

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1329 Session of 2014

INTRODUCED BY WHITE, EICHELBERGER AND STACK, APRIL 7, 2014

REFERRED TO BANKING AND INSURANCE, APRIL 7, 2014

AN ACT

1 Amending the act of May 17, 1921 (P.L.682, No.284), entitled "An
 2 act relating to insurance; amending, revising, and
 3 consolidating the law providing for the incorporation of
 4 insurance companies, and the regulation, supervision, and
 5 protection of home and foreign insurance companies, Lloyds
 6 associations, reciprocal and inter-insurance exchanges, and
 7 fire insurance rating bureaus, and the regulation and
 8 supervision of insurance carried by such companies,
 9 associations, and exchanges, including insurance carried by
 10 the State Workmen's Insurance Fund; providing penalties; and
 11 repealing existing laws," extensively revising provisions on
 12 life and health insurance guaranty associations; and making
 13 editorial changes.

14 The General Assembly of the Commonwealth of Pennsylvania
 15 hereby enacts as follows:

16 Section 1. Sections 1701 and 1702 of the act of May 17, 1921
 17 (P.L.682, No.284), known as The Insurance Company Law of 1921,
 18 added December 18, 1992 (P.L.1519, No.178), are amended to read:

19 Section 1701. Purpose.--(a) The purpose of this article is
 20 to protect, subject to certain limitations, the persons
 21 specified in section 1703(a) against failure in the performance
 22 of contractual obligations, under life and health insurance
 23 policies and annuity contracts specified in section 1703(b),
 24 because of the impairment or insolvency of the member insurer

1 that issued the policies or contracts.

2 (b) To provide this protection, an association of insurers
3 is created to pay benefits and to continue coverages as limited
4 herein, and members of the association are subject to assessment
5 to provide funds to carry out the purpose of this article.

6 (c) This article shall be construed to effect the purpose
7 set forth in subsection (a).

8 Section 1702. Definitions.--As used in this article the
9 following words and phrases shall have the meanings given to
10 them in this section:

11 "Account." [Any] Either of the two accounts created under
12 section 1704.

13 "Association." The Pennsylvania Life and Health Insurance
14 Guaranty Association created under section 1704.

15 "Authorized." In the context of assessments, an assessment
16 is authorized when a resolution is passed by a board of
17 directors.

18 "Authorized assessment." A resolution by a board of
19 directors that has been passed whereby an assessment will be
20 called immediately or in the future from member insurers for a
21 specified amount.

22 "Benefit plan." A specific employe, union or association of
23 natural persons benefit plan.

24 "Called." In the context of assessments, an authorized
25 assessment becomes a called assessment when notice is mailed by
26 the association to member insurers.

27 "Called assessment." A notice issued by an association to
28 member insurers requiring that an authorized assessment be paid
29 within the time frame set forth within the notice. An authorized
30 assessment becomes a called assessment when notice is mailed by

1 the association to member insurers.

2 "Commissioner." The Insurance Commissioner of the
3 Commonwealth.

4 "Contractual obligation." Any obligation under a policy or
5 contract or certificate under a group policy or contract or
6 portion thereof for which coverage is provided under section
7 1703.

8 "Covered policy." Any policy or contract [within the scope
9 of this article] or portion of a policy or contract for which
10 coverage is provided under section 1703.

11 "Department." The Insurance Department of the Commonwealth.

12 "Employee Retirement Income Security Act of 1974" or "ERISA."
13 The Employee Retirement Income Security Act of 1974 (Public Law
14 93-406, 29 U.S.C. § 1001 et seq.).

15 "Extra-contractual claims." Include, for example, claims
16 relating to bad faith in the payment of claims, punitive or
17 exemplary damages or attorney fees and costs.

18 "Impaired insurer." A member insurer which, after the
19 effective date of this article, is not an insolvent insurer
20 and[:

21 (1) is deemed by the Insurance Commissioner to be
22 potentially unable to fulfill its contractual obligations; or

23 (2)] is placed under an order of rehabilitation or
24 conservation by a court of competent jurisdiction.

25 "Insolvent insurer." A member insurer which, after the
26 effective date of this article, is placed under an order of
27 liquidation by a court of competent jurisdiction with a finding
28 of insolvency.

29 "Internal Revenue Code of 1986." The Internal Revenue Code
30 of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.).

1 "Member insurer." [Any] An insurer licensed or which holds a
2 certificate of authority to transact in this Commonwealth any
3 kind of insurance for which coverage is provided under section
4 1703 and includes [any] an insurer whose license or certificate
5 of authority in this Commonwealth may have been suspended,
6 revoked, not renewed or voluntarily withdrawn. The term does not
7 include any of the following:

8 (1) A [nonprofit] hospital or medical service organization,
9 whether profit or nonprofit.

10 (2) A health maintenance organization.

11 (3) A fraternal benefit society.

12 (4) A mandatory State pooling plan.

13 (5) A mutual assessment company or any entity that operates
14 on an assessment basis.

15 (6) An insurance exchange.

16 (6.1) An organization that issues only charitable gift
17 annuities under the act of October 16, 1996 (P.L.712, No.127),
18 known as the "Charitable Gift Annuity Exemption Act."

19 (7) Any entity similar to any of the above.

20 "Moody's Corporate Bond Yield Average." The Monthly Average
21 Corporates as published by Moody's Investors Service, Inc., or
22 any successor thereto.

23 "Owner." A person who is identified as the legal owner under
24 the terms of the policy or contract or who is otherwise vested
25 with legal title to the policy or contract through a valid
26 assignment completed in accordance with the terms of the policy
27 or contract and properly recorded as the owner on the books of
28 the insurer. The term does not include a person with a mere
29 beneficial interest in a policy or contract.

30 "Person." Any individual, corporation, limited liability

1 company, partnership, association, governmental body or entity
2 or voluntary organization.

3 "Plan sponsor." Any of the following:

4 (1) The employer in the case of a benefit plan established
5 or maintained by a single employer.

6 (2) The employe organization in the case of a benefit plan
7 established or maintained by an employe organization.

8 (3) In the case of a benefit plan established or maintained
9 by two or more employers or jointly by one or more employers and
10 one or more employe organizations, the association, committee,
11 joint board of trustees or other similar group of
12 representatives of the parties who establish or maintain the
13 benefit plan.

14 "Premiums." The amounts or considerations, by whatever name
15 called, received on covered policies or contracts less premiums,
16 considerations and deposits returned thereon and less dividends
17 and experience credits thereon. The term does not include any
18 amounts or considerations received for any policies or contracts
19 or for the portions of any policies or contracts for which
20 coverage is not provided under section 1703(b) except that
21 assessable premium shall not be reduced on account of sections
22 1703(b)(2)(iii) relating to interest limitations and [1703(c)(1)
23 (ii)] 1703(c)(2) relating to limitations with respect to any one
24 individual, any one participant and any one contract holder.
25 [The term does not include any premiums in excess of five
26 million (\$5,000,000) dollars on any unallocated annuity contract
27 not issued under a governmental retirement plan established
28 under section 401, 403(b) or 457 of the Internal Revenue Code of
29 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.).] The term shall
30 not include:

1 (1) Premiums in excess of five million (\$5,000,000) dollars
2 on an unallocated annuity contract not issued under a government
3 retirement plan, or its trustee, established under section 401,
4 403(b) or 457 of the Internal Revenue Code of 1986; or

5 (2) With respect to multiple nongroup policies of life
6 insurance owned by one owner, whether the policy owner is an
7 individual, firm, corporation or other person, and whether the
8 persons insured are officers, managers, employes or other
9 persons, premiums in excess of five million (\$5,000,000) dollars
10 with respect to these policies or contracts, regardless of the
11 number of policies or contracts held by the owner.

12 "Principal place of business." Means the following:

13 (1) Except as provided in paragraph (2), for a plan sponsor
14 or a person other than a natural person, the single state in
15 which the natural persons who establish policy for the
16 direction, control and coordination of the operations of the
17 entity as a whole primarily exercise that function, determined
18 by the association in its reasonable judgment by considering the
19 following factors:

20 (i) the state in which the primary executive and
21 administrative headquarters of the entity is located;

22 (ii) the state in which the principal office of the chief
23 executive officer of the entity is located;

24 (iii) the state in which the board of directors, or similar
25 governing person or persons of the entity, conducts the majority
26 of its meetings;

27 (iv) the state in which the executive or management
28 committee of the board of directors, or similar governing person
29 or persons of the entity, conducts the majority of its meetings;

30 (v) the state from which the management of the overall

1 operations of the entity is directed; and

2 (vi) in the case of a benefit plan sponsored by affiliated
3 companies comprising a consolidated corporation, the state in
4 which the holding company or controlling affiliate has its
5 principal place of business as determined using the factors in
6 this paragraph.

7 (2) In the case of a plan sponsor with more than 50% of the
8 participants in the benefit plan employed in a single state,
9 that state shall be deemed to be the principal place of business
10 of the plan sponsor.

11 (3) The principal place of business of a plan sponsor of a
12 benefit plan described in paragraph (3) of the definition of
13 "plan sponsor" shall be deemed to be the principal place of
14 business of the association, committee, joint board of trustees
15 or other similar group of representatives of the parties who
16 establish or maintain the benefit plan, which, in lieu of a
17 specific or clear designation of that principal place of
18 business, shall then be deemed to be the principal place of
19 business of the employer or employe organization that has the
20 largest investment in the benefit plan in question.

21 "Receivership court." The court in the insolvent or impaired
22 insurer's state having jurisdiction over the conservation,
23 rehabilitation or liquidation of the insurer.

24 "Resident." Any person who resides in this Commonwealth [at
25 the time a member insurer is determined to be an impaired or
26 insolvent insurer and to whom a contractual obligation is owed.]
27 and to whom a contractual obligation is owed on the date of
28 entry of a court order that determines a member insurer to be an
29 impaired insurer or a court order that determines a member
30 insurer to be an insolvent insurer. A person may be a resident

1 of only one state, which, in the case of a person other than a
2 natural person, shall be its principal place of business. A
3 citizen of the United States shall be deemed a resident of the
4 state of domicile of the insurer that issued the policies or
5 contracts if the citizen is either of the following:

6 (1) a resident of a foreign country; or

7 (2) a resident of a United States possession, territory or
8 protectorate that does not have an association similar to the
9 association created by this act.

10 "State." A state, the District of Columbia, Puerto Rico and
11 a United States possession, territory or protectorate.

12 "Structured settlement annuity." An annuity purchased in
13 order to fund periodic payments for a plaintiff or other
14 claimant in payment for or with respect to personal injury
15 suffered by the plaintiff or other claimant.

16 "Supplemental contract." [Any] A written agreement entered
17 into for the distribution of proceeds under a life, health or
18 annuity policy or contract [proceeds].

19 "Unallocated annuity contract." [Any] An annuity contract or
20 group annuity certificate which is not issued to and owned by an
21 individual, except to the extent of any annuity benefits
22 guaranteed to an individual by an insurer under such contract or
23 certificate.

24 Section 2. Section 1703 of the act, amended July 17, 2007
25 (P.L.134, No.40), is amended to read:

26 Section 1703. Coverage and Limitations.--(a) This article
27 shall provide coverage [to the following persons] for the
28 policies and contracts specified in subsection (b):

29 (1) To persons who, regardless of where they reside, except
30 for nonresident certificate holders under group policies or

1 contracts, are the beneficiaries, assignees or payees of the
2 persons covered under paragraph (2).

3 (2) To persons who are owners of or certificate holders
4 under these policies or contracts [or, in the case of], other
5 than unallocated annuity contracts, [to the persons who are the
6 contract holders and who] and structured settlement annuities,
7 and in each case who:

8 (i) are residents; or

9 (ii) are not residents, but only under all of the following
10 conditions:

11 (A) the [insurers which] insurer that issued such policies
12 or contracts [are] is domiciled in this Commonwealth;

13 (B) [such insurers never held a license or certificate of
14 authority in] the states in which [such] the persons reside[;

15 (C) these states] have associations similar to the
16 association created by this article; and

17 [(D)] (C) [these] the persons are not eligible for coverage
18 by [those associations.] an association in any other state due
19 to the fact that the insurer was not licensed in the state at
20 the time specified in the state's guaranty association law.

21 (3) For unallocated annuity contracts specified in
22 subsection (b), paragraphs (1) and (2) shall not apply, and this
23 article shall, except as provided in paragraphs (5) and (6),
24 provide coverage to:

25 (i) persons who are the owners of the unallocated annuity
26 contracts if the contracts are issued to or in connection with a
27 specific benefit plan whose plan sponsor has its principal place
28 of business in this State; and

29 (ii) persons who are owners of unallocated annuity contracts
30 issued to or in connection with government lotteries if the

1 owners are residents.

2 (4) For structured settlement annuities specified in
3 subsection (b), paragraphs (1) and (2) shall not apply, and this
4 article shall, except as provided in paragraphs (5) and (6),
5 provide coverage to a person who is a payee under a structured
6 settlement annuity, or beneficiary of a payee if the payee is
7 deceased, if the payee:

8 (i) is a resident, regardless of where the contract owner
9 resides; or

10 (ii) is not a resident, but only under both of the following
11 conditions:

12 (A) (I) the contract owner of the structured settlement
13 annuity is a resident; or

14 (II) the contract owner of the structured settlement annuity
15 is not a resident, but:

16 (aa) the insurer that issued the structured settlement
17 annuity is domiciled in this Commonwealth; and

18 (bb) the state in which the contract owner resides has an
19 association similar to the association created by this article;

20 (B) neither the payee, or beneficiary, nor the contract
21 owner is eligible for coverage by the association of the state
22 in which the payee or contract owner resides.

23 (5) This article shall not provide coverage to:

24 (i) a person who is a payee or beneficiary of a contract
25 owner who is a resident of this Commonwealth, if the payee or
26 beneficiary is afforded any coverage by the association of
27 another state; or

28 (ii) a person covered under paragraph (3), if any coverage
29 is provided by the association of another state to the person.

30 (6) This article is intended to provide coverage to a person

1 who is a resident of this Commonwealth and, in special
2 circumstances, to a nonresident. In order to avoid duplicate
3 coverage, if a person who would otherwise receive coverage under
4 this article is provided coverage under the laws of any other
5 state the person shall not be provided coverage under this
6 article. In determining the application of the provisions of
7 this paragraph in situations where a person could be covered by
8 the association of more than one state, whether as an owner,
9 payee, beneficiary or assignee, this article shall be construed
10 in conjunction with other state laws to result in coverage by
11 only one association.

12 (b) (1) This article shall provide coverage to the persons
13 specified in subsection (a) for direct, nongroup life, health[,]
14 or annuity [and supplemental] policies or contracts, for
15 certificates under direct group policies and contracts and for
16 supplemental contracts to any of the policies or contracts
17 referenced in this sentence and for unallocated annuity
18 contracts issued by member insurers, except as limited by this
19 article. Annuity contracts and certificates under group annuity
20 contracts include, but are not limited to, guaranteed investment
21 contracts, deposit administration contracts, unallocated funding
22 agreements, allocated funding agreements, structured settlement
23 agreements, [lottery contracts] annuities issued to or in
24 connection with government lotteries and any immediate or
25 deferred annuity contracts.

26 (2) This article shall not provide coverage for any of the
27 following:

28 (i) [Any] A portion of a policy or contract not guaranteed
29 by the insurer or under which the risk is borne by the policy or
30 contract holder.

1 (ii) [Any] A policy or contract of reinsurance, unless
2 assumption certificates have been issued under the reinsurance
3 policy or contract.

4 (iii) [Any] A portion of a policy or contract to the extent
5 that the rate of interest on which it is based or the interest
6 rate, crediting rate or similar factor determined by use of an
7 index or other external reference stated in the policy or
8 contract employed in calculating returns or changes in value:

9 (A) averaged over the period of four (4) years prior to the
10 date on which the [association becomes obligated with respect to
11 such policy or contract, exceeds a] member insurer becomes an
12 impaired or insolvent insurer under this article, whichever is
13 earlier, exceeds the rate of interest determined by subtracting
14 two (2) percentage points from Moody's Corporate Bond Yield
15 Average averaged for the same four-year period or for such
16 lesser period if the policy or contract was issued less than
17 four (4) years before the [association became obligated] member
18 insurer becomes an impaired or insolvent insurer under this
19 article, whichever is earlier; and

20 (B) on and after the date on which the [association becomes
21 obligated with respect to such policy or contract] member
22 insurer becomes an impaired or insolvent insurer under this
23 article, whichever is earlier, exceeds the rate of interest
24 determined by subtracting three (3) percentage points from
25 Moody's Corporate Bond Yield Average as most recently available.

26 (iv) [Any] A portion of a policy or contract issued to a
27 plan or program of an employer, association or [similar entity]
28 other person to provide life, health or annuity benefits to its
29 employes [or members], members or others to the extent that such
30 plan or program is self-funded or uninsured, including, but not

1 limited to, benefits payable by an employer, association or
2 [similar entity] other person under:

3 (A) a Multiple Employer Welfare Arrangement as defined in
4 section [514] 3(40) of the Employee Retirement Income Security
5 Act of 1974;

6 (B) a minimum premium group insurance plan;

7 (C) a stop-loss group insurance plan; or

8 (D) an administrative services only contract.

9 (v) [Any] A portion of a policy or contract to the extent
10 that it provides [dividends] for:

11 (A) dividends or experience rating credits [or provides
12 that];

13 (B) voting rights; or

14 (C) payment of any fees or allowances to [be paid to] any
15 person, including the [policyholder or contract holder] policy
16 owner or contract owner, in connection with the service to or
17 administration of such policy or contract.

18 (vi) [Any] A policy or contract issued in this Commonwealth
19 by a member insurer at a time when it was not licensed or did
20 not have a certificate of authority to issue such policy or
21 contract in this Commonwealth.

22 (vii) [Any] An unallocated annuity contract issued to [an]
23 or in connection with an employe benefit plan protected under
24 the Federal Pension Benefit Guaranty Corporation regardless of
25 whether the Federal Pension Benefit Guaranty Corporation has yet
26 become liable to make any payments with respect to the benefit
27 plan.

28 (viii) [Any] A portion of [any] an unallocated annuity
29 contract which is not issued to or in connection with a specific
30 employe, union or association of natural persons benefit plan or

1 a government lottery.

2 (ix) A portion of a policy or contract to the extent that
3 the assessments required under section 1707 with respect to the
4 policy or contract are preempted by Federal or State law.

5 (x) An obligation that does not arise under the express
6 written terms of the policy or contract issued by the insurer to
7 the contract owner or policy owner, including without
8 limitation:

9 (A) a claim based on marketing materials;

10 (B) a claim based on a side letter, rider or other document
11 that was issued by the insurer without meeting applicable policy
12 form filing or approval requirements;

13 (C) a misrepresentation of or regarding policy benefits;

14 (D) an extra-contractual claim; or

15 (E) a claim for penalties or consequential or incidental
16 damages.

17 (xi) A contractual agreement that establishes the member
18 insurer's obligations to provide a book value accounting
19 guaranty for defined contribution benefit plan participants by
20 reference to a portfolio of assets that is owned by the benefit
21 plan or its trustee, which in each case is not an affiliate of
22 the member insurer.

23 (xii) A portion of a policy or contract to the extent it
24 provides for interest or other changes in value to be determined
25 by the use of an index or other external reference stated in the
26 policy or contract, but which have not been credited to the
27 policy or contract, or as to which the policy or contract
28 owner's rights are subject to forfeiture, as of the date the
29 member insurer becomes an unpaired or insolvent insurer under
30 this article, whichever is earlier. If a policy's or contract's

1 interest or changes in value are credited less frequently than
2 annually, then for purposes of determining the values that have
3 been credited and are not subject to forfeiture under this
4 subparagraph, the interest or change in value determined by
5 using the procedures defined in the policy or contract will be
6 credited as if the contractual date of crediting interest or
7 changing values was the date of impairment or insolvency,
8 whichever is earlier, and will not be subject to forfeiture.

9 (xiii) A policy or contract providing any hospital, medical,
10 prescription drug or other health care benefits under Part C of
11 Title XVIII of the Social Security Act (49 Stat. 620, 42 U.S.C.
12 § 1395w-21 et seq.) or Part D of Title XVIII of the Social
13 Security Act (49 Stat. 620, 42 U.S.C. § 1395w-101 et seq.)
14 commonly known as Medicare Parts C and D or any regulations
15 issued pursuant thereto.

16 (c) [(1)] The benefits for which the association may become
17 liable shall in no event exceed the lesser of:

18 [(i)] (1) the contractual obligations for which the insurer
19 is liable or would have been liable if it were not an impaired
20 or insolvent insurer; or

21 [(ii) (A)] (2) (i) With respect to [any] one life,
22 regardless of the number of policies or contracts, the following
23 shall apply:

24 [(I)] (A) Three hundred thousand (\$300,000) dollars in life
25 insurance death benefits, but not more than one hundred thousand
26 (\$100,000) dollars in net cash surrender and net cash withdrawal
27 values for life insurance.

28 [(II) Three hundred thousand (\$300,000) dollars in] (B) In
29 health insurance benefits[, including any net cash surrender and
30 net cash withdrawal values.]:

1 (I) Three hundred thousand (\$300,000) dollars for disability
2 insurance, long-term care insurance and health insurance other
3 than basic hospital, medical and surgical insurance, or major
4 medical insurance.

5 (II) Three hundred thousand (\$300,000) dollars for basic
6 hospital, medical and surgical insurance, or major medical
7 insurance.

8 [(III) Three hundred thousand (\$300,000)] (C) Two hundred
9 fifty thousand (\$250,000) dollars in the present value of
10 annuity benefits, including [one hundred thousand (\$100,000)
11 dollars in] net cash surrender and net cash withdrawal
12 values[.]; or

13 [(IV) Three hundred thousand (\$300,000) dollars in long-term
14 care insurance benefits, as defined under section 1103,
15 including any cash surrender and net cash withdrawal values.]

16 [(B)] (ii) With respect to each individual participating in
17 a governmental retirement benefit plan established under section
18 401, 403(b) or 457 of the Internal Revenue Code of 1986 covered
19 by an unallocated annuity contract or the beneficiaries of each
20 such individual if deceased, in the aggregate, [three hundred
21 thousand (\$300,000)] two hundred fifty thousand (\$250,000)
22 dollars in present value annuity benefits, including [one
23 hundred thousand (\$100,000) dollars in] net cash surrender and
24 net cash withdrawal values.

25 (iii) With respect to each payee of a structured settlement
26 annuity, or beneficiary or beneficiaries of the payee if
27 deceased, two hundred fifty thousand (\$250,000) dollars in
28 present value annuity benefits, in the aggregate, including net
29 cash surrender and net cash withdrawal values, if any.

30 (iv) The association shall not, however, be obligated to

1 cover more than:

2 (A) an aggregate of three hundred thousand (\$300,000)
3 dollars in benefits with respect to any one life under
4 subparagraphs (i), (ii) and (iii); or

5 (B) with respect to one owner of multiple nongroup policies
6 of life insurance, whether the policy owner is an individual,
7 firm, corporation or other person and whether the persons
8 insured are officers, managers, employes or other persons, more
9 than five million (\$5,000,000) dollars in benefits, regardless
10 of the number of policies and contracts held by the owner.

11 (v) With respect to either:

12 (A) one contract owner provided coverage under subsection
13 (a)(3)(ii); or

14 (B) one plan sponsor whose plans own directly or in trust
15 one or more unallocated annuity contracts not included in
16 paragraph (2)(ii), five million (\$5,000,000) dollars in
17 benefits, irrespective of the number of contracts with respect
18 to the contract owner or plan sponsor. However, in the case
19 where one or more unallocated annuity contracts are covered
20 contracts under this article and are owned by a trust or other
21 entity for the benefit of two (2) or more plan sponsors,
22 coverage shall be afforded by the association if the largest
23 interest in the trust or entity owning the contracts is held by
24 a plan sponsor whose principal place of business is in this
25 Commonwealth. The association shall not be obligated to cover
26 more than five million (\$5,000,000) dollars in benefits with
27 respect to all of these unallocated contracts.

28 (vi) The limitations set forth in this subsection are
29 limitations on the benefits for which the association is
30 obligated before taking into account either its subrogation and

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

7 [(C) With respect to any one contract holder covered by any
8 unallocated annuity contract not included in clause (B), five
9 million (\$5,000,000) dollars in benefits, irrespective of the
10 number of such contracts held by that contract holder.

11 (2) The association shall not, however, be liable to expend
12 more than three hundred thousand (\$300,000) dollars in the
13 aggregate with respect to any one individual under subparagraph
14 (ii) (A) and (B) of paragraph (1).]

15 (d) In performing its obligations to provide coverage under
16 section 1706.1, the association shall not be required to
17 guarantee, assume, reinsure or perform, or cause to be
18 guaranteed, assumed, reinsured or performed, the contractual
19 obligations of the insolvent or impaired insurer under a covered
20 policy or contract that do not materially affect the economic
21 values or economic benefits of the covered policy or contract.

22 Section 3. Section 1704 of the act, added December 18, 1992
23 (P.L.1519, No.178), is amended to read:

24 Section 1704. Creation of Association.--(a) There is hereby
25 created a nonprofit, unincorporated association to be known as
26 the Pennsylvania Life and Health Insurance Guaranty Association.
27 All member insurers shall be and remain members of the
28 association as a condition of their authority to transact
29 insurance in this Commonwealth. The association shall perform
30 its functions under the plan of operation established and

1 approved under section 1708 and shall exercise its powers
2 through a board of directors established under section 1705. For
3 purposes of administration and assessment the association shall
4 maintain two accounts:

5 (1) The life insurance and annuity account which includes
6 the following subaccounts:

7 [(i) Life insurance account.

8 (ii) Annuity account.

9 (iii) Unallocated annuity account which shall include
10 contracts qualified under section 403(b) of the Internal Revenue
11 Code of 1986.]

12 (i) life insurance account;

13 (ii) annuity account that shall include annuity contracts
14 owned by a governmental retirement plan, or its trustee,
15 established under section 401, 403(b) or 457 of the Internal
16 Revenue Code of 1986, but shall otherwise exclude unallocated
17 annuities; and

18 (iii) unallocated annuity account, which shall exclude
19 contracts owned by a governmental retirement benefit plan, or
20 its trustee, established under section 401, 403(b) or 457 of the
21 Internal Revenue Code of 1986.

22 (2) The health insurance account.

23 (b) The association shall come under the immediate
24 supervision of the commissioner and shall be subject to the
25 applicable provisions of the insurance laws of this
26 Commonwealth. Meetings or records of the association may be
27 opened to the public upon majority vote of the board of
28 directors of the association.

29 Section 4. Section 1706 of the act, added December 18, 1992
30 (P.L.1519, No.178), is repealed:

1 [Section 1706. Powers and Duties of Association.--(a) If a
2 member insurer is an impaired domestic insurer, the association
3 may, in its discretion and subject to any conditions imposed by
4 the association that do not impair the contractual obligations
5 of the impaired insurer that are approved by the commissioner
6 and that are, except in cases of court-ordered conservation or
7 rehabilitation, also approved by the impaired insurer:

8 (1) guarantee, assume or reinsure or cause to be guaranteed,
9 assumed or reinsured any or all of the policies or contracts of
10 the impaired insurer;

11 (2) provide such moneys, pledges, notes, guarantees or other
12 means as are proper to effectuate paragraph (1) and assure
13 payment of the contractual obligations of the impaired insurer
14 pending action under paragraph (1); or

15 (3) loan money to the impaired insurer.

16 (b) (1) If a member insurer is an impaired insurer, whether
17 domestic, foreign or alien, and the insurer is not paying claims
18 timely, then subject to the preconditions specified in paragraph
19 (2), the association shall, in its discretion, either:

20 (i) take any of the actions specified in subsection (a),
21 subject to the conditions therein; or

22 (ii) provide substitute benefits in lieu of the contractual
23 obligations of the impaired insurer solely for health claims,
24 periodic annuity benefit payments, death benefits, supplemental
25 benefits and cash withdrawals for policy or contract owners who
26 petition therefor under claims of emergency or hardship in
27 accordance with standards proposed by the association and
28 approved by the commissioner.

29 (2) The association shall be subject to the requirements of
30 paragraph (1) only if:

1 (i) the laws of its state of domicile provide that until all
2 payments of or on account of the impaired insurer's contractual
3 obligations by all guaranty associations, along with all
4 expenses thereof and interest on all such payments and expenses,
5 shall have been repaid to the guaranty associations or a plan of
6 repayment by the impaired insurer shall have been approved by
7 the guaranty associations:

8 (A) the delinquency proceeding shall not be dismissed;

9 (B) neither the impaired insurer nor its assets shall be
10 returned to the control of its shareholders or private
11 management;

12 (C) it shall not be permitted to solicit or accept new
13 business or have any suspended or revoked license restored;

14 (ii) in the case where the impaired insurer is a domestic
15 insurer, it has been placed under an order of rehabilitation by
16 a court of competent jurisdiction in this Commonwealth; or

17 (iii) in the case where the impaired insurer is a foreign or
18 alien insurer, it has been prohibited from soliciting or
19 accepting new business in this Commonwealth, its certificate of
20 authority has been suspended or revoked in this Commonwealth,
21 and a petition for rehabilitation or liquidation has been filed
22 in a court of competent jurisdiction in its state of domicile by
23 the commissioner of the state.

24 (c) If a member insurer is an insolvent insurer, the
25 association shall, in its discretion, either:

26 (1) guarantee, assume or reinsure or cause to be guaranteed,
27 assumed or reinsured the policies or contracts of the insolvent
28 insurer;

29 (2) assure payment of the contractual obligations of the
30 insolvent insurer and provide such moneys, pledges, guarantees

1 or other means as are reasonably necessary to discharge such
2 duties; or

3 (3) with respect only to life and health insurance policies,
4 provide benefits and coverages in accordance with subsection
5 (d).

6 (d) (1) When proceeding under subsection (b) (1) (ii) or (c)
7 (3), the association shall, with respect to only life and health
8 insurance policies, do all of the following:

9 (i) Assure payment of benefits for premiums identical to the
10 premiums and benefits (except for terms of conversion and
11 renewability) that would have been payable under the policies of
12 the insolvent insurer, for claims incurred as follows:

13 (A) With respect to group policies, not later than the
14 earlier of the next renewal date under such policies or
15 contracts or forty-five (45) days, but in no event less than
16 thirty (30) days, after the date on which the association
17 becomes obligated with respect to such policies.

18 (B) With respect to individual policies, not later than the
19 earlier of the next renewal date (if any) under such policies or
20 one year, but in no event less than thirty (30) days, from the
21 date on which the association becomes obligated with respect to
22 such policies.

23 (ii) Make diligent efforts to provide all known insureds or
24 group policyholders with respect to group policies thirty (30)
25 days notice of the termination of the benefits provided.

26 (iii) With respect to individual policies, make available to
27 each known insured or owner if other than the insured, and with
28 respect to an individual formerly insured under a group policy
29 who is not eligible for replacement group coverage, make
30 available substitute coverage on an individual basis in

1 accordance with the provisions of paragraph (2), if the insureds
2 had a right under law or the terminated policy to convert
3 coverage to individual coverage or to continue an individual
4 policy in force until a specified age or for a specified time,
5 during which the insurer had no right unilaterally to make
6 changes in any provision of the policy or had a right only to
7 make changes in premium by class.

8 (2) (i) In providing the substitute coverage required under
9 paragraph (1)(iii), the association may offer either to reissue
10 the terminated coverage or to issue an alternative policy.

11 (ii) Alternative or reissued policies shall be offered
12 without requiring evidence of insurability and shall not provide
13 for any waiting period or exclusion that would not have applied
14 under the terminated policy.

15 (iii) The association may reinsure any alternative or
16 reissued policy.

17 (3) (i) Alternative policies adopted by the association
18 shall be subject to the approval of the commissioner. The
19 association may adopt alternative policies of various types for
20 future issuance without regard to any particular impairment or
21 insolvency.

22 (ii) Alternative policies shall contain at least the minimum
23 statutory provisions required in this Commonwealth and provide
24 benefits that shall not be unreasonable in relation to the
25 premium charged. The association shall set the premium in
26 accordance with a table of rates which it shall adopt. The
27 premium shall reflect the amount of insurance to be provided and
28 the age and class of risk of each insured, but shall not reflect
29 any changes in the health of the insured after the original
30 policy was last underwritten.

1 (iii) Any alternative policy issued by the association shall
2 provide coverage of a type similar to that of the policy issued
3 by the impaired or insolvent insurer, as determined by the
4 association.

5 (4) If the association elects to reissue terminated coverage
6 at a premium rate different from that charged under the
7 terminated policy, the premium shall be set by the association
8 in accordance with the amount of insurance provided and the age
9 and class of risk, subject to approval of the commissioner or by
10 a court of competent jurisdiction.

11 (5) The association's obligations with respect to coverage
12 under any policy of the impaired or insolvent insurer or under
13 any reissued or alternative policy shall cease on the date such
14 coverage or policy is replaced by another similar policy by the
15 policyholder, the insured or the association.

16 (e) When proceeding under subsection (b)(1)(ii) or (c) with
17 respect to any policy or contract carrying guaranteed minimum
18 interest rates, the association shall assure the payment or
19 crediting of a rate of interest consistent with section 1703(b)
20 (2)(iii).

21 (f) Nonpayment of premiums within thirty-one (31) days after
22 the date required under the terms of any guaranteed, assumed,
23 alternative or reissued policy or contract or substitute
24 coverage shall terminate the association's obligations under
25 such policy or coverage under this article with respect to such
26 policy or coverage, except with respect to any claims incurred
27 or any net cash surrender value which may be due in accordance
28 with the provisions of this article.

29 (g) Premiums due for coverage after entry of an order of
30 liquidation of an insolvent insurer shall belong to and be

1 payable at the direction of the association, and the association
2 shall be liable for unearned premiums due to policy or contract
3 owners arising after the entry of such order.

4 (h) The protection provided by this article shall not apply
5 where any guaranty protection is provided to residents of this
6 Commonwealth by the laws of the domiciliary state or
7 jurisdiction of the impaired or insolvent insurer other than
8 this Commonwealth.

9 (i) In carrying out its duties under subsections (b) and (c)
10 and subject to approval by the court, the association may do the
11 following:

12 (1) Impose permanent policy or contract liens in connection
13 with any guarantee, assumption or reinsurance agreement if the
14 association finds that the amounts which can be assessed under
15 this article are less than the amounts needed to assure full and
16 prompt performance of the association's duties under this act or
17 that the economic or financial conditions as they affect member
18 insurers are sufficiently adverse to render the imposition of
19 such permanent policy or contract liens to be in the public
20 interest.

21 (2) Impose temporary moratoriums or liens on payments of
22 cash values and policy loans, or any other right to withdraw
23 funds held in conjunction with policies or contracts, in
24 addition to any contractual provisions for deferral of cash or
25 policy loan value.

26 (j) If the association fails to act within a reasonable
27 period of time as provided in subsections (b)(1)(ii), (c) and
28 (d), the commissioner shall have the powers and duties of the
29 association under this article with respect to impaired or
30 insolvent insurers.

1 (k) The association may render assistance and advice to the
2 commissioner, upon his request, concerning rehabilitation,
3 payment of claims, continuance of coverage or the performance of
4 other contractual obligations of any impaired or insolvent
5 insurer.

6 (l) The association shall have standing to appear before any
7 court in this Commonwealth with jurisdiction over an impaired or
8 insolvent insurer concerning which the association is or may
9 become obligated under this article. Such standing shall extend
10 to all matters germane to the powers and duties of the
11 association, including, but not limited to, proposals for
12 reinsuring, modifying or guaranteeing the policies or contracts
13 of the impaired or insolvent insurer and the determination of
14 the policies or contracts and contractual obligations. The
15 association shall also have the right to appear or intervene
16 before a court in another state with jurisdiction over an
17 impaired or insolvent insurer for which the association is or
18 may become obligated or with jurisdiction over a third party
19 against whom the association may have rights through subrogation
20 of the insurer's policyholders.

21 (m) (1) Any person receiving benefits under this article
22 shall be deemed to have assigned the rights under and any causes
23 of action relating to the covered policy or contract to the
24 association to the extent of the benefits received because of
25 this article, whether the benefits are payments of or on account
26 of contractual obligations, continuation of coverage or
27 provision of substitute or alternative coverages. The
28 association may require an assignment to it of such rights and
29 cause of action by any payee, policy or contract owner,
30 beneficiary, insured or annuitant as a condition precedent to

1 the receipt of any rights or benefits conferred by this article
2 upon such person.

3 (2) The subrogation rights of the association under this
4 subsection shall have the same priority against the assets of
5 the impaired or insolvent insurer as that possessed by the
6 person entitled to receive benefits under this article.

7 (3) In addition to paragraphs (1) and (2), the association
8 shall have all common law rights of subrogation and any other
9 equitable or legal remedy which would have been available to the
10 impaired or insolvent insurer or holder of a policy or contract
11 with respect to such policy or contracts.

12 (n) The association may do the following:

13 (1) Enter into such contracts as are necessary or proper to
14 carry out the provisions and purposes of this article.

15 (2) Sue or be sued, including taking any legal actions
16 necessary or proper to recover any unpaid assessments under
17 section 1707 and to settle claims or potential claims against
18 it.

19 (3) Borrow money to effect the purposes of this article; any
20 notes or other evidence of indebtedness of the association not
21 in default shall be legal investments for domestic insurers and
22 may be carried as admitted assets.

23 (4) Employ or retain such persons as are necessary to handle
24 the financial transactions of the association and perform such
25 other functions as become necessary or proper under this
26 article.

27 (5) Take such legal action as may be necessary to avoid
28 payment of improper claims.

29 (6) Exercise, for the purposes of this article and to the
30 extent approved by the commissioner, the powers of a domestic

1 life or health insurer, but in no case may the association issue
2 insurance policies or annuity contracts other than those issued
3 to perform its obligations under this article.

4 (o) The association may join an organization of one or more
5 other state associations of similar purposes, to further the
6 purposes and administer the powers and duties of the
7 association.]

8 Section 5. The act is amended by adding a section to read:

9 Section 1706.1. Powers and Duties of Association.--(a) If a
10 member insurer is an impaired insurer, the association may, in
11 its discretion and subject to any conditions imposed by the
12 association that do not impair the contractual obligations of
13 the impaired insurer that are approved by the commissioner:

14 (1) guarantee, assume or reinsure or cause to be guaranteed,
15 assumed or reinsured any or all of the policies or contracts of
16 the impaired insurer; and

17 (2) provide such moneys, pledges, loans, notes, guarantees
18 or other means as are proper to effectuate paragraph (1) and
19 assure payment of the contractual obligations of the impaired
20 insurer pending action under paragraph (1).

21 (b) If a member insurer is an insolvent insurer, the
22 association shall, in its discretion, either:

23 (1) (i) guarantee, assume or reinsure or cause to be
24 guaranteed, assumed or reinsured the policies or contracts of
25 the insolvent insurer or assure payment of the contractual
26 obligations of the insolvent insurer; and

27 (ii) provide such moneys, pledges, loans, notes or
28 guarantees, or other means as are reasonably necessary to
29 discharge such duties; or

30 (2) provide benefits and coverages in accordance with the

1 following provisions:

2 (i) With respect to life and health insurance policies and
3 annuities, the association shall assure payment of benefits for
4 premiums identical to the premiums and benefits, except for
5 terms of conversion and renewability, that would have been
6 payable under the policies or contracts of the insolvent
7 insurer, for claims incurred as follows:

8 (A) With respect to group policies and contracts, not later
9 than the earlier of the next renewal date under such policies or
10 contracts or forty-five (45) days, but in no event less than
11 thirty (30) days, after the date on which the association
12 becomes obligated with respect to the policies or contracts.

13 (B) With respect to nongroup policies, contracts and
14 annuities, not later than the earlier of the next renewal date,
15 if any, under such policies or contracts or one year, but in no
16 event less than thirty (30) days, from the date on which the
17 association becomes obligated with respect to such policies or
18 contracts.

19 (ii) Make diligent efforts to provide all known insureds or
20 annuitants for nongroup policies and contracts, or group policy
21 owners with respect to group policies and contracts, thirty (30)
22 days' notice of the termination under paragraph (2)(i) of the
23 benefits provided.

24 (iii) With respect to nongroup life and health insurance
25 policies and annuities covered by the association, make
26 available to each known insured or annuitant, or owner if other
27 than the insured or annuitant, and with respect to an individual
28 formerly insured or formerly an annuitant under a group policy
29 who is not eligible for replacement group coverage, make
30 available substitute coverage on an individual basis in

1 accordance with the provisions of subparagraph (iv), if the
2 insureds or annuitants had a right under law or the terminated
3 policy or annuity to convert coverage to individual coverage or
4 to continue an individual policy or annuity in force until a
5 specified age or for a specified time, during which the insurer
6 had no right unilaterally to make changes in any provision of
7 the policy or annuity or had a right only to make changes in
8 premium by class.

9 (iv) (A) In providing the substitute coverage required
10 under subparagraph (iii), the association may offer either to
11 reissue the terminated coverage or to issue an alternative
12 policy.

13 (B) Alternative or reissued policies shall be offered
14 without requiring evidence of insurability and shall not provide
15 for any waiting period or exclusion that would not have applied
16 under the terminated policy.

17 (C) The association may reinsure any alternative or reissued
18 policy.

19 (v) (A) Alternative policies adopted by the association
20 shall be subject to the approval of the domiciliary commissioner
21 and the receivership court. The association may adopt
22 alternative policies of various types for future issuance
23 without regard to any particular impairment or insolvency.

24 (B) Alternative policies shall contain at least the minimum
25 statutory provisions required in this Commonwealth and provide
26 benefits that shall not be unreasonable in relation to the
27 premium charged. The association shall set the premium in
28 accordance with a table of rates which it shall adopt. The
29 premium shall reflect the amount of insurance to be provided and
30 the age and class of risk of each insured, but shall not reflect

1 any changes in the health of the insured after the original
2 policy was last underwritten.

3 (C) Any alternative policy issued by the association shall
4 provide coverage of a type similar to that of the policy issued
5 by the impaired or insolvent insurer, as determined by the
6 association.

7 (vi) If the association elects to reissue terminated
8 coverage at a premium rate different from that charged under the
9 terminated policy, the premium shall be set by the association
10 in accordance with the amount of insurance provided and the age
11 and class of risk, subject to approval of the domiciliary
12 commissioner and the receivership court.

13 (vii) The association's obligations with respect to coverage
14 under any policy of the impaired or insolvent insurer or under
15 any reissued or alternative policy shall cease on the date such
16 coverage or policy is replaced by another similar policy by the
17 policyowner, the insured or the association.

18 (viii) When proceeding under subsection (b) (2) with respect
19 to any policy or contract carrying guaranteed minimum interest
20 rates, the association shall assure the payment or crediting of
21 a rate of interest consistent with section 1703(b) (2) (iii).

22 (c) Nonpayment of premiums within thirty-one (31) days after
23 the date required under the terms of any guaranteed, assumed,
24 alternative or reissued policy or contract or substitute
25 coverage shall terminate the association's obligations under
26 such policy or coverage under this article with respect to such
27 policy or coverage, except with respect to any claims incurred
28 or any net cash surrender value which may be due in accordance
29 with the provisions of this article.

30 (d) Premiums due for coverage after entry of an order of

1 liquidation of an insolvent insurer shall belong to and be
2 payable at the direction of the association, and the association
3 shall be liable for unearned premiums due to policy or contract
4 owners arising after the entry of such order.

5 (e) The protection provided by this article shall not apply
6 where any guaranty protection is provided to residents of this
7 Commonwealth by the laws of the domiciliary state or
8 jurisdiction of the impaired or insolvent insurer other than
9 this Commonwealth.

10 (f) In carrying out its duties under subsection (b) and
11 subject to approval by a court of this Commonwealth, the
12 association may do the following:

13 (1) Impose permanent policy or contract liens in connection
14 with any guarantee, assumption or reinsurance agreement if the
15 association finds that the amounts which can be assessed under
16 this article are less than the amounts needed to assure full and
17 prompt performance of the association's duties under this
18 article or that the economic or financial conditions as they
19 affect member insurers are sufficiently adverse to render the
20 imposition of such permanent policy or contract liens to be in
21 the public interest.

22 (2) Impose temporary moratoriums or liens on payments of
23 cash values and policy loans, or any other right to withdraw
24 funds held in conjunction with policies or contracts, in
25 addition to any contractual provisions for deferral of cash or
26 policy loan value. In addition, in the event of a temporary
27 moratorium or moratorium charge imposed by the receivership
28 court on payment of cash values or policy loans, or on any other
29 right to withdraw funds held in conjunction with policies or
30 contracts, out of the assets of the impaired or insolvent

1 insurer, the association may defer the payment of cash values,
2 policy loans or other rights by the association for the period
3 of the moratorium or moratorium charge imposed by the
4 receivership court, except for claims covered by the association
5 to be paid in accordance with a hardship procedure established
6 by the liquidator or rehabilitator and approved by the
7 receivership court.

8 (g) If the association fails to act within a reasonable
9 period of time as provided in subsection (b), the commissioner
10 shall have the powers and duties of the association under this
11 article with respect to the insolvent insurer.

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

17 (i) The association shall have standing to appear or
18 intervene before a court or agency in this Commonwealth with
19 jurisdiction over an impaired or insolvent insurer concerning
20 whether the association is or may become obligated under this
21 article or with jurisdiction over a person or property against
22 which the association may have rights through subrogation or
23 otherwise. Standing shall extend to all matters germane to the
24 powers and duties of the association, including, but not limited
25 to, proposals for reinsuring, modifying or guaranteeing the
26 policies or contracts of the impaired or insolvent insurer and
27 the determination of the policies or contracts and contractual
28 obligations. The association shall also have the right to appear
29 or intervene before a court or agency in another state with
30 jurisdiction over an impaired or insolvent insurer for which the

1 association is or may become obligated or with jurisdiction over
2 a person against whom or any property against which the
3 association may have rights through subrogation or otherwise.

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

17 (2) The subrogation rights of the association under this
18 subsection shall have the same priority against the assets of
19 the impaired or insolvent insurer as that possessed by the
20 person entitled to receive benefits under this article.

21 (3) In addition to paragraphs (1) and (2), the association
22 shall have all common law rights of subrogation and any other
23 equitable or legal remedy which would have been available to the
24 impaired or insolvent insurer or owner, beneficiary or payee of
25 a policy or contract with respect to the policy or contracts,
26 including without limitation, in the case of a structured
27 settlement annuity, any rights of the owner, beneficiary or
28 payee of the annuity to the extent of benefits received under
29 this article, against a person originally or by succession
30 responsible for the losses arising from the personal injury

1 relating to the annuity or payment therefor, except a person
2 responsible solely by reason of serving as an assignee in
3 respect of a qualified assignment under section 130 of the
4 Internal Revenue Code of 1986.

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

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

18 (k) In addition to the rights and powers elsewhere in this
19 article, the association may:

20 (1) Enter into such contracts as are necessary or proper to
21 carry out the provisions and purposes of this article.

22 (2) Sue or be sued, including taking any legal actions
23 necessary or proper to recover any unpaid assessments under
24 section 1707 and to settle claims or potential claims against
25 it.

26 (3) Borrow money to effect the purposes of this article, and
27 any notes or other evidence of indebtedness of the association
28 not in default shall be legal investments for domestic insurers
29 and may be carried as admitted assets.

30 (4) Employ or retain such persons as are necessary to handle

1 the financial transactions of the association and perform such
2 other functions as become necessary or proper under this
3 article.

4 (5) Take such legal action as may be necessary or
5 appropriate to avoid or recover payment of improper claims.

6 (6) Exercise, for the purposes of this article and to the
7 extent approved by the commissioner, the powers of a domestic
8 life or health insurer, but in no case may the association issue
9 insurance policies or annuity contracts other than those issued
10 to perform its obligations under this article.

11 (7) Organize itself as a corporation or in other legal form
12 permitted by the laws of this Commonwealth.

13 (8) Request information from a person seeking coverage from
14 the association in order to aid the association in determining
15 its obligations under this article with respect to the person,
16 and the person shall promptly comply with the request.

17 (9) Take other necessary or appropriate action to discharge
18 its duties and obligations under this article or to exercise its
19 powers under this article.

20 (l) The association may join an organization of one or more
21 other state associations of similar purposes, to further the
22 purposes and administer the powers and duties of the
23 association.

24 (m) The following provisions shall apply to the association:

25 (1) (i) At any time within one hundred eighty (180)
26 days of the date of the order of liquidation, the association
27 may elect to succeed to the rights and obligations of the ceding
28 member insurer that relate to policies or annuities covered, in
29 whole or in part, by the association, in each case under any one
30 or more reinsurance contracts entered into by the insolvent

1 insurer and its reinsurers and selected by the association. The
2 assumption shall be effective as of the date of the order of
3 liquidation. The election shall be effected by the association
4 or the National Organization of Life and Health Insurance
5 Guaranty Associations (NOLHGA) on its behalf sending written
6 notice, return receipt requested, to the affected reinsurers.

7 (ii) To facilitate the earliest practicable decision about
8 whether to assume any of the contracts of reinsurance, and in
9 order to protect the financial position of the estate, the
10 receiver and each reinsurer of the ceding member insurer shall
11 make available upon request to the association or to NOLHGA on
12 its behalf as soon as possible after commencement of formal
13 delinquency proceedings:

14 (A) copies of in-force contracts of reinsurance and all
15 related files and records relevant to the determination of
16 whether the contracts should be assumed; and

17 (B) notices of any defaults under the reinsurance contracts
18 or any known event or condition with which the passage of time
19 could become a default under the reinsurance contracts.

20 (iii) The following shall apply to reinsurance contracts so
21 assumed by the association:

22 (A) The association shall be responsible for all unpaid
23 premiums due under the reinsurance contracts for periods both
24 before and after the date of the order of liquidation, and shall
25 be responsible for the performance of all other obligations to
26 be performed after the date of the order of liquidation, in each
27 case which relate to policies of annuities covered, in whole or
28 in part, by the association. The association may charge policies
29 or annuities covered in part by the association, through
30 reasonable allocation methods, the costs for reinsurance in

1 excess of the obligations of the association and shall provide
2 notice and an accounting of these charges to the liquidator.

3 (B) The association shall be entitled to any amounts payable
4 by the reinsurer under the reinsurance contracts with respect to
5 losses or events that occur in periods after the date of the
6 order of liquidation and that relate to policies or annuities
7 covered, in whole or in part, by the association, provided that,
8 upon receipt of the amounts, the association shall pay to the
9 beneficiary under the policy or annuity on account of which the
10 amounts were paid a portion of the amount equal to the lesser
11 of:

12 (I) the amount received by the association; or

13 (II) the excess of the amount received by the association
14 over the amount equal to the benefits paid by the association on
15 account of the policy or annuity less the retention of the
16 insurer applicable to the loss or event.

17 (C) Within thirty (30) days following the association's
18 election, the association and each reinsurer under contracts
19 assumed by the association shall calculate the net balance due
20 to or from the association under each reinsurance contract as of
21 the election date with respect to policies or annuities covered,
22 in whole or in part, by the association, which calculation shall
23 give full credit to all items paid by either the insurer or its
24 receiver or the reinsurer prior to the election date. The
25 reinsurer shall pay the receiver any amounts due for losses or
26 events prior to the date of the order of liquidation, subject to
27 any set-off for premiums unpaid for periods prior to the date,
28 and the association or reinsurer shall pay any remaining balance
29 due the other, in each case within five (5) days of the
30 completion of the calculation. A dispute over the amounts due to

1 either the association or the reinsurer shall be resolved by
2 arbitration pursuant to the terms of the affected reinsurance
3 contracts or, if the contract contains no arbitration clause, as
4 otherwise provided by law. If the receiver has received any
5 amounts due the association under clause (B), the receiver shall
6 remit the amounts to the association as promptly as practicable.

7 (D) If the association or receiver, on the association's
8 behalf within sixty (60) days of the election date, pays the
9 unpaid premiums due for periods both before and after the
10 election date that relate to policies or annuities covered, in
11 whole or in part, by the association, the reinsurer shall not be
12 entitled to terminate the reinsurance contracts for failure to
13 pay premiums insofar as the reinsurance contracts relate to
14 policies or annuities covered, in whole or in part, by the
15 association, and shall not be entitled to set off any unpaid
16 amounts due under other contracts, or unpaid amounts due from
17 parties other than the association, against amounts due the
18 association.

19 (2) ???? During the period from the date of the order of
20 liquidation until the election date, or, if the election date
21 does not occur, until one hundred eighty (180) days after the
22 date of the order of liquidation:

23 (i) (A) The association and the reinsurer shall not have
24 any rights or obligations under reinsurance contracts that the
25 association has the right to assume under subsection (1),
26 whether for periods prior to or after the date of the order of
27 liquidation; and

28 (B) the reinsurer, the receiver and the association shall to
29 the extent practicable, provide each other data and records
30 reasonably requested.

1 (ii) Provided that the association has elected to assume a
2 reinsurance contract, the parties' rights and obligations shall
3 be governed by subsection (1).

4 (3) If the association does not elect to assume a
5 reinsurance contract by the election date under subsection (1),
6 the association shall have no rights or obligations, in each
7 case for periods both before and after the date of the order of
8 liquidation, with respect to the reinsurance contract.

9 (4) When policies or annuities, or covered obligations with
10 respect to policies and annuities, are transferred to an
11 assuming insurer, reinsurance on the policies or annuities may
12 also be transferred by the association, in the case of contracts
13 assumed under subsection (1), subject to the following:

14 (i) unless the reinsurer and the assuming insurer agree
15 otherwise, the reinsurance contract transferred shall not cover
16 any new policies of insurance or annuities in addition to those
17 transferred;

18 (ii) the obligations described in subsection (1) shall no
19 longer apply with respect to matters arising after the effective
20 date of the transfer; and

21 (iii) notice shall be given in writing, return receipt
22 requested, by the transferring party to the affected reinsurer
23 not less than thirty (30) days prior to the effective date of
24 the transfer.

25 (5) The provisions of this subsection shall supersede the
26 provisions of any law or of any affected reinsurance contract
27 that provides for or requires any payment of reinsurance
28 proceeds, on account of losses or events that occur in periods
29 after the date of the order of liquidation, to the receiver of
30 the insolvent insurer or any other person. The receiver shall

1 remain entitled to any amounts payable by the reinsurer under
2 the reinsurance contracts with respect to losses or events that
3 occur in periods prior to the date of the order of liquidation,
4 subject to applicable setoff provisions.

5 (6) Except as otherwise provided in this section, nothing in
6 this subsection may:

7 (i) alter or modify the terms and conditions of any
8 reinsurance contract;

9 (ii) abrogate or limit any rights of any reinsurer to claim
10 that it is entitled to rescind a reinsurance contract and
11 renumber remaining subsections;

12 (iii) give a policyholder or beneficiary an independent
13 cause of action against a reinsurer that is not otherwise set
14 forth in the reinsurance contract;

15 (iv) limit or affect the association's rights as a creditor
16 of the estate against the assets of the estate; or

17 (v) apply to reinsurance agreements covering property or
18 casualty risks.

19 (n) The board of directors of the association shall have
20 discretion and may exercise reasonable business judgment to
21 determine the means by which the association is to provide the
22 benefits of this article in an economical and efficient manner.

23 (o) Where the association has arranged or offered to provide
24 the benefits of this article to a covered person under a plan or
25 arrangement that fulfills the association's obligations under
26 this article, the person shall not be entitled to benefits from
27 the association in addition to or other than those provided
28 under the plan or arrangement.

29 (p) Venue in a suit against the association arising under
30 this article shall be in Philadelphia County. The association

1 shall not be required to give an appeal bond in an appeal that
2 relates to a cause of action arising under this article.

3 (g) In carrying out its duties in connection with
4 guaranteeing, assuming or reinsuring policies or contracts under
5 subsection (a) or (b), the association may, subject to approval
6 of the receivership court, issue substitute coverage for a
7 policy or contract that provides an interest rate, crediting
8 rate or similar factor determined by use of an index or other
9 external reference stated in the policy or contract employed in
10 calculating returns or changes in value by issuing an
11 alternative policy or contract in accordance with the following
12 provisions:

13 (1) in lieu of the index or other external reference
14 provided for in the original policy or contract, the alternative
15 policy or contract provides for the following:

16 (i) a fixed interest rate;

17 (ii) payment of dividends with minimum guarantees; or

18 (iii) a different method for calculating interest or changes
19 in value;

20 (2) there is no requirement for evidence of insurability,
21 waiting period or other exclusion that would not have applied
22 under the replaced policy or contract; and

23 (3) the alternative policy or contract is substantially
24 similar to the replaced policy or contract in all other material
25 terms.

26 Section 6. Sections 1707, 1708, 1709, 1710, 1711, 1712, 1716
27 and 1717 of the act, added December 18, 1992 (P.L.1519, No.178),
28 are amended to read:

29 Section 1707. Assessments.--(a) For the purpose of
30 providing the funds necessary to carry out the powers and duties

1 of the association, the board of directors shall assess the
2 member insurers, separately for each account, at such time and
3 for such amounts as the board finds necessary. Assessments shall
4 be due not less than thirty (30) days after prior written notice
5 to the member insurers and shall accrue interest at eight per
6 centum (8%) per annum on and after the due date.

7 (b) There shall be two assessments, as follows:

8 (1) Class A assessments shall be [made] authorized and
9 called for the purpose of meeting administrative and legal costs
10 and other expenses [and examinations conducted under the
11 authority of section 1710(e)]. Class A assessments may be [made]
12 authorized or called whether or not related to a particular
13 impaired or insolvent insurer.

14 (2) Class B assessments shall be [made] authorized or called
15 to the extent necessary to carry out the powers and duties of
16 the association under section [1706] 1706.1 with regard to an
17 impaired or an insolvent insurer.

18 (c) (1) The amount of [any] a Class A assessment shall be
19 determined by the board and may be [made] authorized and called
20 on a pro rata or non-pro rata basis. If pro rata, the board may
21 provide that it be credited against future Class B assessments.
22 [A non-pro rata assessment] The total of all pro rata
23 assessments shall not exceed [two hundred (\$200)] three hundred
24 (\$300) dollars per member insurer in any one calendar year. The
25 amount of any Class B assessment shall be allocated for
26 assessment purposes among the accounts pursuant to an allocation
27 formula which may be based on the premiums or reserves of the
28 impaired or insolvent insurer or any other standard deemed by
29 the board in its sole discretion as being fair and reasonable
30 under the circumstances.

1 (2) Class B assessments against member insurers for each
2 account and subaccount shall be in the proportion that the
3 premiums received on business in this Commonwealth by each
4 assessed member insurer [for] on policies or contracts covered
5 by each account for the three (3) most recent calendar years for
6 which information is available preceding the year in which the
7 insurer became [impaired or insolvent, as the case may be]
8 insolvent or, in the case of an assessment with respect to an
9 impaired insurer, the three (3) most recent calendar years for
10 which information is available preceding the year in which the
11 insured became impaired, bears to such premiums received on
12 business in this Commonwealth for such calendar years by all
13 assessed member insurers.

14 (3) Assessments for funds to meet the requirements of the
15 association with respect to an impaired or insolvent insurer
16 shall not be [made] authorized or called until necessary to
17 implement the purposes of this article. Classification of
18 assessments under subsection (b) and computation of assessments
19 under this subsection shall be made with a reasonable degree of
20 accuracy, recognizing that exact determinations may not always
21 be possible.

22 (d) The association may abate or defer, in whole or in part,
23 the assessment of a member insurer if, in the opinion of the
24 board, payment of the assessment would endanger the ability of
25 the member insurer to fulfill its contractual obligations. In
26 the event an assessment against a member insurer is abated, or
27 deferred in whole or in part, the amount by which such
28 assessment is abated or deferred may be assessed against the
29 other member insurers in a manner consistent with the basis for
30 assessments set forth in this section. Once the conditions that

1 caused a deferral have been removed or rectified, the member
2 insurer shall pay all assessments that were deferred pursuant to
3 a repayment plan approved by the association.

4 (e) (1) [The] (i) Subject to the provisions of
5 subparagraph (ii), the total of all assessments [upon a member
6 insurer for the life] authorized by the association with respect
7 to a member insurer for each subaccount of the life insurance
8 and annuity account and for [each subaccount thereunder shall
9 not in any one (1) calendar year exceed two per centum (2%) and
10 for] the health account shall not in [any] one (1) calendar year
11 exceed two per centum (2%) of [such] that member insurer's
12 average premiums received in this Commonwealth on the policies
13 and contracts covered by the subaccount or account during the
14 three (3) calendar years preceding the year in which the insurer
15 became an impaired or insolvent insurer.

16 (ii) If two (2) or more assessments are authorized in one
17 calendar year with respect to insurers that become impaired or
18 insolvent in different calendar years, the average annual
19 premiums for purposes of the aggregate assessment percentage
20 limitation referenced in subparagraph (i) shall be equal and
21 limited to the higher of the three-year average annual premiums
22 for the applicable subaccount or account as calculated pursuant
23 to this section.

24 (iii) If the maximum assessment, together with the other
25 assets of the association in any account, does not provide in
26 any one (1) year in either account an amount sufficient to carry
27 out the responsibilities of the association, the necessary
28 additional funds shall be assessed as soon thereafter as
29 permitted by this article.

30 (2) The board may provide in the plan of operation a method

1 of allocating funds among claims, whether relating to one or
2 more impaired or insolvent insurers, when the maximum assessment
3 will be insufficient to cover anticipated claims.

4 (3) If [a one per centum (1%) assessment for any] the
5 maximum assessment for a subaccount of the life and annuity
6 account in any one (1) year does not provide an amount
7 sufficient to carry out the responsibilities of the association,
8 then pursuant to subsection (c)(2), the board shall [access]
9 assess all subaccounts of the life and annuity account for the
10 necessary additional amount, subject to the maximum stated in
11 subsection (e)(1).

12 (f) The board may, by an equitable method as established in
13 the plan of operation, refund to member insurers, in proportion
14 to the contribution of each insurer to that account, the amount
15 by which the assets of the account exceed the amount the board
16 finds is necessary to carry out during the coming year the
17 obligations of the association with regard to that account,
18 including assets accruing from assignment, subrogation, net
19 realized gains and income from investments. A reasonable amount
20 may be retained in any account to provide funds for the
21 continuing expenses of the association and for future [losses]
22 claims.

23 (g) It shall be proper for any member insurer, in
24 determining its premium rates and [policyowner] policy owner
25 dividends as to any kind of insurance within the scope of this
26 article, to consider the amount reasonably necessary to meet its
27 assessment obligations under this article, provided that such
28 insurer has not elected to take tax credits as provided in
29 section 1711(a).

30 (h) The association shall issue to each insurer paying an

1 assessment under this article, other than a class A assessment,
2 a certificate of contribution, in a form prescribed by the
3 commissioner, for the amount of the assessment so paid. All
4 outstanding certificates shall be of equal dignity and priority
5 without reference to amounts or dates of issue. A certificate of
6 contribution may be shown by the insurer in its financial
7 statement as an asset in such form and for such amount, if any,
8 and period of time as the commissioner may approve.

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

17 (2) Within sixty (60) days following the payment of an
18 assessment under protest by a member insurer, the association
19 shall notify the member insurer in writing of its determination
20 with respect to the protest unless the association notifies the
21 member insurer that additional time is required to resolve the
22 issues raised by the protest.

23 (3) Within thirty (30) days after a final decision has been
24 made, the association shall notify the protesting member insurer
25 in writing of that final decision. Within sixty (60) days of
26 receipt of notice of the final decision, the protesting member
27 insurer may appeal that final action to the commissioner.

28 (4) In the alternative to rendering a final decision with
29 respect to a protest based on a question regarding the
30 assessment base, the association may refer protests to the

1 commissioner for a final decision, with or without a
2 recommendation from the association.

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

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

12 Section 1708. Plan of Operation.--(a) (1) The association
13 shall submit to the commissioner a plan of operation and any
14 amendments thereto necessary or suitable to assure the fair,
15 reasonable and equitable administration of the association. The
16 plan of operation and any amendments thereto shall become
17 effective upon the commissioner's written approval or unless he
18 has not disapproved it within thirty (30) days.

19 (2) If the association fails to submit a suitable plan of
20 operation within one hundred twenty (120) days following the
21 effective date of this article or if at any time thereafter the
22 association fails to submit suitable amendments to the plan, the
23 commissioner shall, after notice and hearing, adopt and
24 promulgate such reasonable rules as are necessary or advisable
25 to effectuate the provisions of this article. Such rules shall
26 continue in force until modified by the commissioner or
27 superseded by a plan submitted by the association and approved
28 by the commissioner.

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

1 (c) The plan of operation shall, in addition to requirements
2 enumerated elsewhere in this article, contain the following:

3 (1) Establish procedures for handling the assets of the
4 association.

5 (2) Establish the amount and method of reimbursing members
6 of the board of directors under section 1705.

7 (3) Establish regular places and times for meetings,
8 including telephone conference calls of the board of directors.

9 (4) Establish procedures for records to be kept of all
10 financial transactions of the association, its agents and the
11 board of directors.

12 (5) Establish the procedures whereby selections for the
13 board of directors will be made and submitted to the
14 commissioner.

15 (6) Establish any additional procedures for assessments
16 under section 1707.

17 (7) Contain additional provisions necessary or proper for
18 the execution of the powers and duties of the association.

19 (8) Establish procedures whereby a director may be removed
20 for cause, including in the case where a member insurer director
21 becomes an impaired or insolvent insurer.

22 (9) Require the board of directors to establish policy and
23 procedure for addressing conflicts of interests.

24 (d) The plan of operation may provide that any or all powers
25 and duties of the association, except those under sections
26 [1706(n) (3)] 1706.1(k) (3) and 1707, are delegated to a
27 corporation, association or other organization which performs or
28 will perform functions similar to those of this association or
29 its equivalent in two or more states. Such a corporation,
30 association or organization shall be reimbursed for any payments

1 made on behalf of the association and shall be paid for its
2 performance of any function of the association. A delegation
3 under this subsection shall take effect only with the approval
4 of both the board of directors and the commissioner and may be
5 made only to a corporation, association or organization which
6 extends protection not substantially less favorable and
7 effective than that provided by this article.

8 Section 1709. Powers and Duties of the Commissioner.--(a)

9 In addition to the powers and duties enumerated elsewhere in
10 this article, the commissioner shall:

11 (1) Upon request of the board of directors, provide the
12 association with a statement of the premiums in this and any
13 other appropriate states for each member insurer.

14 (2) When an impairment is declared and the amount of the
15 impairment is determined, serve a demand upon the impaired
16 insurer to make good the impairment within a reasonable time;
17 notice to the impaired insurer shall constitute notice to its
18 shareholders, if any; the failure of the insurer to promptly
19 comply with such demand shall not excuse the association from
20 the performance of its powers and duties under this article.

21 (3) In any liquidation or rehabilitation proceeding
22 involving a domestic insurer, be appointed as the liquidator or
23 rehabilitator.

24 (b) The commissioner may suspend or revoke, after notice and
25 hearing, the certificate of authority to transact insurance in
26 this Commonwealth of any member insurer which fails to pay an
27 assessment when due or fails to comply with the plan of
28 operation. As an alternative, the commissioner may levy a
29 forfeiture on any member insurer which fails to pay an
30 assessment when due. Such forfeiture shall not exceed five per

1 centum (5%) of the unpaid assessment per month, but no
2 forfeiture shall be less than one hundred (\$100) dollars per
3 month.

4 (c) [Any] A final action of the board of directors or the
5 association may be appealed to the commissioner by [any] a
6 member insurer if such appeal is taken within sixty (60) days of
7 its receipt of the final action being appealed. [If a member
8 company is appealing an assessment, the amount assessed shall be
9 paid to the association and available to meet association
10 obligations during the pendency of an appeal. If the appeal on
11 the assessment is upheld, the amount paid in error or excess
12 shall be returned to the member company. Any] A final action or
13 order of the commissioner shall be subject to judicial review in
14 a court of competent jurisdiction in accordance with the laws of
15 this Commonwealth that apply to the actions or orders of the
16 commissioner.

17 (d) The liquidator, rehabilitator or conservator of any
18 impaired or insolvent insurer may notify all interested persons
19 of the effect of this article.

20 Section 1710. Prevention of Insolvencies.--(a) To aid in
21 the detection and prevention of insurer insolvencies or
22 impairments, it shall be the duty of the commissioner:

23 (1) To notify the commissioners of all the other states,
24 territories of the United States and the District of Columbia
25 when he takes any of the following actions against a member
26 insurer:

27 (i) revocation of license;

28 (ii) suspension of license; or

29 (iii) makes any formal order that such company restrict its
30 premium writing, obtain additional contributions to surplus,

1 withdraw from the Commonwealth, reinsure all or any part of its
2 business or increase capital, surplus or any other account for
3 the security of policyholders or creditors.

4 This notice shall be mailed to all commissioners within thirty
5 (30) days following the action taken or the date on which such
6 action occurs.

7 (2) To report to the board of directors when he has taken
8 any of the actions set forth in paragraph (1) or has received a
9 report from any other commissioner indicating that any such
10 action has been taken in another state. Such report to the board
11 of directors shall contain all significant details of the action
12 taken or the report received from another commissioner.

13 (3) To report to the board of directors when he has
14 reasonable cause to believe from any examination, whether
15 completed or in process, of any member company that such company
16 may be an impaired or insolvent insurer.

17 (4) To furnish to the board of directors the National
18 Association of Insurance Commissioners' (NAIC) Insurance
19 Regulatory Information System (IRIS) ratios and listing of
20 companies not included in the ratios developed by the National
21 Association of Insurance Commissioners, and the board may use
22 the information contained therein in carrying out its duties and
23 responsibilities under this section. Such report and the
24 information contained therein shall be kept confidential by the
25 board of directors until such time as made public by the
26 commissioner or other lawful authority.

27 (b) The commissioner may seek the advice and recommendations
28 of the board of directors concerning any matter affecting his
29 duties and responsibilities regarding the financial condition of
30 member insurers and companies seeking admission to transact

1 insurance business in this Commonwealth.

2 (c) The board of directors may, upon majority vote, make
3 reports and recommendations to the commissioner upon any matter
4 germane to the solvency, liquidation, rehabilitation or
5 conservation of any member insurer or germane to the solvency of
6 any company seeking to do an insurance business in this
7 Commonwealth. Such reports and recommendations shall not be
8 considered public documents.

9 (d) [It shall be the duty of the] The board of directors,
10 may, upon majority vote, to notify the commissioner of any
11 information indicating any member insurer may be an impaired or
12 insolvent insurer.

13 (e) (1) The board of directors may, upon majority vote,
14 request that the commissioner order an examination of any member
15 insurer which the board in good faith believes may be an
16 impaired or insolvent insurer. Within thirty (30) days of the
17 receipt of such request, the commissioner shall begin such
18 examination. The examination may be conducted as a National
19 Association of Insurance Commissioners examination or may be
20 conducted by such persons as the commissioner designates. The
21 cost of such examination shall be paid by the association, and
22 the examination report shall be treated as are other examination
23 reports. In no event shall such examination report be released
24 to the board of directors prior to its release to the public,
25 but this shall not preclude the commissioner from complying with
26 subsection (a).

27 (2) The commissioner shall notify the board of directors
28 when the examination is completed. The request for an
29 examination shall be kept on file by the commissioner, but it
30 shall not be open to public inspection prior to the release of

1 the examination report to the public.

2 (f) The board of directors may, upon majority vote, make
3 recommendations to the commissioner for the detection and
4 prevention of insurer insolvencies.

5 (g) The board of directors shall, at the conclusion of any
6 insurer insolvency in which the association was obligated to pay
7 covered claims, prepare a report to the commissioner containing
8 such information as it may have in its possession bearing on the
9 history and causes of such insolvency. The board shall cooperate
10 with the boards of directors of guaranty associations in other
11 states in preparing a report on the history and causes of
12 insolvency of a particular insurer, and may adopt by reference
13 any report prepared by such other associations.

14 Section 1711. Credits for Assessments Paid.--(a) A member
15 insurer may offset against its premium tax liability to this
16 Commonwealth a proportionate part of the assessments described
17 in section 1707 to the extent of twenty per centum (20%) of the
18 amount of such assessment for each of the five (5) calendar
19 years following the year in which such assessment was paid. In
20 the event a member insurer should cease doing business, all
21 uncredited assessments may be credited against its premium tax
22 liability for the year it ceases doing business.

23 (b) The proportionate part of an assessment which may be
24 offset against a member company's premium tax liability to the
25 Commonwealth shall be determined according to a fraction of
26 which the denominator is the total premiums received by the
27 company during the calendar year immediately preceding the year
28 in which the assessment is paid and the numerator is that
29 portion of the premiums received during such year on account of
30 policies of life or health and accident insurance in which the

1 premium rates are guaranteed during the continuance of the
2 respective policies without a right exercisable by the company
3 to increase said premium rates.

4 (c) Any sums which are acquired by refund, pursuant to
5 section 1707(f), from the association by member insurers, and
6 which have theretofore been offset against premium taxes as
7 provided in this section and are not then needed for the
8 purposes of this act, shall be paid by such insurers to this
9 Commonwealth in such manner as the tax authorities may require.
10 The association shall notify the commissioner that such refunds
11 have been made.

12 (d) No offset against premium tax liability shall be
13 permitted to the extent that a member insurer's rates or
14 policyholder dividends have been adjusted as permitted in
15 section 1707.

16 Section 1712. Miscellaneous Provisions.--(a) Nothing in
17 this article shall be construed to reduce the liability for
18 unpaid assessments of the insureds of an impaired or insolvent
19 insurer operating under a plan with assessment liability.

20 (b) Records shall be kept of all [negotiations and meetings
21 in which the association or its representatives are involved]
22 meetings of the board of directors to discuss the activities of
23 the association in carrying out its powers and duties under
24 section [1706] 1706.1. [Records of such negotiations or meetings
25 shall be made public only upon] The records of the association
26 with respect to an impaired or insolvent insurer shall not be
27 disclosed prior to the termination of a liquidation,
28 rehabilitation or conservation proceeding involving the impaired
29 or insolvent insurer, upon the termination of the impairment or
30 insolvency of the insurer, [or] except upon the termination of

1 the impairment or insolvency of the insurer, or upon the order
2 of a court of competent jurisdiction. Nothing in this subsection
3 shall limit the duty of the association to render a report of
4 its activities under section 1713.

5 (c) For the purpose of carrying out its obligations under
6 this article, the association shall be deemed to be a creditor
7 of the impaired or insolvent insurer to the extent of assets
8 attributable to covered policies reduced by any amounts to which
9 the association is entitled as subrogee pursuant to section
10 [1706] 1706.1. Assets of the impaired or insolvent insurer
11 attributable to covered policies shall be used to continue all
12 covered policies and pay all contractual obligations of the
13 impaired or insolvent insurer as required by this article.
14 Assets attributable to covered policies, as used in this
15 subsection, are that proportion of the assets which the reserves
16 that should have been established for such policies bear to the
17 reserves that should have been established for all policies of
18 insurance written by the impaired or insolvent insurer.

19 (d) As a creditor of the impaired or insolvent insurer as
20 established in subsection (c) and consistent with section 536 of
21 the act of May 17, 1921 (P.L.789, No.285), known as The
22 Insurance Department Act of 1921, the association and other
23 similar associations shall be entitled to receive a disbursement
24 of assets out of the marshaled assets, from time to time as the
25 assets become available to reimburse it, as a credit against
26 contractual obligations under this article. If the liquidator
27 has not, within one hundred twenty (120) days of a final
28 determination of insolvency of an insurer by the receivership
29 court, made an application to the court for the approval of a
30 proposal to disburse assets out of marshaled assets to guaranty

1 associations having obligations because of the insolvency, then
2 the association shall be entitled to make application to the
3 receivership court for approval of its own proposal to disburse
4 these assets.

5 (d.1) (1) Prior to the termination of any liquidation,
6 rehabilitation or conservation proceeding, the court may take
7 into consideration the contributions of the respective parties,
8 including the association, the shareholders and [policyowners]
9 policy owners of the insolvent insurer, and any other party with
10 a bona fide interest, in making an equitable distribution of the
11 ownership rights of such insolvent insurer. In such a
12 determination, consideration shall be given to the welfare of
13 the policyholders of the continuing or successor insurer.

14 (2) No distribution to stockholders, if any, of an impaired
15 or insolvent insurer shall be made until and unless the total
16 amount of valid claims of the association with interest thereon
17 for funds expended in carrying out its powers and duties under
18 section [1706] 1706.1 with respect to such insurer have been
19 fully recovered by the association.

20 (e) (1) If an order for liquidation or rehabilitation of an
21 insurer domiciled in this Commonwealth has been entered, the
22 receiver appointed under such order shall have a right to
23 recover on behalf of the insurer, from any affiliate that
24 controlled it, the amount of distributions, other than stock
25 dividends paid by the insurer on its capital stock, made at any
26 time during the five (5) years preceding the petition for
27 liquidation or rehabilitation subject to the limitations of
28 paragraphs (2) to (4).

29 (2) No such distribution shall be recoverable if the insurer
30 shows that when paid the distribution was lawful and reasonable

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

4 (3) Any person who was an affiliate that controlled the
5 insurer at the time the distributions were paid shall be liable
6 up to the amount of distributions he received. Any person who
7 was an affiliate that controlled the insurer at the time the
8 distributions were declared shall be liable up to the amount of
9 distributions he would have received if they had been paid
10 immediately. If two or more persons are liable with respect to
11 the same distributions, they shall be jointly and severally
12 liable.

13 (4) The maximum amount recoverable under this subsection
14 shall be the amount needed in excess of all other available
15 assets of the insolvent insurer to pay the contractual
16 obligations of the insolvent insurer.

17 (5) If any person liable under paragraph (3) is insolvent,
18 all its affiliates that controlled it at the time distribution
19 was paid shall be jointly and severally liable for any resulting
20 deficiency in the amount recovered from the insolvent affiliate.

21 Section 1716. Stay of Proceedings and Reopening Default
22 Judgments.--All proceedings in which the insolvent insurer is a
23 party in any court in this Commonwealth shall be stayed [sixty
24 (60)] one hundred eighty (180) days from the date an order of
25 liquidation, rehabilitation or conservation is final to permit
26 proper legal action by the association on any matters germane to
27 its powers or duties. As to judgment under any decision, order,
28 verdict or finding based on default, the association may apply
29 to have such judgment set aside by the same court that made such
30 judgment and shall be permitted to defend against such suit on

1 the merits.

2 Section 1717. Prohibited Advertisement [or] of Insurance
3 Guaranty Association Act in Insurance Sales.--(a) No person,
4 including an insurer, agent or affiliate of an insurer, shall
5 make, publish, disseminate, circulate or place before the
6 public, or cause, directly or indirectly, to be made, published,
7 disseminated, circulated or placed before the public, in any
8 newspaper, magazine or other publication, or in the form of a
9 notice, circular, pamphlet, letter or poster, or over any radio
10 station or television station, or in any other way, any
11 advertisement, announcement or statement, written or oral, which
12 uses the existence of the association for the purpose of sales,
13 solicitation or inducement to purchase any form of insurance
14 covered by this article, provided, however, that this section
15 shall not apply to the association or any other entity which
16 does not sell or solicit insurance.

17 (b) Within one hundred eighty (180) days of the effective
18 date of this article, the association shall prepare a summary
19 document describing the general purposes and current limitations
20 of the article and complying with subsection (c). This document
21 should be submitted to the commissioner for approval. Sixty (60)
22 days after receiving such approval, no insurer may deliver a
23 policy or contract described in section 1703(b)(1) to a
24 policyholder or contract holder, unless the document is
25 delivered to the policyholder or contract holder prior to or at
26 the time of delivery of the policy or contract except if
27 subsection (d) applies. The document should also be available
28 upon request by a policyholder. The distribution, delivery or
29 contents or interpretation of this document shall not mean that
30 either the policy or the contract or the holder thereof would be

1 covered in the event of the impairment or insolvency of a member
2 insurer. The description document shall be revised by the
3 association as amendments to the article may require. Failure to
4 receive this document does not give the policyholder, contract
5 holder, certificate holder or insured any greater rights than
6 those stated in this article.

7 (c) The document prepared under subsection (b) shall contain
8 a clear and conspicuous disclaimer on its face. The commissioner
9 shall promulgate a regulation establishing the form and content
10 of the disclaimer. The disclaimer shall:

11 (1) State the name and address of the association and
12 department.

13 (2) Prominently warn the policyholder or contract holder
14 that the association may not cover the policy or, if coverage is
15 available, it will be subject to substantial limitations and
16 exclusions and conditioned on continued residence in this
17 Commonwealth.

18 (3) State that the insurer and its agents are prohibited by
19 law from using the existence of the association for the purpose
20 of sales, solicitation or inducement to purchase any form of
21 insurance.

22 (4) Emphasize that the policyholder or contract holder
23 should not rely on coverage under the association when selecting
24 an insurer.

25 (5) Provide other information as directed by the
26 commissioner.

27 (d) No insurer or agent may deliver a policy or contract
28 described in section 1703(b) (1) and excluded under section
29 1703(b) (2) from coverage under this article unless the insurer
30 or agent, prior to or at the time of delivery, gives the

1 policyholder or contract holder a separate written notice which
2 clearly and conspicuously discloses that the policy or contract
3 is not covered by the association. The commissioner shall by
4 regulation specify the form and content of the notice.

5 Section 7. This act shall take effect immediately.