

## Chapter 633

(Senate Bill 1003)

AN ACT concerning

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

FOR the purpose of revising the Life and Health Insurance Guaranty Corporation Act; clarifying the purpose of the Act to protect certain persons against failure in the performance of contractual obligations due to the impairment or insolvency of certain insurers; clarifying the persons and circumstances under which certain coverage shall be provided by the Life and Health Insurance Guaranty Corporation; authorizing the Corporation to provide coverage to certain payees or certain beneficiaries of payees under structured settlement annuities under certain circumstances; specifying certain circumstances under which certain persons are not provided coverage under the Act; specifying certain circumstances under which certain policies and contracts issued by member insurers are not provided coverage under the Act; specifying certain interest and certain changes in value of certain policies or contracts that will not be subject to forfeiture under certain circumstances; establishing the principal place of business for certain entities for purposes of the Act; clarifying the authority of the Corporation to take certain action for member insurers that are impaired insurers; clarifying the authority of the Corporation to take certain action for member insurers that are insolvent insurers; clarifying the powers and duties of the Maryland Insurance Commissioner under certain circumstances; authorizing the Corporation, subject to approval of the Commissioner, to issue substitute coverage for certain policies and contracts under certain circumstances; altering the maximum amounts of certain contractual obligations of certain impaired or insolvent insurers for which the Corporation may become liable under certain circumstances; authorizing the Corporation to join an organization of certain state associations for a certain purpose; authorizing the Corporation to elect to succeed to the rights and obligations of certain insolvent insurers relating to certain reinsurance contracts within a certain period of time after the date of an order of liquidation; requiring a receiver and certain reinsurers to make certain information available under certain circumstances for certain purposes after commencement of certain delinquency proceedings; establishing certain rights and obligations of the Corporation relating to certain reinsurance contracts assumed by the Corporation under certain circumstances; requiring the Corporation and certain reinsurers to make certain calculations within a certain period of time after a certain election; requiring certain reinsurers and the Corporation to make certain payments to a receiver in a certain manner under certain circumstances; requiring a receiver to remit certain payments to the Corporation in a certain manner under a certain circumstance; prohibiting certain reinsurers from

taking certain actions relating to reinsurance contracts under certain circumstances; establishing certain rights and obligations of the Corporation and certain reinsurers during a certain period of time after the date of an order of liquidation; authorizing the Corporation to transfer certain reinsurance on certain policies, annuities, or covered obligations under certain circumstances; providing for the application of this Act as it relates to certain laws and certain rights and obligations under certain reinsurance contracts; providing for the application of this Act as it relates to certain rights of the Corporation; extending a certain immunity to certain organizations and certain agents or employees of certain organizations; defining certain terms; altering certain defined terms; and generally relating to the Life and Health Insurance Guaranty Corporation Act.

BY repealing and reenacting, with amendments,

Article – Insurance

Section 9–401, 9–402, 9–403, 9–404, 9–407, 9–408, 9–414, and 9–417

Annotated Code of Maryland

(2011 Replacement Volume)

BY adding to

Article – Insurance

Section 9–407.1

Annotated Code of Maryland

(2011 Replacement Volume)

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

### **Article – Insurance**

9–401.

- (a) In this subtitle the following words have the meanings indicated.
- (b) “Account” means:
  - (1) the health insurance account;
  - (2) the life insurance account; or
  - (3) the annuity account.

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

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

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

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

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

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

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

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

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

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

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

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

- (i) a health maintenance organization;
- (ii) a fraternal benefit society;
- (iii) a mandatory State pooling plan;
- (iv) a mutual assessment company or other entity that operates on an assessment basis; or
- (v) an insurance exchange.

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

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

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

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

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

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

9–402.

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

9–403.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. variable annuity contracts;

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

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

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

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

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

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

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

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

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

2. a minimum premium group insurance plan;

3. a stop-loss group insurance plan; or

4. an administrative services only contract;

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

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

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

1. unallocated funding agreements;

2. unallocated annuity contract benefits;

3. deposit administration contracts; or



4. guaranteed investment contract accounts;

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

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

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

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

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

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

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

**4. EXTRA–CONTRACTUAL CLAIMS; AND**

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

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

**(XIII) A POLICY OR CONTRACT PROVIDING ANY HOSPITAL, MEDICAL, PRESCRIPTION DRUG, OR OTHER HEALTH CARE BENEFITS UNDER**

**PART C OR PART D OF SUBCHAPTER XVIII, CHAPTER 7 OF TITLE 42 OF THE UNITED STATES CODE, COMMONLY KNOWN AS MEDICARE PART C & D, OR ANY REGULATIONS ADOPTED UNDER IT.**

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

9-404.

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

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

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

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

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

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

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

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

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

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

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

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

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

9-407.

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

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

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

- (i) carry out item (1) of this subsection; and
- (ii) ensure payment of the contractual obligations of the impaired insurer, pending action under item (1) of this subsection[; and
- (3) lend money to the impaired insurer].

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

- (1) guarantee or reinsure, or cause to be guaranteed, assumed, or reinsured, the impaired insurer's covered policies of residents;
- (2) provide moneys, pledges, notes, guarantees, or other appropriate means to:
  - (i) carry out item (1) of this subsection; and
  - (ii) ensure payment of the contractual obligations of the impaired insurer to residents, pending action under item (1) of this subsection; and
  - (3) lend money to the impaired insurer.

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

- (i) guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the impaired insurer's covered policies of residents;
- (ii) ensure payment of the contractual obligations of the impaired insurer; and
- (iii) provide moneys, pledges, notes, guarantees, or other means reasonably necessary to carry out this paragraph.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**(II) PAYMENT OF DIVIDENDS WITH MINIMUM GUARANTEES;**

**OR**

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

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

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

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

(2) The Corporation is not liable for health care received after the date of the impairment or insolvency unless the health care was in progress on the date of

the impairment or insolvency or unless other health care coverage is not available from another insurer or nonprofit health service plan.

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

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

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

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

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

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

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

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

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

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

(4) (I) **EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE CORPORATION MAY NOT, WITH RESPECT TO ANY ONE LIFE, BE**



**LIABLE FOR COVERAGE GREATER THAN AN AGGREGATE OF \$300,000 ~~IN HEALTH INSURANCE BENEFITS UNDER PARAGRAPH (3)(II)2 OF THIS SUBSECTION FOR THE BENEFITS DESCRIBED IN PARAGRAPH (3)(II)1, 2, AND 3 OF THIS SUBSECTION.~~**

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

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

**9-407.1.**

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

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

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

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

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

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

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

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

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

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

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

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

**(F) (1) (I) WITHIN 30 DAYS AFTER THE CORPORATION'S ELECTION, THE CORPORATION AND EACH REINSURER UNDER CONTRACTS**

ASSUMED BY THE CORPORATION SHALL CALCULATE THE NET BALANCE DUE TO OR FROM THE CORPORATION UNDER EACH REINSURANCE CONTRACT AS OF THE ELECTION DATE WITH RESPECT TO POLICIES OR ANNUITIES COVERED, IN WHOLE OR IN PART, BY THE CORPORATION.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9-408.

The Corporation may:

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

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

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

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

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

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

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

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

9-414.

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

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

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

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

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

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

(iii) by court order.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

9-417.

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

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

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

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

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

**Approved by the Governor, May 22, 2012.**