

SENATE BILL 1003

C4

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CF HB 1340

By: ~~Senator Middleton~~ **Senators Middleton, Garagiola, Glassman, Kelley,
Kittleman, Klausmeier, and Pugh**

Introduced and read first time: February 17, 2012

Assigned to: Rules

Re-referred to: Finance, February 27, 2012

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 17, 2012

CHAPTER _____

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 contractual obligations of certain impaired or insolvent insurers for which the
 2 Corporation may become liable under certain circumstances; authorizing the
 3 Corporation to join an organization of certain state associations for a certain
 4 purpose; authorizing the Corporation to elect to succeed to the rights and
 5 obligations of certain insolvent insurers relating to certain reinsurance
 6 contracts within a certain period of time after the date of an order of liquidation;
 7 requiring a receiver and certain reinsurers to make certain information
 8 available under certain circumstances for certain purposes after commencement
 9 of certain delinquency proceedings; establishing certain rights and obligations of
 10 the Corporation relating to certain reinsurance contracts assumed by the
 11 Corporation under certain circumstances; requiring the Corporation and certain
 12 reinsurers to make certain calculations within a certain period of time after a
 13 certain election; requiring certain reinsurers and the Corporation to make
 14 certain payments to a receiver in a certain manner under certain circumstances;
 15 requiring a receiver to remit certain payments to the Corporation in a certain
 16 manner under a certain circumstance; prohibiting certain reinsurers from
 17 taking certain actions relating to reinsurance contracts under certain
 18 circumstances; establishing certain rights and obligations of the Corporation
 19 and certain reinsurers during a certain period of time after the date of an order
 20 of liquidation; authorizing the Corporation to transfer certain reinsurance on
 21 certain policies, annuities, or covered obligations under certain circumstances;
 22 providing for the application of this Act as it relates to certain laws and certain
 23 rights and obligations under certain reinsurance contracts; providing for the
 24 application of this Act as it relates to certain rights of the Corporation;
 25 extending a certain immunity to certain organizations and certain agents or
 26 employees of certain organizations; defining certain terms; altering certain
 27 defined terms; and generally relating to the Life and Health Insurance
 28 Guaranty Corporation Act.

29 BY repealing and reenacting, with amendments,
 30 Article – Insurance
 31 Section 9–401, 9–402, 9–403, 9–404, 9–407, 9–408, 9–414, and 9–417
 32 Annotated Code of Maryland
 33 (2011 Replacement Volume)

34 BY adding to
 35 Article – Insurance
 36 Section 9–407.1
 37 Annotated Code of Maryland
 38 (2011 Replacement Volume)

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

41 **Article – Insurance**

42 9–401.

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

2 (b) “Account” means:

3 (1) the health insurance account;

4 (2) the life insurance account; or

5 (3) the annuity account.

6 **(C) “ASSOCIATION” MEANS THE CORPORATION OR ANY SIMILAR**
 7 **ORGANIZATION THAT HAS BEEN FORMED IN ANOTHER STATE THAT SERVES THE**
 8 **SAME PURPOSE AS THE CORPORATION FOR THE OTHER STATE.**

9 ~~(D)~~ **(D)** “Contractual obligation” means an obligation under a policy or
 10 contract or certificate under a group policy or contract for which coverage is provided
 11 under § 9–403 of this subtitle.

12 ~~(E)~~ **(E)** “Corporation” means the Life and Health Insurance Guaranty
 13 Corporation.

14 ~~(F)~~ **(F)** “Covered policy” means a policy or contract to which this subtitle
 15 applies.

16 ~~(G)~~ **(G)** “Impaired insurer” means an insurer that:

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

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

21 ~~(H)~~ **(H)** “Individual” means a natural person covered under an individual policy
 22 or covered as a member under a group policy.

23 ~~(I)~~ **(I)** “Insolvent insurer” means a member insurer that, after July 1, 1971, is
 24 placed under an order of liquidation by a court of competent jurisdiction [after] **WITH**
 25 a finding of insolvency.

26 ~~(J)~~ **(J)** (1) “Member insurer” means an authorized insurer that writes a kind
 27 of insurance to which this subtitle applies.

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

1 ~~[(2)]~~**(3)** “Member insurer” does not include:

2 (i) a health maintenance organization;

3 (ii) a fraternal benefit society;

4 (iii) a mandatory State pooling plan;

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

7 (v) an insurance exchange.

8 ~~⊕~~ **(K)** “Moody’s corporate bond yield average” means the monthly average
9 yield on corporate bonds as published by Moody’s Investors Service, Inc.

10 ~~⊕~~ **(L)** (1) “Premiums” means amounts received on covered policies or
11 contracts, less premiums, considerations, and deposits returned, and less dividends
12 and experience credits.

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

16 ~~⊕~~ **(M)** “Resident” means a person that resides in the State [when] **ON THE**
17 **DATE OF ENTRY OF A COURT ORDER THAT DETERMINES** a member insurer [is
18 determined] to be an impaired insurer or **A COURT ORDER THAT DETERMINES A**
19 **MEMBER INSURER TO BE AN** insolvent insurer and to whom a contractual obligation
20 is owed.

21 ~~⊕~~ **(N)** “**STRUCTURED SETTLEMENT ANNUITY**” **MEANS AN ANNUITY**
22 **PURCHASED IN ORDER TO FUND PERIODIC PAYMENTS FOR A PLAINTIFF OR ANY**
23 **OTHER CLAIMANT IN PAYMENT FOR OR WITH RESPECT TO PERSONAL INJURY**
24 **SUFFERED BY THE PLAINTIFF OR OTHER CLAIMANT.**

25 ~~⊕~~ **(O)** “Supplemental contract” means an agreement entered into for the
26 distribution of policy or contract proceeds.

27 9–402.

28 Subject to certain limitations, the purpose of this subtitle is to protect
29 [residents] **PERSONS SPECIFIED IN § 9–403(A) THROUGH (F) OF THIS SUBTITLE**
30 who are policyowners, [insureds,] **CONTRACT OWNERS, CERTIFICATE HOLDERS,**
31 beneficiaries, [annuitants,] payees, and assignees of life insurance policies, health
32 insurance policies, annuity contracts, and supplemental contracts **SPECIFIED IN §**

1 **9-403(G) OF THIS SUBTITLE** against failure in the performance of contractual
2 obligations due to the impairment **OR INSOLVENCY** of the insurer that issued the
3 policies or contracts.

4 9-403.

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

8 (B) (1) [Subject] **FOR CONTRACTS OTHER THAN STRUCTURED**
9 **SETTLEMENT ANNUITIES, SUBJECT** to paragraph (2) of this subsection, coverage
10 shall be provided under this subtitle for the policies or contracts specified in subsection
11 **[(b)] (G)** of this section to [an individual] **A PERSON** who is:

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

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

16 1. the insurer that issued the policy or contract is
17 domiciled in this State;

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

21 [3.] 2. the state in which the nonresident resides has an
22 insurance guaranty corporation or its equivalent similar to the Corporation
23 established by § 9-405 of this subtitle; and

24 [4.] 3. the nonresident is not eligible for coverage by the
25 insurance guaranty corporation or its equivalent in the state in which the nonresident
26 resides **BECAUSE THE INSURER WAS NOT LICENSED IN THAT STATE AT THE TIME**
27 **SPECIFIED IN THAT STATE'S GUARANTY CORPORATION OR ASSOCIATION LAW.**

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

32 (C) **EXCEPT AS PROVIDED IN SUBSECTIONS (A), (D), AND (E) OF THIS**
33 **SECTION, THIS SUBTITLE SHALL PROVIDE COVERAGE TO A PERSON WHO IS A**

1 PAYEE UNDER A STRUCTURED SETTLEMENT ANNUITY OR BENEFICIARY OF A
2 PAYEE IF THE PAYEE IS DECEASED, IF:

3 (1) (I) THE PAYEE IS A RESIDENT, REGARDLESS OF WHERE THE
4 CONTRACT OWNER RESIDES; OR

5 (II) THE PAYEE IS NOT A RESIDENT AND:

6 1. THE CONTRACT OWNER OF THE STRUCTURED
7 SETTLEMENT ANNUITY IS A RESIDENT; OR

8 2. A. THE CONTRACT OWNER OF THE
9 STRUCTURED SETTLEMENT ANNUITY IS NOT A RESIDENT;

10 B. THE INSURER THAT ISSUED THE STRUCTURED
11 SETTLEMENT ANNUITY IS DOMICILED IN THIS STATE; AND

12 C. THE STATE IN WHICH THE CONTRACT OWNER
13 RESIDES HAS AN ASSOCIATION SIMILAR TO THE CORPORATION; AND

14 (2) THE PAYEE OR BENEFICIARY, AND THE CONTRACT OWNER
15 ARE NOT ELIGIBLE FOR COVERAGE BY THE ASSOCIATION OF THE STATE IN
16 WHICH THE PAYEE OR CONTRACT OWNER RESIDES.

17 (D) THIS SUBTITLE DOES NOT PROVIDE COVERAGE TO:

18 (1) A PERSON WHO IS A PAYEE OR BENEFICIARY OF A CONTRACT
19 OWNER WHO IS A RESIDENT OF THIS STATE, IF THE PAYEE OR BENEFICIARY IS
20 PROVIDED ANY COVERAGE BY THE ASSOCIATION OF ANOTHER STATE; OR

21 (2) A PERSON WHO OTHERWISE WOULD RECEIVE COVERAGE
22 UNDER THIS SUBTITLE, IF THE PERSON IS PROVIDED COVERAGE UNDER THE
23 LAWS OF ANOTHER STATE.

24 (E) TO DETERMINE COVERAGE UNDER THIS SECTION UNDER
25 CIRCUMSTANCES IN WHICH A PERSON COULD BE COVERED BY THE
26 ASSOCIATION OF MORE THAN ONE STATE, WHETHER AS AN OWNER, A PAYEE, A
27 BENEFICIARY, OR AN ASSIGNEE, THIS SUBTITLE SHALL BE CONSTRUED IN
28 CONJUNCTION WITH OTHER STATE LAWS TO RESULT IN COVERAGE BY ONLY
29 ONE ASSOCIATION.

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

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

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

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

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

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

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

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

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

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

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

26 A. variable annuity contracts;

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

29 C. the value of an annuity contract in excess of the
30 values guaranteed in the contract; or

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

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

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

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

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

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

22 1. a multiple employer welfare arrangement, as defined
23 in ~~§ [514] 3(40) of the Employee Retirement Income Security Act of 1974 (29 U.S.C.~~
24 ~~§ 1002(40))~~ **29 U.S.C. § 1002(40)**;

25 2. a minimum premium group insurance plan;

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

27 4. an administrative services only contract;

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

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

1 (vii) an annuity contract or group annuity certificate that is not
2 issued to and owned by an individual [policyholder], except to the extent of annuity
3 benefits guaranteed to an individual [policyholder] by an insurer under the annuity
4 contract or group certificate, including the following contracts:

- 5 1. unallocated funding agreements;
- 6 2. unallocated annuity contract benefits;
- 7 3. deposit administration contracts; or
- 8 4. guaranteed investment contract accounts;

9 (viii) a policy issued by an organization as provided in § 1–202(3)
10 of this article; [or]

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

12 **(X) A PORTION OF A POLICY OR CONTRACT TO THE EXTENT**
13 **THAT THE ASSESSMENTS REQUIRED BY § 9–409 OF THIS SUBTITLE WITH**
14 **RESPECT TO THE POLICY OR CONTRACT ARE PREEMPTED BY FEDERAL OR**
15 **STATE LAW;**

16 **(XI) AN OBLIGATION THAT DOES NOT ARISE UNDER THE**
17 **EXPRESS WRITTEN TERMS OF THE POLICY OR CONTRACT ISSUED BY THE**
18 **INSURER TO THE CONTRACT OWNER OR POLICY OWNER, INCLUDING WITHOUT**
19 **LIMITATION:**

- 20 1. CLAIMS MADE ON MARKETING MATERIALS;
- 21 2. CLAIMS BASED ON SIDE LETTERS, RIDERS, OR
22 OTHER DOCUMENTS THAT WERE ISSUED BY THE INSURER WITHOUT MEETING
23 APPLICABLE POLICY FORM FILING OR APPROVAL REQUIREMENTS;
- 24 3. MISREPRESENTATIONS OF OR REGARDING POLICY
25 BENEFITS;
- 26 4. EXTRA–CONTRACTUAL CLAIMS; AND
- 27 5. A CLAIM FOR PENALTIES OR CONSEQUENTIAL OR
28 INCIDENTAL DAMAGES;

29 **(XII) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, A**
30 **PORTION OF A POLICY OR CONTRACT TO THE EXTENT THAT IT PROVIDES FOR**
31 **INTEREST OR OTHER CHANGES IN VALUE TO BE DETERMINED BY THE USE OF AN**

1 INDEX OR OTHER EXTERNAL REFERENCE STATED IN THE POLICY OR CONTRACT,
2 BUT WHICH HAVE NOT BEEN CREDITED TO THE POLICY OR CONTRACT, OR AS TO
3 WHICH THE POLICY OR CONTRACT OWNER'S RIGHTS ARE SUBJECT TO
4 FORFEITURE, AS OF THE DATE THE MEMBER INSURER BECOMES AN IMPAIRED
5 INSURER OR INSOLVENT INSURER UNDER THIS SUBTITLE, WHICHEVER IS
6 EARLIER; OR

7 (XIII) A POLICY OR CONTRACT PROVIDING ANY HOSPITAL,
8 MEDICAL, PRESCRIPTION DRUG, OR OTHER HEALTH CARE BENEFITS UNDER
9 PART C OR PART D OF SUBCHAPTER XVIII, CHAPTER 7 OF TITLE 42 OF THE
10 UNITED STATES CODE, COMMONLY KNOWN AS MEDICARE PART C & D, OR ANY
11 REGULATIONS ADOPTED UNDER IT.

12 (3) IF A POLICY'S OR CONTRACT'S INTEREST OR CHANGES IN
13 VALUE ARE CREDITED LESS FREQUENTLY THAN ANNUALLY, THEN TO
14 DETERMINE THE VALUES THAT HAVE BEEN CREDITED AND ARE NOT SUBJECT
15 TO FORFEITURE UNDER THIS SUBSECTION, THE INTEREST OR CHANGE IN
16 VALUE DETERMINED BY USING THE PROCEDURES DEFINED IN THE POLICY OR
17 CONTRACT WILL BE CREDITED AS IF THE CONTRACTUAL DATE OF CREDITING
18 INTEREST OR CHANGING VALUES WAS THE DATE OF IMPAIRMENT OR
19 INSOLVENCY, WHICHEVER IS EARLIER, AND WILL NOT BE SUBJECT TO
20 FORFEITURE.

21 9-404.

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

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

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

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

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

1 **(I) THE STATE IN WHICH THE PRIMARY EXECUTIVE AND**
2 **ADMINISTRATIVE HEADQUARTERS OF THE ENTITY IS LOCATED;**

3 **(II) THE STATE IN WHICH THE PRINCIPAL OFFICE OF THE**
4 **CHIEF EXECUTIVE OFFICER OF THE ENTITY IS LOCATED;**

5 **(III) THE STATE IN WHICH THE BOARD OF DIRECTORS, OR**
6 **SIMILAR GOVERNING PERSON OR PERSONS, OF THE ENTITY CONDUCTS THE**
7 **MAJORITY OF ITS MEETINGS;**

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

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

13 **(VI) FOR A BENEFIT PLAN SPONSORED BY AFFILIATED**
14 **COMPANIES COMPRISING A CONSOLIDATED CORPORATION, THE STATE IN**
15 **WHICH THE HOLDING COMPANY OR CONTROLLING AFFILIATE HAS ITS**
16 **PRINCIPAL PLACE OF BUSINESS, AS DETERMINED UNDER THE FACTORS IN THIS**
17 **PARAGRAPH.**

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

22 **(3) FOR AN ASSOCIATION, A COMMITTEE, A JOINT BOARD OF**
23 **TRUSTEES, OR ANY OTHER SIMILAR GROUP OF REPRESENTATIVES OF THE**
24 **PARTIES WHO ESTABLISH OR MAINTAIN A BENEFIT PLAN WHEN THERE IS NO**
25 **SPECIFIC OR CLEAR DESIGNATION OF A PRINCIPAL PLACE OF BUSINESS, THE**
26 **PRINCIPAL PLACE OF BUSINESS IS THE PRINCIPAL PLACE OF BUSINESS OF THE**
27 **EMPLOYER OR EMPLOYEE ORGANIZATION THAT HAS THE LARGEST INVESTMENT**
28 **IN THE BENEFIT PLAN IN QUESTION.**

29 9-407.

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

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

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

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

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

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

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

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

17 (2) provide moneys, pledges, notes, guarantees, or other appropriate
18 means to:

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

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

22 (3) lend money to the impaired insurer.

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

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

27 (ii) ensure payment of the contractual obligations of the
28 impaired insurer; and

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

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

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

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

9 (ii) ensure payment of the contractual obligations of the
10 impaired insurer to residents; and

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

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

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

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

21 **(II) ENSURE PAYMENT OF THE CONTRACTUAL OBLIGATIONS**
22 **OF THE INSOLVENT INSURER; AND**

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (2) The Corporation may require a payee, policy or contract owner,
35 beneficiary, insured, or annuitant to assign to the Corporation all rights to the extent

1 of benefits received under the covered policy as a condition precedent to the receipt of
2 any rights or benefits under this subtitle.

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

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

8 **(I) IN CARRYING OUT ITS DUTIES IN CONNECTION WITH**
9 **GUARANTEEING OR REINSURING POLICIES OR CONTRACTS UNDER**
10 **SUBSECTIONS (A) AND (B) OF THIS SECTION, THE CORPORATION MAY, SUBJECT**
11 **TO APPROVAL OF THE COMMISSIONER, ISSUE SUBSTITUTE COVERAGE FOR A**
12 **POLICY OR CONTRACT THAT PROVIDES AN INTEREST RATE, A CREDITING RATE,**
13 **OR A SIMILAR FACTOR DETERMINED BY USE OF AN INDEX OR OTHER EXTERNAL**
14 **REFERENCE STATED IN THE POLICY OR CONTRACT EMPLOYED IN CALCULATING**
15 **RETURNS OR CHANGES IN VALUE BY ISSUING AN ALTERNATIVE POLICY OR**
16 **CONTRACT, IF:**

17 **(1) IN LIEU OF THE INDEX OR OTHER EXTERNAL REFERENCE**
18 **PROVIDED FOR IN THE ORIGINAL POLICY OR CONTRACT, THE ALTERNATIVE**
19 **POLICY OR CONTRACT PROVIDES FOR:**

20 **(I) A FIXED INTEREST RATE;**

21 **(II) PAYMENT OF DIVIDENDS WITH MINIMUM GUARANTEES;**
22 **OR**

23 **(III) A DIFFERENT METHOD FOR CALCULATING INTEREST OR**
24 **CHANGES IN VALUE;**

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

28 **(3) THE ALTERNATIVE POLICY OR CONTRACT IS SUBSTANTIALLY**
29 **SIMILAR TO THE ORIGINAL POLICY OR CONTRACT IN ALL OTHER MATERIAL**
30 **TERMS.**

31 (j) (1) Subject to paragraphs (2) and (3) of this subsection and unless the
32 contractual obligations of the impaired insurer or insolvent insurer are reduced **OR**
33 **EXCLUDED** under subsection [(e)](D) of this section **OR § 9-403(G)(2) OF THIS**
34 **SUBTITLE**, the contractual obligations of the impaired insurer or insolvent insurer for
35 which the Corporation is or may become liable shall be as great as, but no greater

1 than, the contractual obligations that the impaired insurer or insolvent insurer would
2 have had in the absence of the impairment or insolvency.

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

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

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

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

13 1. \$300,000 in life insurance death benefits, but not
14 more than \$100,000 in net cash surrender and net cash withdrawal values for life
15 insurance;

16 2. [\$300,000 in health insurance benefits, including net
17 cash surrender and net cash withdrawal values] **IN HEALTH INSURANCE BENEFITS:**

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

21 **B. \$300,000 FOR DISABILITY INSURANCE AND**
22 **\$300,000 FOR LONG-TERM CARE INSURANCE, AS DEFINED IN § 18-101 OF THIS**
23 **ARTICLE; AND**

24 **C. \$100,000 FOR COVERAGES NOT ~~DEFINED~~**
25 **INCLUDED AS BASIC HOSPITAL, MEDICAL, AND SURGICAL INSURANCE, OR**
26 **MAJOR MEDICAL INSURANCE, OR DISABILITY INSURANCE OR LONG-TERM CARE**
27 **INSURANCE, INCLUDING ANY NET CASH SURRENDER AND NET CASH**
28 **WITHDRAWAL VALUES UNDER ITEMS A AND B OF THIS ITEM; and**

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

31 **B. WITH RESPECT TO EACH PAYEE UNDER A**
32 **STRUCTURED SETTLEMENT ANNUITY, OR BENEFICIARY OF THE PAYEE IF THE**
33 **PAYEE IS DECEASED, \$250,000 IN PRESENT VALUE ANNUITY BENEFITS, IN THE**

1 AGGREGATE, INCLUDING ANY NET CASH SURRENDER AND NET CASH
2 WITHDRAWAL VALUES.

3 (4) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS
4 PARAGRAPH, THE CORPORATION MAY NOT, WITH RESPECT TO ANY ONE LIFE, BE
5 LIABLE FOR COVERAGE GREATER THAN AN AGGREGATE OF \$300,000 ~~IN HEALTH~~
6 ~~INSURANCE BENEFITS UNDER PARAGRAPH (3)(II)2 OF THIS SUBSECTION FOR~~
7 THE BENEFITS DESCRIBED IN PARAGRAPH (3)(II)1, 2, AND 3 OF THIS
8 SUBSECTION.

9 (II) THE CORPORATION MAY NOT, WITH RESPECT TO ANY
10 ONE LIFE, BE LIABLE FOR COVERAGE GREATER THAN AN AGGREGATE OF
11 \$500,000 IN BASIC HOSPITAL, MEDICAL, AND SURGICAL INSURANCE OR MAJOR
12 MEDICAL INSURANCE UNDER PARAGRAPH (3)(II)2A OF THIS SUBSECTION.

13 (K) THE CORPORATION MAY JOIN AN ORGANIZATION OF ONE OR MORE
14 OTHER STATE ASSOCIATIONS OF SIMILAR PURPOSES, TO FURTHER THE
15 PURPOSES AND ADMINISTER THE POWERS AND DUTIES OF THE CORPORATION.

16 9-407.1.

17 (A) AT ANY TIME WITHIN 180 DAYS AFTER THE DATE OF AN ORDER OF
18 LIQUIDATION, THE CORPORATION MAY ELECT TO SUCCEED TO THE RIGHTS AND
19 OBLIGATIONS OF THE CEDING MEMBER INSURER THAT RELATE TO POLICIES OR
20 ANNUITIES COVERED, IN WHOLE OR IN PART, BY THE CORPORATION, IN EACH
21 CASE UNDER ANY ONE OR MORE REINSURANCE CONTRACTS ENTERED INTO BY
22 THE INSOLVENT INSURER AND ITS REINSURERS AND SELECTED BY THE
23 CORPORATION.

24 (B) ANY ASSUMPTION UNDER SUBSECTION (A) OF THIS SECTION IS
25 EFFECTIVE AS OF THE DATE OF THE ORDER OF LIQUIDATION.

26 (C) THE ELECTION SHALL BE EFFECTED BY THE CORPORATION OR THE
27 NATIONAL ORGANIZATION OF LIFE AND HEALTH INSURANCE GUARANTY
28 ASSOCIATIONS ON ITS BEHALF SENDING WRITTEN NOTICE, RETURN RECEIPT
29 REQUESTED, TO THE AFFECTED REINSURERS.

30 (D) TO FACILITATE THE EARLIEST PRACTICABLE DECISION ABOUT
31 WHETHER TO ASSUME ANY OF THE CONTRACTS OF REINSURANCE, AND IN
32 ORDER TO PROTECT THE FINANCIAL POSITION OF THE ESTATE, THE RECEIVER
33 AND EACH REINSURER OF THE CEDING MEMBER INSURER SHALL MAKE
34 AVAILABLE ON REQUEST TO THE CORPORATION OR TO THE NATIONAL
35 ORGANIZATION OF LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATIONS

1 ON ITS BEHALF AS SOON AS POSSIBLE AFTER COMMENCEMENT OF FORMAL
2 DELINQUENCY PROCEEDINGS:

3 (1) COPIES OF IN-FORCE CONTRACTS OF REINSURANCE AND ALL
4 RELATED FILES AND RECORDS RELEVANT TO THE DETERMINATION OF
5 WHETHER THE CONTRACTS SHOULD BE ASSUMED; AND

6 (2) NOTICES OF ANY DEFAULTS UNDER THE REINSURANCE
7 CONTRACTS OR ANY KNOWN EVENT OR CONDITION THAT, WITH THE PASSAGE OF
8 TIME, COULD BECOME A DEFAULT UNDER THE REINSURANCE CONTRACTS.

9 (E) (1) THIS SUBSECTION APPLIES TO REINSURANCE CONTRACTS
10 ASSUMED BY THE CORPORATION.

11 (2) THE CORPORATION IS RESPONSIBLE FOR ALL UNPAID
12 PREMIUMS DUE UNDER A REINSURANCE CONTRACT ASSUMED BY THE
13 CORPORATION FOR PERIODS BOTH BEFORE AND AFTER THE DATE OF THE
14 ORDER OF LIQUIDATION, AND IS RESPONSIBLE FOR THE PERFORMANCE OF ALL
15 OTHER OBLIGATIONS TO BE PERFORMED AFTER THE DATE OF THE ORDER OF
16 LIQUIDATION, IN EACH CASE WHICH RELATE TO POLICIES OR ANNUITIES
17 COVERED, IN WHOLE OR IN PART, BY THE CORPORATION.

18 (3) THE CORPORATION MAY CHARGE POLICIES OR ANNUITIES
19 COVERED IN PART BY THE CORPORATION, THROUGH REASONABLE ALLOCATION
20 METHODS, THE COSTS FOR REINSURANCE IN EXCESS OF THE OBLIGATIONS OF
21 THE CORPORATION AND SHALL PROVIDE NOTICE AND AN ACCOUNTING OF
22 THESE CHARGES TO THE LIQUIDATOR.

23 (4) THE CORPORATION IS ENTITLED TO ANY AMOUNTS PAYABLE
24 BY THE REINSURER UNDER THE REINSURANCE CONTRACTS WITH RESPECT TO
25 LOSSES OR EVENTS THAT OCCUR IN PERIODS AFTER THE DATE OF THE ORDER
26 OF LIQUIDATION AND THAT RELATE TO POLICIES OR ANNUITIES COVERED, IN
27 WHOLE OR IN PART, BY THE CORPORATION, IF ON RECEIPT OF ANY AMOUNTS
28 PAYABLE, THE CORPORATION IS OBLIGED TO PAY TO THE BENEFICIARY UNDER
29 THE POLICY OR ANNUITY ON ACCOUNT OF WHICH THE AMOUNTS WERE PAID A
30 PORTION OF THE AMOUNT EQUAL TO THE LESSER OF:

31 (I) THE AMOUNT RECEIVED BY THE CORPORATION; AND

32 (II) THE EXCESS OF THE AMOUNT RECEIVED BY THE
33 CORPORATION OVER THE AMOUNT EQUAL TO THE BENEFITS PAID BY THE
34 CORPORATION ON ACCOUNT OF THE POLICY OR ANNUITY LESS THE RETENTION
35 OF THE INSURER APPLICABLE TO THE LOSS OR EVENT.

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

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

10 **(2) WITHIN 5 DAYS AFTER THE COMPLETION OF THE**
11 **CALCULATION UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE REINSURER**
12 **SHALL PAY THE RECEIVER ANY AMOUNTS DUE FOR LOSSES OR EVENTS BEFORE**
13 **THE DATE OF THE ORDER OF LIQUIDATION, SUBJECT TO ANY SETOFF FOR**
14 **PREMIUMS UNPAID FOR PERIODS BEFORE THE DATE, AND THE CORPORATION**
15 **OR REINSURER SHALL PAY ANY REMAINING BALANCE DUE THE OTHER, IN EACH**
16 **CASE.**

17 **(3) ANY DISPUTES OVER THE AMOUNTS DUE TO EITHER THE**
18 **CORPORATION OR THE REINSURER SHALL BE RESOLVED BY ARBITRATION**
19 **UNDER THE TERMS OF THE AFFECTED REINSURANCE CONTRACTS OR, IF THE**
20 **CONTRACT CONTAINS NO ARBITRATION CLAUSE, AS OTHERWISE PROVIDED BY**
21 **LAW.**

22 **(4) IF THE RECEIVER HAS RECEIVED ANY AMOUNTS DUE TO THE**
23 **CORPORATION UNDER SUBSECTION ~~(E)(3)~~ (E)(4) OF THIS SECTION, THE**
24 **RECEIVER SHALL REMIT THOSE AMOUNTS TO THE CORPORATION AS PROMPTLY**
25 **AS PRACTICABLE.**

26 **(G) IF THE CORPORATION OR RECEIVER, ON THE CORPORATION'S**
27 **BEHALF, WITHIN 60 DAYS AFTER THE ELECTION DATE, PAYS THE UNPAID**
28 **PREMIUMS DUE FOR PERIODS BOTH BEFORE AND AFTER THE ELECTION DATE**
29 **THAT RELATE TO POLICIES OR ANNUITIES COVERED, IN WHOLE OR IN PART, BY**
30 **THE CORPORATION, THE REINSURER IS NOT ENTITLED TO:**

31 **(1) TERMINATE THE REINSURANCE CONTRACTS FOR FAILURE TO**
32 **PAY PREMIUMS FOR THE REINSURANCE CONTRACTS THAT RELATE TO POLICIES**
33 **OR ANNUITIES COVERED, IN WHOLE OR IN PART, BY THE CORPORATION; OR**

34 **(2) SET OFF ANY UNPAID AMOUNTS DUE UNDER OTHER**
35 **CONTRACTS, OR UNPAID AMOUNTS DUE FROM PARTIES OTHER THAN THE**
36 **CORPORATION, AGAINST AMOUNTS DUE THE CORPORATION.**

1 **(H) DURING THE PERIOD FROM THE DATE OF THE ORDER OF**
2 **LIQUIDATION UNTIL THE ELECTION DATE OR, IF THE ELECTION DATE DOES NOT**
3 **OCCUR, UNTIL 180 DAYS AFTER THE DATE OF THE ORDER OF LIQUIDATION:**

4 **(1) (I) NEITHER THE CORPORATION NOR THE REINSURER**
5 **SHALL HAVE ANY RIGHTS OR OBLIGATIONS UNDER REINSURANCE CONTRACTS**
6 **THAT THE CORPORATION HAS THE RIGHT TO ASSUME UNDER SUBSECTIONS (A)**
7 **THROUGH (G) OF THIS SECTION, WHETHER FOR PERIODS BEFORE OR AFTER**
8 **THE DATE OF THE ORDER OF LIQUIDATION; AND**

9 **(II) THE REINSURER, THE RECEIVER, AND THE**
10 **CORPORATION SHALL, TO THE EXTENT PRACTICABLE, PROVIDE EACH OTHER**
11 **DATA AND RECORDS REASONABLY REQUESTED; AND**

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

15 **(I) IF THE CORPORATION DOES NOT ELECT TO ASSUME A**
16 **REINSURANCE CONTRACT BY THE ELECTION DATE UNDER SUBSECTIONS (A)**
17 **THROUGH (G) OF THIS SECTION, THE CORPORATION SHALL HAVE NO RIGHTS OR**
18 **OBLIGATIONS, IN EACH CASE FOR PERIODS BOTH BEFORE AND AFTER THE DATE**
19 **OF THE ORDER OF LIQUIDATION, WITH RESPECT TO THE REINSURANCE**
20 **CONTRACT.**

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

26 **(1) UNLESS THE REINSURER AND THE ASSUMING INSURER AGREE**
27 **OTHERWISE, THE REINSURANCE CONTRACT TRANSFERRED DOES NOT COVER**
28 **ANY NEW POLICIES OF INSURANCE OR ANNUITIES IN ADDITION TO THOSE**
29 **TRANSFERRED;**

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

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

1 **(K) (1) THE PROVISIONS OF THIS SECTION SUPERSEDE THE**
2 **PROVISIONS OF ANY STATE LAW OR OF ANY AFFECTED REINSURANCE**
3 **CONTRACT THAT PROVIDES FOR OR REQUIRES ANY PAYMENT OF REINSURANCE**
4 **PROCEEDS, ON ACCOUNT OF LOSSES OR EVENTS THAT OCCUR IN PERIODS**
5 **AFTER THE DATE OF THE ORDER OF LIQUIDATION, TO THE RECEIVER OF THE**
6 **INSOLVENT INSURER OR ANY OTHER PERSON.**

7 **(2) THE RECEIVER REMAINS ENTITLED TO ANY AMOUNTS**
8 **PAYABLE BY THE REINSURER UNDER THE REINSURANCE CONTRACTS WITH**
9 **RESPECT TO LOSSES OR EVENTS THAT OCCUR IN PERIODS BEFORE THE DATE OF**
10 **THE ORDER OF LIQUIDATION, SUBJECT TO APPLICABLE SETOFF PROVISIONS.**

11 **(L) (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THIS**
12 **SECTION DOES NOT ALTER OR MODIFY THE TERMS AND CONDITIONS OF ANY**
13 **REINSURANCE CONTRACT.**

14 **(2) THIS SECTION DOES NOT:**

15 **(I) ABROGATE OR LIMIT ANY RIGHTS OF ANY REINSURER**
16 **TO CLAIM THAT THE REINSURER IS ENTITLED TO RESCIND A REINSURANCE**
17 **CONTRACT;**

18 **(II) GIVE A POLICYHOLDER OR BENEFICIARY AN**
19 **INDEPENDENT CAUSE OF ACTION AGAINST A REINSURER THAT IS NOT**
20 **OTHERWISE SET FORTH IN THE REINSURANCE CONTRACT;**

21 **(III) LIMIT OR AFFECT THE CORPORATION'S RIGHTS AS A**
22 **CREDITOR OF THE ESTATE AGAINST THE ASSETS OF THE ESTATE; OR**

23 **(IV) APPLY TO REINSURANCE AGREEMENTS COVERING**
24 **PROPERTY OR CASUALTY RISKS.**

25 9-408.

26 The Corporation may:

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

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

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

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

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

7 (6) take any legal action necessary to avoid payment of improper
8 claims;

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

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

16 9–414.

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

20 (b) Assessable premiums may not be reduced because of [**§ 9–403(b)(2)(iii)**] **§**
21 **9–403(G)(2)(III)** of this subtitle relating to interest limitations and because of **§**
22 **9–407(j)** of this subtitle relating to limitations with respect to an individual
23 policyholder.

24 (c) (1) The Corporation shall keep records of all negotiations and
25 meetings in which the Corporation or its representatives are involved to discuss the
26 activities of the Corporation in carrying out its powers and duties under §§ 9–407 and
27 9–408 of this subtitle.

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

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

32 (ii) after the termination of the impairment **OR INSOLVENCY** of
33 an insurer; or

1 (iii) by court order.

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

4 (d) (1) In this subsection, “assets attributable to covered policies” means
5 that proportion of the impaired **OR INSOLVENT** insurer’s assets that the amount of
6 the reserves that should have been established for the covered policies bears to the
7 amount of the reserves that should have been established for all policies written by the
8 impaired **OR INSOLVENT** insurer.

9 (2) For the purpose of carrying out its obligations under this subtitle,
10 the Corporation is considered a creditor of the impaired **OR INSOLVENT** insurer to the
11 extent of the impaired **OR INSOLVENT** insurer’s assets attributable to covered policies
12 reduced by any amounts to which the Corporation is entitled as subrogee under [§
13 9–407(i)] **§ 9–407(H)** of this subtitle.

14 (3) The assets attributable to covered policies of the impaired **OR**
15 **INSOLVENT** insurer shall be used to continue the covered policies and pay the
16 contractual obligations of the impaired **OR INSOLVENT** insurer as required by this
17 subtitle.

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

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

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

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

33 (g) (1) Subject to the limitations of paragraphs (2) and (4) of this
34 subsection, if an order for liquidation or rehabilitation of an insurer domiciled in the
35 State has been entered, the receiver appointed under the order shall have a right to
36 recover on behalf of the insurer, from any affiliate that controlled the insurer, the
37 amount of distribution, other than stock dividends paid by the insurer on its capital

1 stock, made at any time during the 5 years preceding the petition for liquidation or
2 rehabilitation.

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

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

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

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

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

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

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

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

25 (h) (1) An insurer or insurance producer may not deliver a policy or
26 contract that at the time of delivery exceeds the limitations imposed by ~~¶§ 9-407(j)(3)~~
27 ~~§ 9-407(i)(3)~~ of this subtitle, or that is not subject to coverage under § 9-403 of this
28 subtitle, unless the insurer or insurance producer, before or at the time of delivery,
29 provides the policyholder or contract holder with a separate written notice as provided
30 in paragraph (2) of this subsection.

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

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

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

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

6 9-417.

7 (A) A member insurer or its agents or employees, the Corporation or its
8 agents or employees, members of the Board of Directors, and the Commissioner or the
9 Commissioner's representatives shall have the immunity from liability described in §
10 5-413 of the Courts Article for any action or omission taken by them in the
11 performance of their powers and duties under this subtitle.

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

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

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

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.