reinsurance, unless assumption
26 certificates have been issued;

27 (iii) any part of a policy or contract to the extent that the rate of
28 interest on which it is based **OR THE INTEREST RATE, CREDITING RATE, OR**
29 **SIMILAR FACTOR DETERMINED BY USE OF AN INDEX OR OTHER EXTERNAL**
30 **REFERENCE STATED IN THE POLICY OR CONTRACT EMPLOYED IN CALCULATING**
31 **RETURNS OR CHANGES IN VALUE:**

1 1. averaged over the period of 4 years before the date on
2 which the Corporation becomes obligated with respect to the policy or contract,
3 exceeds a rate of interest determined by subtracting 2 percentage points from Moody's
4 corporate bond yield average for the 4-year period before the date on which the
5 Corporation became obligated or, if the policy or contract was issued less than 4 years
6 before the Corporation became obligated, for that period; or

7 2. on or after the date on which the Corporation becomes
8 obligated with respect to the policy or contract, exceeds the rate of interest determined
9 by subtracting 3 percentage points from the most recent published Moody's corporate
10 bond yield average;

11 (iv) a plan or program of an employer, association, or similar
12 entity to provide life, health, or annuity benefits to its employees or members to the
13 extent that the plan or program is self-funded or uninsured, including benefits
14 payable by an employer, association, or similar entity under:

15 1. a multiple employer welfare arrangement, as defined
16 in § [514] **3(40)** of the Employee Retirement Income Security Act of 1974 (**29 U.S.C.**
17 **§ 1002(40)**);

18 2. a minimum premium group insurance plan;

19 3. a stop-loss group insurance plan; or

20 4. an administrative services only contract;

21 (v) any part of a policy or contract to the extent that it provides
22 dividends or experience rating credits or provides that a fee or allowances be paid to
23 **[an individual] ANY PERSON**, including the policy or contract holder, in connection
24 with the service to or administration of the policy or contract;

25 (vi) a policy or contract issued in the State by a member insurer
26 at a time when it was not licensed or did not have a certificate of authority to issue the
27 policy or contract in the State;

28 (vii) an annuity contract or group annuity certificate that is not
29 issued to and owned by an individual **[policyholder]**, except to the extent of annuity
30 benefits guaranteed to an individual **[policyholder]** by an insurer under the annuity
31 contract or group certificate, including the following contracts:

32 1. unallocated funding agreements;

33 2. unallocated annuity contract benefits;

34 3. deposit administration contracts; or

1 4. guaranteed investment contract accounts;
2 (viii) a policy issued by an organization as provided in § 1–202(3)
3 of this article; [or]

4 (ix) an annuity agreement issued under § 16–114 of this article;

5 **(X) A PORTION OF A POLICY OR CONTRACT TO THE EXTENT**
6 **THAT THE ASSESSMENTS REQUIRED BY § 9–409 OF THIS SUBTITLE WITH**
7 **RESPECT TO THE POLICY OR CONTRACT ARE PREEMPTED BY FEDERAL OR**
8 **STATE LAW;**

9 **(XI) AN OBLIGATION THAT DOES NOT ARISE UNDER THE**
10 **EXPRESS WRITTEN TERMS OF THE POLICY OR CONTRACT ISSUED BY THE**
11 **INSURER TO THE CONTRACT OWNER OR POLICY OWNER, INCLUDING WITHOUT**
12 **LIMITATION:**

13 1. **CLAIMS MADE ON MARKETING MATERIALS;**

14 2. **CLAIMS BASED ON SIDE LETTERS, RIDERS, OR**
15 **OTHER DOCUMENTS THAT WERE ISSUED BY THE INSURER WITHOUT MEETING**
16 **APPLICABLE POLICY FORM FILING OR APPROVAL REQUIREMENTS;**

17 3. **MISREPRESENTATIONS OF OR REGARDING POLICY**
18 **BENEFITS;**

19 4. **EXTRA–CONTRACTUAL CLAIMS; AND**

20 5. **A CLAIM FOR PENALTIES OR CONSEQUENTIAL OR**
21 **INCIDENTAL DAMAGES;**

22 **(XII) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, A**
23 **PORTION OF A POLICY OR CONTRACT TO THE EXTENT THAT IT PROVIDES FOR**
24 **INTEREST OR OTHER CHANGES IN VALUE TO BE DETERMINED BY THE USE OF AN**
25 **INDEX OR OTHER EXTERNAL REFERENCE STATED IN THE POLICY OR CONTRACT,**
26 **BUT WHICH HAVE NOT BEEN CREDITED TO THE POLICY OR CONTRACT, OR AS**
27 **TO WHICH THE POLICY OR CONTRACT OWNER’S RIGHTS ARE SUBJECT TO**
28 **FORFEITURE, AS OF THE DATE THE MEMBER INSURER BECOMES AN IMPAIRED**
29 **INSURER OR INSOLVENT INSURER UNDER THIS SUBTITLE, WHICHEVER IS**
30 **EARLIER; OR**

31 **(XIII) A POLICY OR CONTRACT PROVIDING ANY HOSPITAL,**
32 **MEDICAL, PRESCRIPTION DRUG, OR OTHER HEALTH CARE BENEFITS UNDER**
33 **PART C OR PART D OF SUBCHAPTER XVIII, CHAPTER 7 OF TITLE 42 OF THE**

1 UNITED STATES CODE, COMMONLY KNOWN AS MEDICARE PART C & D, OR ANY
2 REGULATIONS ADOPTED UNDER IT.

3 (3) IF A POLICY'S OR CONTRACT'S INTEREST OR CHANGES IN
4 VALUE ARE CREDITED LESS FREQUENTLY THAN ANNUALLY, THEN TO
5 DETERMINE THE VALUES THAT HAVE BEEN CREDITED AND ARE NOT SUBJECT
6 TO FORFEITURE UNDER THIS SUBSECTION, THE INTEREST OR CHANGE IN
7 VALUE DETERMINED BY USING THE PROCEDURES DEFINED IN THE POLICY OR
8 CONTRACT WILL BE CREDITED AS IF THE CONTRACTUAL DATE OF CREDITING
9 INTEREST OR CHANGING VALUES WAS THE DATE OF IMPAIRMENT OR
10 INSOLVENCY, WHICHEVER IS EARLIER, AND WILL NOT BE SUBJECT TO
11 FORFEITURE.

12 9-404.

13 (a) (1) This subtitle shall be liberally construed to carry out its purpose as
14 specified in § 9-402 of this subtitle.

15 (2) Section 9-402 of this subtitle is an aid and guide to the
16 interpretation of this subtitle.

17 (b) The words "policy" and "contract" are used interchangeably throughout
18 this subtitle.

19 (c) A person may be a resident of only one state. For a person other than an
20 individual, that state is the state in which its principal place of business is located.

21 (D) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, FOR A
22 PLAN SPONSOR OR PERSON OTHER THAN AN INDIVIDUAL, ITS PRINCIPAL PLACE
23 OF BUSINESS IS THE SINGLE STATE IN WHICH THE INDIVIDUALS WHO ESTABLISH
24 POLICY FOR THE DIRECTION, CONTROL, AND COORDINATION OF THE
25 OPERATIONS OF THE ENTITY, AS A WHOLE, PRIMARILY EXERCISE THAT
26 FUNCTION, AS DETERMINED BY THE CORPORATION IN ITS REASONABLE
27 JUDGMENT BY CONSIDERING THE FOLLOWING FACTORS:

28 (I) THE STATE IN WHICH THE PRIMARY EXECUTIVE AND
29 ADMINISTRATIVE HEADQUARTERS OF THE ENTITY IS LOCATED;

30 (II) THE STATE IN WHICH THE PRINCIPAL OFFICE OF THE
31 CHIEF EXECUTIVE OFFICER OF THE ENTITY IS LOCATED;

32 (III) THE STATE IN WHICH THE BOARD OF DIRECTORS, OR
33 SIMILAR GOVERNING PERSON OR PERSONS, OF THE ENTITY CONDUCTS THE
34 MAJORITY OF ITS MEETINGS;

1 **(IV) THE STATE IN WHICH THE EXECUTIVE OR MANAGEMENT**
2 **COMMITTEE OF THE BOARD OF DIRECTORS, OR SIMILAR GOVERNING PERSON**
3 **OR PERSONS, OF THE ENTITY CONDUCTS THE MAJORITY OF ITS MEETINGS;**

4 **(V) THE STATE FROM WHICH THE MANAGEMENT OF THE**
5 **OVERALL OPERATIONS OF THE ENTITY IS DIRECTED; AND**

6 **(VI) FOR A BENEFIT PLAN SPONSORED BY AFFILIATED**
7 **COMPANIES COMPRISING A CONSOLIDATED CORPORATION, THE STATE IN**
8 **WHICH THE HOLDING COMPANY OR CONTROLLING AFFILIATE HAS ITS**
9 **PRINCIPAL PLACE OF BUSINESS, AS DETERMINED UNDER THE FACTORS IN THIS**
10 **PARAGRAPH.**

11 **(2) FOR A PLAN SPONSOR, IF MORE THAN 50% OF THE**
12 **PARTICIPANTS IN THE BENEFIT PLAN ARE EMPLOYED IN A SINGLE STATE, THAT**
13 **STATE IS DEEMED TO BE THE PRINCIPAL PLACE OF BUSINESS OF THE PLAN**
14 **SPONSOR.**

15 **(3) FOR AN ASSOCIATION, A COMMITTEE, A JOINT BOARD OF**
16 **TRUSTEES, OR ANY OTHER SIMILAR GROUP OF REPRESENTATIVES OF THE**
17 **PARTIES WHO ESTABLISH OR MAINTAIN A BENEFIT PLAN WHEN THERE IS NO**
18 **SPECIFIC OR CLEAR DESIGNATION OF A PRINCIPAL PLACE OF BUSINESS, THE**
19 **PRINCIPAL PLACE OF BUSINESS IS THE PRINCIPAL PLACE OF BUSINESS OF THE**
20 **EMPLOYER OR EMPLOYEE ORGANIZATION THAT HAS THE LARGEST INVESTMENT**
21 **IN THE BENEFIT PLAN IN QUESTION.**

22 9-407.

23 (a) For a [domestic] **MEMBER** insurer that is an impaired insurer, [before an
24 order of liquidation or rehabilitation and] **THE CORPORATION**, subject to any
25 conditions imposed by the Corporation that do not impair the contractual obligations
26 of the impaired insurer [if the impaired insurer and Commissioner approve, the
27 Corporation] **AND THAT ARE APPROVED BY THE COMMISSIONER**, may:

28 (1) guarantee or reinsure, or cause to be guaranteed, assumed, or
29 reinsured, [the impaired insurer's covered policies of residents] **ANY OR ALL OF THE**
30 **COVERED POLICIES OR CONTRACTS OF THE IMPAIRED INSURER; AND**

31 (2) provide moneys, pledges, **LOANS**, notes, guarantees, or other
32 appropriate means to:

33 (i) carry out item (1) of this subsection; and

1 (ii) ensure payment of the contractual obligations of the
2 impaired insurer, pending action under item (1) of this subsection[]; and

3 (3) lend money to the impaired insurer].

4 [(b) For a foreign insurer or alien insurer that is an impaired insurer, before
5 an order of liquidation, rehabilitation, or conservation and subject to any conditions
6 imposed by the Corporation that do not impair the contractual obligations of the
7 impaired insurer, if the impaired insurer and the Commissioner approve, the
8 Corporation may, with respect to the covered policies of residents:

9 (1) guarantee or reinsure, or cause to be guaranteed, assumed, or
10 reinsured, the impaired insurer's covered policies of residents;

11 (2) provide moneys, pledges, notes, guarantees, or other appropriate
12 means to:

13 (i) carry out item (1) of this subsection; and

14 (ii) ensure payment of the contractual obligations of the
15 impaired insurer to residents, pending action under item (1) of this subsection; and

16 (3) lend money to the impaired insurer.

17 (c) (1) For a domestic insurer that is an impaired insurer under an order
18 of liquidation or rehabilitation, if the Commissioner approves, the Corporation shall:

19 (i) guarantee, assume, or reinsure, or cause to be guaranteed,
20 assumed, or reinsured, the impaired insurer's covered policies of residents;

21 (ii) ensure payment of the contractual obligations of the
22 impaired insurer; and

23 (iii) provide moneys, pledges, notes, guarantees, or other means
24 reasonably necessary to carry out this paragraph.

25 (2) If the Corporation fails to act within a reasonable period of time
26 with respect to the domestic impaired insurer, the Commissioner shall have the
27 powers and duties of the Corporation under this subtitle.

28 (d) (1) For a foreign insurer or alien insurer that is an impaired insurer
29 under an order of liquidation, rehabilitation, or conservation, if the Commissioner
30 approves, the Corporation shall:

31 (i) guarantee, assume, or reinsure, or cause to be guaranteed,
32 assumed, or reinsured, the impaired insurer's covered policies of residents;

1 (ii) ensure payment of the contractual obligations of the
2 impaired insurer to residents; and

3 (iii) provide moneys, pledges, notes, guarantees, or other means
4 reasonably necessary to carry out this paragraph.

5 (2) If the Corporation fails to act within a reasonable period of time
6 with respect to the foreign or alien impaired insurer, the Commissioner shall have the
7 powers and duties of the Corporation under this subtitle.]

8 **(B) FOR A MEMBER INSURER THAT IS AN INSOLVENT INSURER, THE**
9 **CORPORATION MAY:**

10 **(1) (I) GUARANTEE OR REINSURE, OR CAUSE TO BE**
11 **GUARANTEED, ASSUMED, OR REINSURED, ANY OR ALL OF THE COVERED**
12 **POLICIES OR CONTRACTS OF THE INSOLVENT INSURER; OR**

13 **(II) ENSURE PAYMENT OF THE CONTRACTUAL OBLIGATIONS**
14 **OF THE INSOLVENT INSURER; AND**

15 **(2) PROVIDE MONEY, PLEDGES, LOANS, NOTES, GUARANTEES, OR**
16 **OTHER APPROPRIATE MEANS TO DISCHARGE THE CORPORATION'S DUTIES**
17 **UNDER ITEM (1) OF THIS SUBSECTION.**

18 **(C) IF THE CORPORATION FAILS TO ACT WITHIN A REASONABLE**
19 **PERIOD OF TIME WITH RESPECT TO THE IMPAIRED OR INSOLVENT INSURER,**
20 **THE COMMISSIONER SHALL HAVE THE POWERS AND DUTIES OF THE**
21 **CORPORATION UNDER THIS SUBTITLE.**

22 **[(e)] (D) (1) In carrying out its duties under [subsections (c) and (d)]**
23 **SUBSECTION (B) of this section, the Corporation may request that policy liens,**
24 **contract liens, moratoriums on payments, or other similar means be imposed.**

25 (2) Policy liens, contract liens, moratoriums on payments, or other
26 similar means may be imposed if the Commissioner approves the specific policy liens,
27 contract liens, moratoriums on payments, or other similar means after finding that:

28 (i) the amounts that can be assessed under this subtitle are less
29 than the amounts needed to ensure full and prompt performance of the impaired
30 insurer's contractual obligations; or

31 (ii) the economic or financial conditions, as they affect member
32 insurers, are sufficiently adverse to render the imposition of policy liens, contract
33 liens, moratoriums on payments, or other similar means to be in the public interest.

1 (3) (i) Before being obligated under [subsections (c) and (d)]
2 **SUBSECTION (B)** of this section, the Corporation may request that temporary
3 moratoriums or liens on payments of cash values and policy loans be imposed.

4 (ii) If the Commissioner approves, the temporary moratoriums
5 or liens requested by the Corporation under this paragraph may be imposed.

6 **[(f)] (E)** The Corporation is not liable under this section for a covered policy
7 of a foreign insurer or alien insurer whose domiciliary jurisdiction or state of entry
8 provides, by statute or regulation, protection for residents of this State substantially
9 similar to that provided under this subtitle for residents of other states.

10 **[(g)] (F)** On request of the Commissioner, the Corporation may give help
11 and advice to the Commissioner about rehabilitation, payment of claims, continuations
12 of coverage, or the performance of other contractual obligations of an impaired insurer.

13 **[(h)] (G)** (1) The Corporation has standing to appear **OR INTERVENE**
14 before any court [in the State] **OR AGENCY** with jurisdiction over an impaired **OR**
15 **INSOLVENT** insurer as to which the Corporation is or may become obligated under
16 this subtitle.

17 (2) The standing extends to all matters germane to the powers and
18 duties of the Corporation, including proposals for reinsuring or guaranteeing the
19 covered policies of the impaired **OR INSOLVENT** insurer and the determination of the
20 covered policies and contractual obligations.

21 **[(i)] (H)** (1) A person receiving benefits under this subtitle, whether the
22 benefits are payments of contractual obligations or continuation of coverage, is deemed
23 to have assigned all rights under **OR CAUSES OF ACTION RELATING TO** the covered
24 policy to the Corporation to the extent of the benefits received because of this subtitle.

25 (2) The Corporation may require a payee, policy or contract owner,
26 beneficiary, insured, or annuitant to assign to the Corporation all rights to the extent
27 of benefits received under the covered policy as a condition precedent to the receipt of
28 any rights or benefits under this subtitle.

29 (3) The Corporation is subrogated to the rights assigned under this
30 subsection against the assets of the impaired **OR INSOLVENT** insurer.

31 (4) The subrogation rights of the Corporation under this subsection
32 have the same priority against the assets of the impaired **OR INSOLVENT** insurer as
33 those of the person entitled to receive benefits under this subtitle.

34 **(I) IN CARRYING OUT ITS DUTIES IN CONNECTION WITH**
35 **GUARANTEEING OR REINSURING POLICIES OR CONTRACTS UNDER**
36 **SUBSECTIONS (A) AND (B) OF THIS SECTION, THE CORPORATION MAY, SUBJECT**

1 TO APPROVAL OF THE COMMISSIONER, ISSUE SUBSTITUTE COVERAGE FOR A
2 POLICY OR CONTRACT THAT PROVIDES AN INTEREST RATE, A CREDITING RATE,
3 OR A SIMILAR FACTOR DETERMINED BY USE OF AN INDEX OR OTHER EXTERNAL
4 REFERENCE STATED IN THE POLICY OR CONTRACT EMPLOYED IN CALCULATING
5 RETURNS OR CHANGES IN VALUE BY ISSUING AN ALTERNATIVE POLICY OR
6 CONTRACT, IF:

7 (1) IN LIEU OF THE INDEX OR OTHER EXTERNAL REFERENCE
8 PROVIDED FOR IN THE ORIGINAL POLICY OR CONTRACT, THE ALTERNATIVE
9 POLICY OR CONTRACT PROVIDES FOR:

10 (I) A FIXED INTEREST RATE;

11 (II) PAYMENT OF DIVIDENDS WITH MINIMUM GUARANTEES;
12 OR

13 (III) A DIFFERENT METHOD FOR CALCULATING INTEREST OR
14 CHANGES IN VALUE;

15 (2) THERE IS NO REQUIREMENT FOR EVIDENCE OF INSURABILITY,
16 WAITING PERIOD, OR OTHER EXCLUSION THAT WOULD NOT HAVE APPLIED
17 UNDER THE ORIGINAL POLICY OR CONTRACT; AND

18 (3) THE ALTERNATIVE POLICY OR CONTRACT IS SUBSTANTIALLY
19 SIMILAR TO THE ORIGINAL POLICY OR CONTRACT IN ALL OTHER MATERIAL
20 TERMS.

21 (j) (1) Subject to paragraphs (2) and (3) of this subsection and unless the
22 contractual obligations of the impaired insurer or insolvent insurer are reduced OR
23 EXCLUDED under subsection [(e)](D) of this section OR § 9-403(G)(2) OF THIS
24 SUBTITLE, the contractual obligations of the impaired insurer or insolvent insurer for
25 which the Corporation is or may become liable shall be as great as, but no greater
26 than, the contractual obligations that the impaired insurer or insolvent insurer would
27 have had in the absence of the impairment or insolvency.

28 (2) The Corporation is not liable for health care received after the date
29 of the impairment or insolvency unless the health care was in progress on the date of
30 the impairment or insolvency or unless other health care coverage is not available
31 from another insurer or nonprofit health service plan.

32 (3) Benefits for which the Corporation may become liable may not
33 exceed the lesser of:

34 (i) the contractual obligations for which the insurer is or would
35 have been liable if it were not an impaired insurer or insolvent insurer; or

1 (ii) with respect to any one life, regardless of the number of
2 policies or contracts:

3 1. \$300,000 in life insurance death benefits, but not
4 more than \$100,000 in net cash surrender and net cash withdrawal values for life
5 insurance;

6 2. [\$300,000 in health insurance benefits, including net
7 cash surrender and net cash withdrawal values] **IN HEALTH INSURANCE BENEFITS:**

8 **A. \$500,000 FOR BASIC HOSPITAL, MEDICAL, AND**
9 **SURGICAL INSURANCE OR MAJOR MEDICAL INSURANCE PROVIDED BY HEALTH**
10 **BENEFIT PLANS, AS DEFINED IN § 15-1301 OF THIS ARTICLE;**

11 **B. \$300,000 FOR DISABILITY INSURANCE AND**
12 **\$300,000 FOR LONG-TERM CARE INSURANCE, AS DEFINED IN § 18-101 OF THIS**
13 **ARTICLE; AND**

14 **C. \$100,000 FOR COVERAGES NOT DEFINED AS BASIC**
15 **HOSPITAL, MEDICAL, AND SURGICAL INSURANCE, OR MAJOR MEDICAL**
16 **INSURANCE, OR DISABILITY INSURANCE OR LONG-TERM CARE INSURANCE,**
17 **INCLUDING ANY NET CASH SURRENDER AND NET CASH WITHDRAWAL VALUES;**
18 **and**

19 3. **A. \$250,000 in the present value of annuity**
20 **benefits, including net cash surrender and net cash withdrawal values; AND**

21 **B. WITH RESPECT TO EACH PAYEE UNDER A**
22 **STRUCTURED SETTLEMENT ANNUITY, OR BENEFICIARY OF THE PAYEE IF THE**
23 **PAYEE IS DECEASED, \$250,000 IN PRESENT VALUE ANNUITY BENEFITS, IN THE**
24 **AGGREGATE, INCLUDING ANY NET CASH SURRENDER AND NET CASH**
25 **WITHDRAWAL VALUES.**

26 (4) (I) **EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS**
27 **PARAGRAPH, THE CORPORATION MAY NOT, WITH RESPECT TO ANY ONE LIFE, BE**
28 **LIABLE FOR COVERAGE GREATER THAN AN AGGREGATE OF \$300,000 IN HEALTH**
29 **INSURANCE BENEFITS UNDER PARAGRAPH (3)(II)2 OF THIS SUBSECTION.**

30 (II) **THE CORPORATION MAY NOT, WITH RESPECT TO ANY**
31 **ONE LIFE, BE LIABLE FOR COVERAGE GREATER THAN AN AGGREGATE OF**
32 **\$500,000 IN BASIC HOSPITAL, MEDICAL, AND SURGICAL INSURANCE OR MAJOR**
33 **MEDICAL INSURANCE UNDER PARAGRAPH (3)(II)2A OF THIS SUBSECTION.**

1 **(K) THE CORPORATION MAY JOIN AN ORGANIZATION OF ONE OR MORE**
2 **OTHER STATE ASSOCIATIONS OF SIMILAR PURPOSES, TO FURTHER THE**
3 **PURPOSES AND ADMINISTER THE POWERS AND DUTIES OF THE CORPORATION.**

4 **9-407.1.**

5 **(A) AT ANY TIME WITHIN 180 DAYS AFTER THE DATE OF AN ORDER OF**
6 **LIQUIDATION, THE CORPORATION MAY ELECT TO SUCCEED TO THE RIGHTS AND**
7 **OBLIGATIONS OF THE CEDING MEMBER INSURER THAT RELATE TO POLICIES OR**
8 **ANNUITIES COVERED, IN WHOLE OR IN PART, BY THE CORPORATION, IN EACH**
9 **CASE UNDER ANY ONE OR MORE REINSURANCE CONTRACTS ENTERED INTO BY**
10 **THE INSOLVENT INSURER AND ITS REINSURERS AND SELECTED BY THE**
11 **CORPORATION.**

12 **(B) ANY ASSUMPTION UNDER SUBSECTION (A) OF THIS SECTION IS**
13 **EFFECTIVE AS OF THE DATE OF THE ORDER OF LIQUIDATION.**

14 **(C) THE ELECTION SHALL BE EFFECTED BY THE CORPORATION OR THE**
15 **NATIONAL ORGANIZATION OF LIFE AND HEALTH INSURANCE GUARANTY**
16 **ASSOCIATIONS ON ITS BEHALF SENDING WRITTEN NOTICE, RETURN RECEIPT**
17 **REQUESTED, TO THE AFFECTED REINSURERS.**

18 **(D) TO FACILITATE THE EARLIEST PRACTICABLE DECISION ABOUT**
19 **WHETHER TO ASSUME ANY OF THE CONTRACTS OF REINSURANCE, AND IN**
20 **ORDER TO PROTECT THE FINANCIAL POSITION OF THE ESTATE, THE RECEIVER**
21 **AND EACH REINSURER OF THE CEDING MEMBER INSURER SHALL MAKE**
22 **AVAILABLE ON REQUEST TO THE CORPORATION OR TO THE NATIONAL**
23 **ORGANIZATION OF LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATIONS**
24 **ON ITS BEHALF AS SOON AS POSSIBLE AFTER COMMENCEMENT OF FORMAL**
25 **DELINQUENCY PROCEEDINGS:**

26 **(1) COPIES OF IN-FORCE CONTRACTS OF REINSURANCE AND ALL**
27 **RELATED FILES AND RECORDS RELEVANT TO THE DETERMINATION OF**
28 **WHETHER THE CONTRACTS SHOULD BE ASSUMED; AND**

29 **(2) NOTICES OF ANY DEFAULTS UNDER THE REINSURANCE**
30 **CONTRACTS OR ANY KNOWN EVENT OR CONDITION THAT, WITH THE PASSAGE OF**
31 **TIME, COULD BECOME A DEFAULT UNDER THE REINSURANCE CONTRACTS.**

32 **(E) (1) THIS SUBSECTION APPLIES TO REINSURANCE CONTRACTS**
33 **ASSUMED BY THE CORPORATION.**

1 **(2) THE CORPORATION IS RESPONSIBLE FOR ALL UNPAID**
2 **PREMIUMS DUE UNDER A REINSURANCE CONTRACT ASSUMED BY THE**
3 **CORPORATION FOR PERIODS BOTH BEFORE AND AFTER THE DATE OF THE**
4 **ORDER OF LIQUIDATION, AND IS RESPONSIBLE FOR THE PERFORMANCE OF ALL**
5 **OTHER OBLIGATIONS TO BE PERFORMED AFTER THE DATE OF THE ORDER OF**
6 **LIQUIDATION, IN EACH CASE WHICH RELATE TO POLICIES OR ANNUITIES**
7 **COVERED, IN WHOLE OR IN PART, BY THE CORPORATION.**

8 **(3) THE CORPORATION MAY CHARGE POLICIES OR ANNUITIES**
9 **COVERED IN PART BY THE CORPORATION, THROUGH REASONABLE ALLOCATION**
10 **METHODS, THE COSTS FOR REINSURANCE IN EXCESS OF THE OBLIGATIONS OF**
11 **THE CORPORATION AND SHALL PROVIDE NOTICE AND AN ACCOUNTING OF**
12 **THESE CHARGES TO THE LIQUIDATOR.**

13 **(4) THE CORPORATION IS ENTITLED TO ANY AMOUNTS PAYABLE**
14 **BY THE REINSURER UNDER THE REINSURANCE CONTRACTS WITH RESPECT TO**
15 **LOSSES OR EVENTS THAT OCCUR IN PERIODS AFTER THE DATE OF THE ORDER**
16 **OF LIQUIDATION AND THAT RELATE TO POLICIES OR ANNUITIES COVERED, IN**
17 **WHOLE OR IN PART, BY THE CORPORATION, IF ON RECEIPT OF ANY AMOUNTS**
18 **PAYABLE, THE CORPORATION IS OBLIGED TO PAY TO THE BENEFICIARY UNDER**
19 **THE POLICY OR ANNUITY ON ACCOUNT OF WHICH THE AMOUNTS WERE PAID A**
20 **PORTION OF THE AMOUNT EQUAL TO THE LESSER OF:**

21 **(I) THE AMOUNT RECEIVED BY THE CORPORATION; AND**

22 **(II) THE EXCESS OF THE AMOUNT RECEIVED BY THE**
23 **CORPORATION OVER THE AMOUNT EQUAL TO THE BENEFITS PAID BY THE**
24 **CORPORATION ON ACCOUNT OF THE POLICY OR ANNUITY LESS THE RETENTION**
25 **OF THE INSURER APPLICABLE TO THE LOSS OR EVENT.**

26 **(F) (1) (I) WITHIN 30 DAYS AFTER THE CORPORATION'S**
27 **ELECTION, THE CORPORATION AND EACH REINSURER UNDER CONTRACTS**
28 **ASSUMED BY THE CORPORATION SHALL CALCULATE THE NET BALANCE DUE TO**
29 **OR FROM THE CORPORATION UNDER EACH REINSURANCE CONTRACT AS OF THE**
30 **ELECTION DATE WITH RESPECT TO POLICIES OR ANNUITIES COVERED, IN**
31 **WHOLE OR IN PART, BY THE CORPORATION.**

32 **(II) THE CALCULATION UNDER SUBPARAGRAPH (I) OF THIS**
33 **PARAGRAPH SHALL GIVE FULL CREDIT TO ALL ITEMS PAID BY EITHER THE**
34 **INSURER OR ITS RECEIVER OR THE REINSURER PRIOR TO THE ELECTION DATE.**

35 **(2) WITHIN 5 DAYS AFTER THE COMPLETION OF THE**
36 **CALCULATION UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE REINSURER**

1 SHALL PAY THE RECEIVER ANY AMOUNTS DUE FOR LOSSES OR EVENTS BEFORE
2 THE DATE OF THE ORDER OF LIQUIDATION, SUBJECT TO ANY SETOFF FOR
3 PREMIUMS UNPAID FOR PERIODS BEFORE THE DATE, AND THE CORPORATION
4 OR REINSURER SHALL PAY ANY REMAINING BALANCE DUE THE OTHER, IN EACH
5 CASE.

6 (3) ANY DISPUTES OVER THE AMOUNTS DUE TO EITHER THE
7 CORPORATION OR THE REINSURER SHALL BE RESOLVED BY ARBITRATION
8 UNDER THE TERMS OF THE AFFECTED REINSURANCE CONTRACTS OR, IF THE
9 CONTRACT CONTAINS NO ARBITRATION CLAUSE, AS OTHERWISE PROVIDED BY
10 LAW.

11 (4) IF THE RECEIVER HAS RECEIVED ANY AMOUNTS DUE TO THE
12 CORPORATION UNDER SUBSECTION (E)(3) OF THIS SECTION, THE RECEIVER
13 SHALL REMIT THOSE AMOUNTS TO THE CORPORATION AS PROMPTLY AS
14 PRACTICABLE.

15 (G) IF THE CORPORATION OR RECEIVER, ON THE CORPORATION'S
16 BEHALF, WITHIN 60 DAYS AFTER THE ELECTION DATE, PAYS THE UNPAID
17 PREMIUMS DUE FOR PERIODS BOTH BEFORE AND AFTER THE ELECTION DATE
18 THAT RELATE TO POLICIES OR ANNUITIES COVERED, IN WHOLE OR IN PART, BY
19 THE CORPORATION, THE REINSURER IS NOT ENTITLED TO:

20 (1) TERMINATE THE REINSURANCE CONTRACTS FOR FAILURE TO
21 PAY PREMIUMS FOR THE REINSURANCE CONTRACTS THAT RELATE TO POLICIES
22 OR ANNUITIES COVERED, IN WHOLE OR IN PART, BY THE CORPORATION; OR

23 (2) SET OFF ANY UNPAID AMOUNTS DUE UNDER OTHER
24 CONTRACTS, OR UNPAID AMOUNTS DUE FROM PARTIES OTHER THAN THE
25 CORPORATION, AGAINST AMOUNTS DUE THE CORPORATION.

26 (H) DURING THE PERIOD FROM THE DATE OF THE ORDER OF
27 LIQUIDATION UNTIL THE ELECTION DATE OR, IF THE ELECTION DATE DOES NOT
28 OCCUR, UNTIL 180 DAYS AFTER THE DATE OF THE ORDER OF LIQUIDATION:

29 (1) (I) NEITHER THE CORPORATION NOR THE REINSURER
30 SHALL HAVE ANY RIGHTS OR OBLIGATIONS UNDER REINSURANCE CONTRACTS
31 THAT THE CORPORATION HAS THE RIGHT TO ASSUME UNDER SUBSECTIONS (A)
32 THROUGH (G) OF THIS SECTION, WHETHER FOR PERIODS BEFORE OR AFTER
33 THE DATE OF THE ORDER OF LIQUIDATION; AND

1 **(II) THE REINSURER, THE RECEIVER, AND THE**
2 **CORPORATION SHALL, TO THE EXTENT PRACTICABLE, PROVIDE EACH OTHER**
3 **DATA AND RECORDS REASONABLY REQUESTED; AND**

4 **(2) IF THE CORPORATION HAS ELECTED TO ASSUME A**
5 **REINSURANCE CONTRACT, THE PARTIES' RIGHTS AND OBLIGATIONS SHALL BE**
6 **GOVERNED BY SUBSECTIONS (A) THROUGH (G) OF THIS SECTION.**

7 **(I) IF THE CORPORATION DOES NOT ELECT TO ASSUME A**
8 **REINSURANCE CONTRACT BY THE ELECTION DATE UNDER SUBSECTIONS (A)**
9 **THROUGH (G) OF THIS SECTION, THE CORPORATION SHALL HAVE NO RIGHTS OR**
10 **OBLIGATIONS, IN EACH CASE FOR PERIODS BOTH BEFORE AND AFTER THE DATE**
11 **OF THE ORDER OF LIQUIDATION, WITH RESPECT TO THE REINSURANCE**
12 **CONTRACT.**

13 **(J) WHEN POLICIES OR ANNUITIES, OR COVERED OBLIGATIONS WITH**
14 **RESPECT TO POLICIES OR ANNUITIES, ARE TRANSFERRED TO AN ASSUMING**
15 **INSURER, REINSURANCE ON THE POLICIES OR ANNUITIES MAY ALSO BE**
16 **TRANSFERRED BY THE CORPORATION, IN THE CASE OF CONTRACTS ASSUMED**
17 **UNDER SUBSECTIONS (A) THROUGH (G) OF THIS SECTION, IF:**

18 **(1) UNLESS THE REINSURER AND THE ASSUMING INSURER AGREE**
19 **OTHERWISE, THE REINSURANCE CONTRACT TRANSFERRED DOES NOT COVER**
20 **ANY NEW POLICIES OF INSURANCE OR ANNUITIES IN ADDITION TO THOSE**
21 **TRANSFERRED;**

22 **(2) THE OBLIGATIONS DESCRIBED IN SUBSECTIONS (A) THROUGH**
23 **(G) OF THIS SECTION NO LONGER APPLY WITH RESPECT TO MATTERS ARISING**
24 **AFTER THE EFFECTIVE DATE OF THE TRANSFER; AND**

25 **(3) NOTICE IS GIVEN IN WRITING, RETURN RECEIPT REQUESTED,**
26 **BY THE TRANSFERRING PARTY TO THE AFFECTED REINSURER AT LEAST 30**
27 **DAYS BEFORE THE EFFECTIVE DATE OF THE TRANSFER.**

28 **(K) (1) THE PROVISIONS OF THIS SECTION SUPERSEDE THE**
29 **PROVISIONS OF ANY STATE LAW OR OF ANY AFFECTED REINSURANCE**
30 **CONTRACT THAT PROVIDES FOR OR REQUIRES ANY PAYMENT OF REINSURANCE**
31 **PROCEEDS, ON ACCOUNT OF LOSSES OR EVENTS THAT OCCUR IN PERIODS**
32 **AFTER THE DATE OF THE ORDER OF LIQUIDATION, TO THE RECEIVER OF THE**
33 **INSOLVENT INSURER OR ANY OTHER PERSON.**

34 **(2) THE RECEIVER REMAINS ENTITLED TO ANY AMOUNTS**
35 **PAYABLE BY THE REINSURER UNDER THE REINSURANCE CONTRACTS WITH**

1 RESPECT TO LOSSES OR EVENTS THAT OCCUR IN PERIODS BEFORE THE DATE OF
2 THE ORDER OF LIQUIDATION, SUBJECT TO APPLICABLE SETOFF PROVISIONS.

3 (L) (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THIS
4 SECTION DOES NOT ALTER OR MODIFY THE TERMS AND CONDITIONS OF ANY
5 REINSURANCE CONTRACT.

6 (2) THIS SECTION DOES NOT:

7 (I) ABROGATE OR LIMIT ANY RIGHTS OF ANY REINSURER
8 TO CLAIM THAT THE REINSURER IS ENTITLED TO RESCIND A REINSURANCE
9 CONTRACT;

10 (II) GIVE A POLICYHOLDER OR BENEFICIARY AN
11 INDEPENDENT CAUSE OF ACTION AGAINST A REINSURER THAT IS NOT
12 OTHERWISE SET FORTH IN THE REINSURANCE CONTRACT;

13 (III) LIMIT OR AFFECT THE CORPORATION'S RIGHTS AS A
14 CREDITOR OF THE ESTATE AGAINST THE ASSETS OF THE ESTATE; OR

15 (IV) APPLY TO REINSURANCE AGREEMENTS COVERING
16 PROPERTY OR CASUALTY RISKS.

17 9-408.

18 The Corporation may:

19 (1) enter into contracts that are necessary or proper to carry out the
20 provisions and purposes of this subtitle;

21 (2) sue or be sued and take any other legal actions necessary or proper
22 for the recovery of unpaid assessments under § 9-409 of this subtitle;

23 (3) borrow money to carry out the purposes of this subtitle, provided
24 that any notes or other evidences of indebtedness of the Corporation not in default are
25 legal investments for domestic insurers and may be carried as admitted assets;

26 (4) employ or retain persons as necessary to handle the financial
27 transactions of the Corporation and perform other functions that are necessary or
28 proper under this subtitle;

29 (5) negotiate and contract with liquidators, rehabilitators,
30 conservators, or ancillary receivers to carry out the powers and duties of the
31 Corporation;

1 (6) take any legal action necessary to avoid payment of improper
2 claims;

3 (7) for the purposes of this subtitle and to the extent approved by the
4 Commissioner, exercise the powers of a domestic life insurer or health insurer, except
5 that the Corporation may not issue policies or annuity contracts other than those
6 issued to perform the contractual obligation of an impaired **OR INSOLVENT** insurer;
7 and

8 (8) perform any other act necessary or proper to carry out the
9 purposes of this subtitle.

10 9–414.

11 (a) This subtitle may not be construed to reduce the liability for unpaid
12 assessments of the insureds of an impaired **OR INSOLVENT** insurer operating under a
13 plan with assessment liability.

14 (b) Assessable premiums may not be reduced because of [**§ 9–403(b)(2)(iii)**] **§**
15 **9–403(G)(2)(III)** of this subtitle relating to interest limitations and because of **§**
16 **9–407(j)** of this subtitle relating to limitations with respect to an individual
17 policyholder.

18 (c) (1) The Corporation shall keep records of all negotiations and
19 meetings in which the Corporation or its representatives are involved to discuss the
20 activities of the Corporation in carrying out its powers and duties under §§ 9–407 and
21 9–408 of this subtitle.

22 (2) Records of the negotiations or meetings described in paragraph (1)
23 of this subsection shall be made public only:

24 (i) after the termination of a liquidation, rehabilitation, or
25 conservation proceeding involving an impaired **OR INSOLVENT** insurer;

26 (ii) after the termination of the impairment **OR INSOLVENCY** of
27 an insurer; or

28 (iii) by court order.

29 (3) This subsection does not limit the duty of the Corporation to
30 submit a report of its activities under **§ 9–415** of this subtitle.

31 (d) (1) In this subsection, “assets attributable to covered policies” means
32 that proportion of the impaired **OR INSOLVENT** insurer’s assets that the amount of
33 the reserves that should have been established for the covered policies bears to the

1 amount of the reserves that should have been established for all policies written by the
2 impaired **OR INSOLVENT** insurer.

3 (2) For the purpose of carrying out its obligations under this subtitle,
4 the Corporation is considered a creditor of the impaired **OR INSOLVENT** insurer to the
5 extent of the impaired **OR INSOLVENT** insurer's assets attributable to covered policies
6 reduced by any amounts to which the Corporation is entitled as subrogee under [§
7 9-407(i)] **§ 9-407(H)** of this subtitle.

8 (3) The assets attributable to covered policies of the impaired **OR**
9 **INSOLVENT** insurer shall be used to continue the covered policies and pay the
10 contractual obligations of the impaired **OR INSOLVENT** insurer as required by this
11 subtitle.

12 (e) (1) (i) Before the termination of a liquidation, rehabilitation, or
13 conservation proceeding, the court may consider the contributions of the respective
14 parties, including the Corporation, the stockholders and policy owners of the impaired
15 **OR INSOLVENT** insurer, and any other party with a bona fide interest, in making an
16 equitable distribution of the ownership rights of the impaired **OR INSOLVENT** insurer.

17 (ii) In making a determination under subparagraph (i) of this
18 paragraph, the court shall consider the welfare of the policyholders of the continuing
19 or successor insurer.

20 (2) A distribution to any stockholders of an impaired **OR INSOLVENT**
21 insurer may not be made until all of the assessments levied by the Corporation with
22 respect to the impaired **OR INSOLVENT** insurer have been fully recovered by the
23 Corporation.

24 (f) It is a prohibited unfair method of competition, subject to Title 27 of this
25 article (Unfair Trade Practices), for a person to make use in any manner of the
26 protection afforded by this subtitle in the sale of insurance.

27 (g) (1) Subject to the limitations of paragraphs (2) and (4) of this
28 subsection, if an order for liquidation or rehabilitation of an insurer domiciled in the
29 State has been entered, the receiver appointed under the order shall have a right to
30 recover on behalf of the insurer, from any affiliate that controlled the insurer, the
31 amount of distribution, other than stock dividends paid by the insurer on its capital
32 stock, made at any time during the 5 years preceding the petition for liquidation or
33 rehabilitation.

34 (2) A dividend described in paragraph (1) of this subsection is not
35 recoverable if the insurer shows that:

36 (i) the distribution was lawful and reasonable when paid; and

1 (ii) the insurer did not know and could not reasonably have
2 known that the distribution might adversely affect the ability of the insurer to fulfill
3 its contractual obligations.

4 (3) (i) A person that was an affiliate that controlled the insurer
5 when the distributions described in paragraph (1) of this subsection were paid is liable
6 up to the amount of distributions the person received.

7 (ii) A person that was an affiliate that controlled the insurer
8 when the distributions described under paragraph (1) of this subsection were declared,
9 is liable up to the amount of distributions the person would have received if they had
10 been paid immediately.

11 (iii) Two or more persons that are liable with respect to the same
12 distributions are jointly and severally liable.

13 (4) The maximum amount recoverable under this subsection is the
14 amount needed in excess of all other available assets of the impaired **OR INSOLVENT**
15 insurer to pay the contractual obligations of the impaired **OR INSOLVENT** insurer.

16 (5) If a person liable under paragraph (3) of this subsection is
17 insolvent, all of its affiliates that controlled it when the dividend was paid are jointly
18 and severally liable for any resulting deficiency in the amount recovered from the
19 insolvent affiliate.

20 (h) (1) An insurer or insurance producer may not deliver a policy or
21 contract that at the time of delivery exceeds the limitations imposed by [**§ 9-407(j)(3)**]
22 **§ 9-407(I)(3)** of this subtitle, or that is not subject to coverage under § 9-403 of this
23 subtitle, unless the insurer or insurance producer, before or at the time of delivery,
24 provides the policyholder or contract holder with a separate written notice as provided
25 in paragraph (2) of this subsection.

26 (2) The notice required under this subsection shall disclose clearly and
27 conspicuously that:

28 (i) the policy or contract is not covered by, or exceeds the
29 limitations of liability applicable to, the Corporation; and

30 (ii) the Corporation is not a department or unit of the State, and
31 the liabilities or debts of the Corporation are not liabilities or debts of the State.

32 (3) The Commissioner shall adopt regulations establishing a standard
33 form to be used by insurance producers and insurers to conform with the provisions of
34 this subsection.

1 **(A)** A member insurer or its agents or employees, the Corporation or its
2 agents or employees, members of the Board of Directors, and the Commissioner or the
3 Commissioner's representatives shall have the immunity from liability described in §
4 5-413 of the Courts Article for any action or omission taken by them in the
5 performance of their powers and duties under this subtitle.

6 **(B) THE IMMUNITY UNDER SUBSECTION (A) OF THIS SECTION SHALL**
7 **EXTEND TO:**

8 **(1) THE CORPORATION AS A PARTICIPANT IN AN ORGANIZATION**
9 **OF ONE OR MORE OTHER STATE ASSOCIATIONS OF SIMILAR PURPOSES TO THE**
10 **CORPORATION; AND**

11 **(2) THE AGENTS OR EMPLOYEES OF AN ORGANIZATION IN WHICH**
12 **THE CORPORATION IS A PARTICIPANT UNDER ITEM (1) OF THIS SUBSECTION.**

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
14 October 1, 2012.