

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997

As Engrossed: S3/4/97

A Bill

HOUSE BILL 1635

4
5 By: Representative Pollan, Maddox, Miller, Capps, Cunningham, and Newman

For An Act To Be Entitled

9 "AN ACT TO AMEND THE ARKANSAS LIFE AND DISABILITY
10 INSURANCE GUARANTY ASSOCIATION ACT."

Subtitle

13 "TO AMEND THE ARKANSAS LIFE AND
14 DISABILITY INSURANCE GUARANTY
15 ASSOCIATION ACT."

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

19 SECTION 1. Subchapter 1, Chapter 96, Title 23 of the Arkansas Code is
20 amended to read as follows:

21 "23-96-101. TITLE. This chapter shall be known and cited as the
22 Arkansas Life and Disability Insurance Guaranty Association Act .

24 23-96-102. PURPOSE.

25 (a) The purpose of this chapter is to protect, subject to certain
26 limitations, the persons specified in § 23-96-107(a) against failure in the
27 performance of contractual obligations, under life and disability insurance
28 policies and annuity contracts specified in § 23-96-107(b), because of the
29 impairment or insolvency of the member insurer that issued the policies or
30 contracts.

31 (b) To provide this protection, an association of insurers is created to
32 pay benefits and to continue coverages as limited herein, and members of the
33 association are subject to assessment to provide funds to carry out the
34 purpose of this chapter.

35
36 23-96-103. CONSTRUCTION - APPLICABILITY.

1 (a) This chapter shall be ~~liberally~~ construed to effect the purpose
2 under ~~§ 23-96-102 which shall constitute an aid and guide to interpretation.~~

3 (b) ~~This chapter shall not apply to any insurer which is insolvent or~~
4 ~~unable to fulfill its contractual obligations on March 9, 1989.~~

5 ~~— (c) Nothing in this chapter shall be construed to reduce the liability~~
6 ~~for unpaid assessments of the insureds of an impaired or insolvent insurer~~
7 ~~operating under a plan with assessment liability.~~

8

9 23-96-104. DEFINITIONS.

10 As used in this chapter:

11 (1) Account means any of the two (2) accounts created under 23-
12 96-109;

13 (2) Association means the Arkansas Life and Disability Insurance
14 Guaranty Association created under § 23-96-109;

15 (3) Authorized assessment or the term authorized when used in
16 the context of assessments means a resolution by the Board of Directors has
17 been passed whereby an assessment will be called immediately or in the future
18 from member insurers for a specified amount. An assessment is authorized when
19 the resolution is passed;

20 (4) Benefit plan means a specific employee, union or association
21 of natural persons benefit plan;

22 (5) Called assessment or the term called when used in the
23 context of assessments means that a notice has been issued by the association
24 to member insurers requiring that an authorized assessment be paid within the
25 time frame set forth within the notice. An authorized assessment becomes a
26 called assessment when notice is mailed by the association to member insurers;

27 ~~(36)~~ Commissioner means the Insurance Commissioner of this state;

28 ~~(47)~~ Contractual obligations means any obligation under a policy
29 or contract or certificate under a group policy or contract, or portion
30 thereof for which coverage is provided under § 23-96-107;

31 ~~(58)~~ Covered policy or covered contract means any policy or
32 contract or portion of a policy or contract for which coverage is provided
33 within the scope of this chapter under § 23-96-107;

34 (9) Extra-contractual claims shall include, for example, claims
35 relating to bad faith in the payment of claims, punitive or exemplary damages
36 or attorneys' fees and costs;

1 (610) Impaired insurer means a member insurer which, after March
2 9, 1989, is not an insolvent insurer and-

3 ~~_____ (A) Is deemed by the commissioner to be potentially unable
4 to fulfill its contractual obligations; or~~

5 ~~_____ (B) Is placed under an order of rehabilitation or
6 conservation by a court of competent jurisdiction;~~

7 (711) Insolvent insurer means a member insurer which, after March
8 9, 1989, is placed under an order of liquidation by a court of competent
9 jurisdiction with a finding of insolvency;

10 (812) Member insurer means any insurer licensed or which holds a
11 certificate of authority to transact in this state any kind of insurance for
12 which coverage is provided under § 23-96-107, and includes any insurer whose
13 license or certificate of authority in this state may have been suspended,
14 revoked, not renewed, or voluntarily withdrawn, but does not include:

15 (A) A ~~nonprofit~~ hospital or medical service organization,
16 whether profit or nonprofit;

17 (B) A health maintenance organization;

18 (C) A fraternal benefit society;

19 (D) A mandatory state pooling plan;

20 (E) A burial association;

21 (F) An insurance exchange;

22 (G) Prepaid funeral trusts; or

23 (H) Any entity similar to any of the above;

24 (913) Moody's Corporate Bond Yield Average means the Monthly
25 Average Corporates as published by Moody's Investors Service, Inc., or any
26 successor thereto;

27 (14) Owner of a policy or contract and policy owner and contract
28 owner means the person who is identified as the legal owner under the terms
29 of the policy or contract or who is otherwise vested with legal title to the
30 policy or contract through a valid assignment completed in accordance with the
31 terms of the policy or contract and properly recorded as the owner on the
32 books of the insurer. The terms owner, contract owner and policy owner do
33 not include persons with a mere beneficial interest in a policy or contract.

34 (1015)(A) Person means any individual, corporation, limited
35 liability company, partnership, association, governmental body or entity, or
36 voluntary organization;

1 (B) It is the intent of the General Assembly that the term
2 person shall include a claimant or beneficiary who is receiving annuity
3 benefits as provided in § 11-9-210 and § 23-96-114(e) and (f);

4 (16) Plan sponsor means:

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

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

9 (C) In a case of a benefit plan established or maintained by
10 two (2) or more employers or jointly by one or more employers and one or more
11 employee organizations, the association, committee, joint board of trustees,
12 or other similar group of representatives of the parties who establish or
13 maintain the benefit plan.

14 (~~11~~17)(A) Premiums means amounts or considerations (by whatever
15 name called) received on covered policies or contracts, less returned
16 premiums, considerations, and deposits returned thereon, and less dividends
17 and experience credits thereon.

18 (B)(i) Premiums does not include any amounts or
19 considerations received for any policies or contracts or for the portions of
20 any policies or contracts for which coverage is not provided under § 23-96-
21 106, except that assessable premium shall not be reduced on account of § 23-
22 96-106(a)(3), relating to interest limitations and § 23-96-114(a)(2), relating
23 to limitations with respect to any one individual, any one participant, and
24 any one contract owner holder.

25 (ii) Provided, that premium shall not include:

26 (a) any premiums in excess of one million dollars
27 (\$1,000,000) on an unallocated annuity contract not issued under a
28 governmental retirement benefit plan (or its trustee) established under
29 sections 401(k), 403(b), or 457 of the United States Internal Revenue Code; or

30 (b) with respect to multiple non-group policies
31 of life insurance owned by one owner, whether the policy owner is an
32 individual, firm, corporation or other person, and whether the persons insured
33 are officers, managers, employees or other persons, premiums in excess of one
34 million dollars (\$1,000,000) with respect to these policies or contracts,
35 regardless of the number of policies or contracts held by the owner;

36 (18)(A) Principal place of business of a plan sponsor or a

1 person other than a natural person means the single state in which the natural
2 persons who establish policy for the direction, control and coordination of
3 the operations of the entity as a whole primarily exercise that function,
4 determined by the association in its reasonable judgment by considering the
5 following factors:

6 (1) The state in which the primary executive and
7 administrative headquarters of the entity is located;

8 (2) The state in which the principal office of the
9 chief executive officer of the entity is located;

10 (3) The state in which the board of directors (or
11 similar governing person or persons) of the entity conducts the majority of
12 its meetings;

13 (4) The state in which the executive or management
14 committee of the board of directors (or similar governing person or persons)
15 of the entity conducts the majority of its meetings;

16 (5) The state from which the management of the overall
17 operations of the entity is directed; and

18 (6) In the case of a benefit plan sponsored by
19 affiliated companies comprising a consolidated corporation, the state in which
20 the holding company or controlling affiliate has its principal place of
21 business as determined using the above factors. However, in the case of a
22 plan sponsor, if more than fifty percent (50%) of the participants in the
23 benefit plan are employed in a single state, that state shall be deemed to be
24 the principal place of business of the plan sponsor.

25 (B) The principal place of business of a plan sponsor of a
26 benefit plan described in subsection 16(C) of this section shall be deemed to
27 be the principal place of business of the association, committee, joint board
28 of trustees or other similar group of representatives of the parties who
29 establish or maintain the benefit plan that, in lieu of a specific or clear
30 designation of a principal place of business, shall be deemed to be the
31 principal place of business of the employer or employee organization that has
32 the largest investment in the benefit plan in question;

33 (19) Receivership court means the court in the insolvent or
34 impaired insurer's state having jurisdiction over the conservation,
35 rehabilitation or liquidation of the insurer;

36 (20) Resident means a person to whom a contractual obligation is

1 owed and who resides in this state on the date of entry of a court order that
 2 determines a member insurer to be an impaired insurer or a court order that
 3 determines a member insurer to be an insolvent insurer, whichever occurs
 4 first. A person may be a resident of only one state, which in the case of a
 5 person other than a natural person shall be its principal place of business.
 6 Citizens of the United States that are either (i) residents of foreign
 7 countries, or (ii) residents of United States possessions, territories or
 8 protectorates that do not have an association similar to the association
 9 created by this chapter shall be deemed residents of the state of domicile of
 10 the insurer that issued the policies or contracts;

11 (21) Structured settlement annuity means an annuity purchased in
 12 order to fund periodic payments for a plaintiff or other claimant in payment
 13 for or with respect to personal injury suffered by the plaintiff or other
 14 claimant.

15 (22) State means a state, the District of Columbia, Puerto Rico,
 16 and a United States possession, territory or protectorate;

17 ~~(12) Resident means any person who resides in this state at the~~
 18 ~~time a member insurer is determined to be an impaired or insolvent insurer and~~
 19 ~~to whom a contractual obligation is owed. A person may be a resident of only~~
 20 ~~one (1) state, which in the case of a person other than a natural person shall~~
 21 ~~be its principal place of business;~~

22 (1323) Supplemental contract means a written ~~any~~ agreement
 23 entered into for the distribution of proceeds under a life, disability or
 24 annuity policy or contract-~~proceeds~~;

25 (1424)(A) Unallocated annuity contract means ~~any~~ an annuity
 26 contract or group annuity certificate which is not issued to and owned by an
 27 individual, except to the extent of any annuity benefits guaranteed to an
 28 individual by an insurer under such contract or certificate;

29 (B) It is the intent of the General Assembly that an annuity
 30 contract as provided for in § 11-9-210, shall not be an unallocated annuity
 31 contract.

32

33 23-96-105. ADVERTISEMENT OF ASSOCIATION ACT IN INSURANCE SALES - NOTICE
 34 TO ~~POLICYHOLDERS~~ POLICY OWNERS.

35 (a) No person, including an insurer, agent, or affiliate of an insurer
 36 shall make, publish, disseminate, circulate, or place before the public, or

1 cause, directly or indirectly, to be made, published, disseminated, circulated
2 or placed before the public, in any newspaper, magazine, or other publication,
3 or in the form of a notice, circular, pamphlet, letter, or poster, or over any
4 radio station or television station, or in any other way, any advertisement,
5 announcement, or statement, written or oral, which uses the existence of the
6 Arkansas Life and Disability Insurance Guaranty Association for the purpose of
7 sales, solicitation, or inducement to purchase any form of insurance covered
8 by this chapter, except in conformity with the rules and regulations of the
9 commissioner. In adopting such rules and regulations, the commissioner, in
10 consultation with the board of directors of the association, shall take into
11 consideration the following factors: the need of the public to have
12 confidence in the financial soundness of insurance products offered for sale
13 in this state, the financial integrity of member insurers doing business in
14 this state, and the role of the association in serving as a safety net for
15 policyowners, contract owners, insureds and beneficiaries of impaired or
16 insolvent insurers in this state. Provided, however, that this section shall
17 not apply to the Arkansas Life and Disability Insurance Guaranty Association
18 or any other entity which does not sell or solicit insurance.

19 (b)(1)(A) Within one hundred eighty (180) days of March 9, 1989, the
20 association shall prepare a summary document describing the general purpose
21 and current limitations of the chapter and complying with subsection (c) of
22 this section.

23 (B) This document ~~should~~ shall be submitted to the commissioner
24 for approval.

25 (C) Sixty (60) days after receiving such approval, no insurer may
26 deliver a policy or contract described in § 23-96-107(b) to a policy or
27 contract ~~holder~~ owner unless the summary document is delivered to the policy
28 or contract ~~holder~~ owner ~~prior to or~~ at the time of delivery of the policy or
29 contract except if § 23-96-107(c) applies.

30 (2)(A) The document should also be available upon request by a
31 ~~policyholder~~ policy owner.

32 (B) The distribution, delivery, or contents or interpretation of
33 this document ~~shall not mean~~ does not guarantee that either the policy or the
34 contract or the ~~holder~~ owner thereof ~~would~~ is ~~be~~ covered in the event of the
35 impairment or insolvency of a member insurer.

36 (C) The description document shall be revised by the association

1 as amendments to this chapter may require.

2 (D) Failure to receive this document does not give the ~~policy-~~
3 ~~holder~~ policy owner, contract ~~holder~~ owner, certificate holder, or insured any
4 greater rights than those stated in this chapter.

5 (c)(1) The document prepared under subsection (b) of this section shall
6 contain a clear and conspicuous disclaimer on its face.

7 (2) The commissioner shall ~~promulgate a rule~~ establishing the form
8 and content of the disclaimer.

9 (3) The disclaimer shall:

10 (A) State the name and address of the Arkansas ~~Life and health~~
11 Disability ~~Insurance~~ Guaranty ~~Association~~ and Arkansas ~~Insurance~~
12 Department;

13 (B) Prominently warn the policy or contract ~~holder~~ owner that the
14 Arkansas Life and ~~Health~~ Disability Insurance Guaranty Association may not
15 cover the policy or, if coverage is available, it will be subject to
16 substantial limitations, exclusions, and conditioned on continued residence in
17 ~~the~~ this state;

18 (C) State the types of policies for which guaranty funds will
19 provide coverage;

20 (D)~~(C)~~ State that the insurer and its agents are prohibited by law
21 from using the existence of the Arkansas Life and Disability Insurance Guar-
22 anty Association for the purpose of sales, solicitation, or inducement to
23 purchase any form of insurance;

24 (E)~~(D)~~ Emphasize State that the policy or contract ~~holder~~ owner
25 should not rely on coverage under the Arkansas Life and Disability Insurance
26 Guaranty Association when selecting an insurer;

27 (F) Explain rights available and procedures for filing a
28 complaint to a violation of any provisions of this chapter; and

29 (G)~~(E)~~ Provide other information as directed by the commissioner
30 including but not limited to, sources of information about financial
31 conditions of insurers provided that the information is not proprietary and is
32 subject to disclosure under that state's public records law.

33

34 23-96-106. SCOPE OF CHAPTER.

35 (a) This chapter shall not provide coverage for:

36 (1) ~~Any~~ A portion of a policy or contract not guaranteed by the

1 insurer, or under which the risk is borne by the policy or contract holder
2 owner;

3 (2) ~~Any~~ A portion of a policy or contract of reinsurance, unless
4 assumption certificates have been issued pursuant to the reinsurance policy or
5 contract;

6 (3) ~~Any~~ A portion of a policy or contract to the extent that the
7 rate of interest on which it is based:

8 (A) Averaged over the period of four (4) years prior to the
9 date on which the association becomes obligated with respect to such policy or
10 contract, exceeds a rate of interest determined by subtracting two (2)
11 percentage points from Moody's Corporate Bond Yield Average averaged for that
12 same four-year period or for such lesser period if the policy or contract was
13 issued less than four (4) years before the association became obligated; and

14 (B) On and after the date on which the association becomes
15 obligated with respect to such policy or contract, exceeds the rate of
16 interest determined by subtracting three (3) percentage points from Moody's
17 Corporate Bond Yield Average as most recently available;

18 (4) ~~Any~~ A portion of a policy or contract issued to a plan or
19 program of an employer, association, or similar entity other person to provide
20 life, disability, or annuity benefits to its employees, ~~or~~ members or others
21 to the extent that such plan or program is self-funded or uninsured, including
22 but not limited to benefits payable by an employer, association, or ~~similar~~
23 entity other person under:

24 (A) A multiple employer welfare arrangement as defined in
25 section 514 of the Employee Retirement Income Security Act of 1974, as
26 amended;

27 (B) A minimum premium group insurance plan;

28 (C) A stop-loss group insurance plan; or

29 (D) An administrative services only contract;

30 (5) ~~Any~~ A portion of a policy or contract to the extent that it
31 provides for dividends or experience rating credits, voting rights, or
32 ~~provides that payment of~~ any fees or allowances ~~be paid~~ to any person,
33 including the policy or contract holder ~~owner~~, in connection with the service
34 to or administration of such policy or contract;

35 (6) ~~Any~~ A policy or contract issued in this state by a member
36 insurer at a time when it was not licensed or did not have a certificate of

1 authority to issue such policy or contract in this state;

2 (7) ~~Any~~ An unallocated annuity contract issued to or in connection
3 with a ~~an employee~~ benefit plan protected under the federal Pension Benefit
4 Guaranty Corporation regardless of whether the federal Pension Benefit
5 Guaranty Corporation has yet become liable to make any payments with respect
6 to the benefit plan;

7 (8) ~~Any~~ A portion of ~~any~~ an unallocated annuity contract which is
8 not issued to or in connection with a specific employee, union, or association
9 of natural persons benefit plan or a government lottery; and that is not owned
10 by a benefit plan (directly or in trust) or a government lottery or issued to
11 a collective investment trust or similar pooled fund offered by a bank or
12 other financial institution;

13 (9) Any policy or contract written on the mutual assessment plan
14 or stipulated premium plan prior to January 1, 1968, for which no statutory
15 legal reserves are required- ;

16 (10) A portion of a policy or contract to the extent that the
17 assessments required by Ark. Code Ann. §23-96-115 with respect to the policy
18 or contract are preempted by federal or state law;

19 (11) An obligation that does not arise under the express written
20 terms of the policy or contract issued by the insurer to the contract owner or
21 policy owner, including without limitation:

22 (i) Claims based on marketing materials;

23 (ii) Claims based on side letters, riders or other documents
24 that were issued by the insurer without meeting applicable policy form filing
25 or approval requirements;

26 (iii) Misrepresentations of or regarding policy benefits;

27 (iv) Extra-contractual claims; or

28 (v) A claim for penalties or consequential or incidental
29 damages;

30 (12) A contractual agreement that establishes the member insurer's
31 obligations to provide a book value accounting guaranty for defined
32 contribution benefit plan participants by reference to a portfolio of assets
33 that is owned by the benefit plan or its trustees, which in each case is not
34 an affiliate of the member insurer.

35 (b) The protection provided by this chapter shall not apply where any
36 guaranty protection is provided to residents of this state by the laws of the

1 domiciliary state or jurisdiction of the impaired or insolvent insurer other
2 than this state.

3

4 23-96-107. COVERAGE.

5 (a) This chapter shall provide coverage for the policies and contracts
6 specified in subsection (b) of this section to:

7 (1) Persons who, regardless of where they reside, except for
8 nonresident certificate holders under group policies or contracts, are the
9 beneficiaries, assignees, or payees of the persons covered under subdivision
10 (a)(2) of this section; ~~and~~

11 (2) Persons who are owners of or certificate holders under such
12 policies or contracts, ~~or, in the case of (other than unallocated annuity~~
13 ~~contracts and structured settlement annuities), persons who are the contract~~
14 ~~holders, and in each case who are:~~

15 (A) ~~Are~~ Residents; or

16 (B) ~~Not~~ Are not residents, but only under all of the
17 following conditions:

18 (i) ~~The insurers which that issued such the policies~~
19 ~~or contracts are is~~ domiciled in this state;

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

22 ~~_____ (iii) Such The states in which the persons reside have~~
23 ~~associations similar to the association created by this chapter; and~~

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

28 (3) For unallocated annuity contracts specified in subsection (b),
29 Paragraphs (1) and (2) of this subsection shall not apply and this chapter
30 shall (except as provided in Paragraphs (E) and (F) of this subsection)
31 provide coverage to:

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

36 (B) Persons who are owners of unallocated annuity contracts

1 issued to or in connection with government lotteries if the owners are
2 residents.

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

9 (A) Is a resident, regardless of where the contract owner
10 resides, or

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

13 (i)(a)The contract owner of the structured settlement
14 annuity is a resident, or

15 (b)The contract owner of the structured settlement
16 annuity is not a resident, but the insurer that issued the structured
17 settlement annuity is domiciled in this state;

18 (c)The state in which the contract owner resides
19 has an association similar to the association created by this chapter; and

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

23 (5) This chapter shall not provide coverage for:

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

27 (B) A person covered in Section (3) if any coverage is
28 provided by the association of another state to such person.

29 (6) This chapter is intended to provide coverage to a person who
30 is a resident of this state and, in special circumstances, to a nonresident.

31 In order to avoid duplicate coverage, if a person who would otherwise receive
32 coverage under this chapter is provided coverage under the laws of any other
33 state, the person shall not be provided coverage under this chapter. In

34 determining the application of the provision of this paragraph in situations
35 where a person could be covered by the association of more than one state,
36 whether as an owner, payee, beneficiary or assignee, this chapter shall be

1 construed in conjunction with other state laws to result in coverage by only
2 one association.

3 (b) This chapter shall provide coverage to the persons specified in
4 subsection (a) of this section for direct, nongroup life, disability ~~or~~
5 annuity, ~~and supplemental~~ policies or contracts, and supplemental contracts to
6 any of these, for certificates under direct group policies and contracts, and
7 for unallocated annuity contracts issued by member insurers, except as limited
8 by this chapter. Annuity contracts and certificates under group annuity
9 contracts include but are not limited to guaranteed investment contracts,
10 deposit administration contracts, unallocated funding agreements, allocated
11 funding agreements, structured settlement ~~agreements~~, annuities, annuities
12 issued to or in connection with government lotteries ~~lottery contracts~~, and
13 any immediate or deferred annuity contracts.

14 (c)(1) No insurer or agent may deliver a policy or contract described in
15 subsection (b) of this section and excluded under § 23-96-106(a)(1) from
16 coverage under this chapter unless the insurer or agent, prior to or at the
17 time of delivery, gives the policy or contract holder a separate written
18 notice which clearly and conspicuously discloses that the policy or contract
19 is not covered by the Arkansas Life and Disability Insurance Guaranty
20 Association.

21 (2) The commissioner shall by rule specify the form and content of
22 the notice.

23

24 23-96-108. IMMUNITY.

25 There shall be no liability on the part of and no cause of action of any
26 nature shall arise against any member insurer or its agents or employees, the
27 association or its agents or employees, members of the board of directors, or
28 the commissioner or his representatives for any action or omission by them in
29 the performance of their powers and duties under this chapter. Such immunity
30 shall extend to the participation in any organization of one or more other
31 state associations of similar purposes and to any such organization and its
32 agents or employees.

33

34 23-96-109. CREATION OF THE ASSOCIATION - EXAMINATION - ANNUAL
35 REPORT - TAX EXEMPTION - BOARD OF DIRECTORS.

36 (a)(1) There is created a nonprofit legal entity to be known as the

1 Arkansas Life and Disability Insurance Guaranty Association. All member
2 insurers shall be and remain members of the association as a condition of
3 their authority to transact insurance in this state. The association shall
4 perform its functions under the plan of operation established and approved
5 under § 23-96-116 and shall exercise its powers through a board of directors
6 established under subsection (b) of this section.

7 (2) The association shall come under the immediate supervision of
8 the commissioner and shall be subject to the applicable provisions of the
9 insurance laws of this state. Meetings or records of the association may be
10 opened to the public upon majority vote of the board of directors of the
11 association.

12 (3) The association shall be subject to examination and regulation
13 by the commissioner.

14 (4) The board of directors shall submit to the commissioner each
15 year, not later than one hundred twenty (120) days after the association's
16 fiscal year, a financial report in a form approved by the commissioner and a
17 report of its activities during the preceding fiscal year. Upon request of a
18 member insurer, the association shall provide the member insurer with a copy
19 of the report.

20 (5) For purposes of administration and assessment the association
21 shall maintain two (2) accounts:

22 (A) The life insurance and annuity account, which includes the
23 following subaccounts:

24 (i) Life insurance account;

25 (ii) Annuity account; which shall include annuity contracts
26 owned by a governmental retirement plan (or its trustee) established under
27 Section 401(k), 403(b) or 457 of the United States Internal Revenue Code, but
28 shall otherwise exclude unallocated annuities; and

29 (iii) Unallocated annuity account, which shall ~~include~~
30 exclude contracts owned by a governmental retirement benefit plan (or its
31 trustee) established under Section 401(k), 403(b) or 457 of the United States
32 Internal Revenue Code—qualified under section 403(b) of the United States
33 Internal Revenue Code;

34 (B) The disability insurance account.

35 (6) The association shall be exempt from payment of all fees and all
36 taxes levied by this state or any of its subdivisions, except taxes levied on

1 real property.

2 (b)(1)(A) The board of directors of the association shall consist of not
3 less than five (5) nor more than nine (9) member insurers serving terms as
4 established in the plan of operation.

5 (B) The members of the board shall be selected by member insurers
6 subject to the approval of the commissioner.

7 (C) Vacancies on the board shall be filled for the remaining
8 period of the term by a majority vote of the remaining board members, subject
9 to the approval of the commissioner.

10 (2) In approving selections to the board, the commissioner shall
11 consider, among other things, whether all member insurers are fairly
12 represented.

13 (3) Members of the board may be reimbursed from the assets of the
14 association for expenses incurred by them as members of the board of
15 directors, but members of the board shall not otherwise be compensated by the
16 association for their services.

17

18 23-96-110. POWERS AND DUTIES OF ASSOCIATION.

19 (a) In addition to the rights and powers elsewhere in this chapter, the
20 ~~The~~ association may:

21 (1) Enter into such contracts as are necessary or proper to carry out
22 the provisions and purposes of this chapter;

23 (2) Sue or be sued, including taking any legal actions necessary or
24 proper to recover any unpaid assessments under § 23-96-115 and to settle
25 claims or potential claims against it;

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

29 (4) Employ or retain such persons as are necessary or appropriate to
30 handle the financial transactions of the association and to perform such other
31 functions as become necessary or proper under this chapter;

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

34 (6) Exercise, for the purpose of this chapter and to the extent ap-
35 proved by the commissioner, the powers of a domestic life or disability
36 insurer, but in no case may the association issue insurance policies or

1 annuity contracts other than those issued to perform its obligations under
2 this chapter- ;

3 (7) Organize itself as a corporation or in other legal form permitted
4 by the laws of this state;

5 (8) Request information from a person seeking coverage from the
6 association in order to aid the association in determining its obligations
7 under this chapter with respect to the person, and the person shall promptly
8 comply with the request; and

9 (9) Take other necessary or appropriate action to discharge its duties
10 and obligations under this chapter or to exercise its powers under this
11 chapter.

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

16 (c)(1) The association shall have standing to appear or intervene before
17 any court or agency in this state with jurisdiction over an impaired or
18 insolvent insurer concerning which the association is or may become obligated
19 under this chapter or with jurisdiction over any person or property against
20 whom the association may have rights through subrogation or otherwise. Such
21 standing shall extend to all matters germane to the powers and duties of the
22 association, including, but not limited to, proposals for reinsuring,
23 modifying, or guaranteeing the policies or contracts of the impaired or
24 insolvent insurer and the determination of the policies or contracts and
25 contractual obligations.

26 (2) The association shall also have the right to appear or intervene
27 before a court or agency in another state with jurisdiction over an impaired
28 or insolvent insurer for which the association is or may become obligated or
29 with jurisdiction over ~~a third party~~ any person or property against whom the
30 association may have rights through subrogation ~~of the insurer's policyholders~~
31 or otherwise.

32 (d) The association may join an organization of one (1) or more other
33 state associations of similar purposes, to further the purposes and administer
34 the powers and duties of the association.

35 (e)(1)(A) Records shall be kept of all ~~negotiations and meetings in~~
36 ~~which the association or its representatives are involved~~ meetings of the

1 board of directors to discuss the activities of the association in carrying
2 out its powers and duties under §§ 23-96-111 -- 23-96-114, and 23-96-120.

3 ~~(B) Records of such negotiations or meetings shall be made public~~
4 ~~only upon~~ The records of the association with respect to an impaired or
5 insolvent insurer shall not be disclosed prior to the termination of a
6 liquidation, rehabilitation, or conservation proceeding involving the impaired
7 or insolvent insurer, upon the termination of the impairment or insolvency of
8 the insurer, or upon the order of a court of competent jurisdiction.

9 (2) Nothing in this subsection shall limit the duty of the association
10 to render a report of its activities under § 23-96-109(a)(4).

11 (f) At any time within one year after the date on which the association
12 becomes responsible for the obligations of a member insurer (the coverage
13 date), the association may elect to succeed to the rights and obligations of
14 the member insurer, that accrue on or after the coverage date and that relate
15 to contracts covered (in whole or in part) by the association, under any one
16 or more indemnity reinsurance agreement(s) entered into by the member insurer
17 as a ceding insurer and selected by the association; provided, however, that
18 the association may not exercise any such election with respect to a
19 reinsurance agreement if the receiver, rehabilitator or liquidator of the
20 member insurer has previously and expressly disaffirmed the reinsurance
21 agreement. The election shall be effected by a notice to the receiver,
22 rehabilitator or liquidator and to the affected reinsurer(s). If the
23 association makes an election, paragraphs (1) through (4) below shall apply
24 with respect to the agreements selected by the association:

25 (1) The association shall be responsible for all unpaid premiums due
26 under the agreement(s) (for periods both before and after the coverage date),
27 and shall be responsible for the performance of all other obligations to be
28 performed after the coverage date, in each case which relate to contracts
29 covered (in whole or in part) by the association. The association may charge
30 contracts covered in part by the association through reasonable allocation
31 methods, the costs for reinsurance in excess of the obligations of the
32 association;

33 (2) The association shall be entitled to any amounts payable by the
34 reinsurer under the agreement(s) with respect to losses or events that occur
35 in periods after the coverage date and that relate to contracts covered by the
36 association (in whole or in part), provided that, upon receipt of any such

1 amounts, the association shall be obliged to pay to the beneficiary under the
2 policy or contract on account of which the amounts were paid a portion of the
3 amount equal to the excess of:

4 (i) The amount received by the association; or

5 (ii) The benefits paid by the association on account of the policy
6 or contract less the retention of the impaired or insolvent member insurer
7 applicable to the loss or event;

8 (3) Within thirty (30) days following the associations election, the
9 association and each indemnity reinsurer shall calculate the net balance due
10 to or from the association under each such reinsurance agreement(s) as of the
11 date of the associations election, which calculation shall give full credit to
12 all items paid by either the member insurer (or its receiver, rehabilitator or
13 liquidator) or the indemnity reinsurer during the period between the coverage
14 date and the date of the association's election. Either the association or
15 indemnity reinsurer shall pay the net balance due the other within five (5)
16 days of the completion of the aforementioned calculation. If the receiver,
17 rehabilitator or liquidator has received any amounts due the association
18 pursuant to subsection (f)(2), the receiver, rehabilitator or liquidator shall
19 remit the same to the association as promptly as practicable.

20 (4) If the association, within sixty (60) days of the election, pays
21 the premiums due for period both before and after the coverage date that
22 relates to contracts covered by the association (in whole or in part), the
23 reinsurer shall not be entitled to terminate the reinsurance agreements(s)
24 (insofar as the agreement(s)) relate to contracts covered by the association
25 (in whole or in part)) and shall not be entitled to set off any unpaid premium
26 due for periods prior to the coverage date against amounts due the
27 association.

28 (g) In the event the association transfers its obligations to another
29 insurer, and if the association and the other insurer agree, the other insurer
30 shall succeed to the rights and obligations of the association under
31 subsection (f) effective as of the date agreed upon by the association and the
32 other insurer and regardless of whether the association has made the election
33 referred to above in subsection (f) provided that:

34 (i) the indemnity reinsurance agreement(s) shall automatically
35 terminate for new reinsurance unless the indemnity reinsurer and the other
36 insurer agree to the contrary;

1 (ii) the obligations described in the proviso to subsection (f)(2)
2 above shall no longer apply on and after the date the indemnity reinsurance
3 agreement is transferred to the third party insurer; and

4 (iii) this subsection (g) shall not apply if the association has
5 previously expressly determined in writing that it will not exercise the
6 election referred to in subsection (f).

7 (h) The provisions of subsection (f) shall supersede the provisions of
8 any law of this state or of any affected reinsurance agreement(s) that provide
9 for or require any payment of reinsurance proceeds, on account of losses or
10 events that occur in periods after the coverage date, to the receiver,
11 liquidator or rehabilitator of the insolvent member insurer. The receiver,
12 rehabilitator or liquidator shall remain entitled to any amounts payable by
13 the reinsurer under the reinsurance agreement(s) with respect to losses or
14 events that occur in periods prior to the coverage date (subject to applicable
15 setoff provisions).

16 (i) Except as otherwise expressly provided above, nothing herein shall
17 alter or modify the terms and conditions of the indemnity reinsurance
18 agreements of the insolvent member insurer. Nothing herein shall abrogate or
19 limit any rights of any reinsurer to claim that is entitled to rescind a
20 reinsurance agreement. Nothing herein shall give a policy owner or
21 beneficiary an independent cause of action against an indemnity reinsurer that
22 is not otherwise set forth in the indemnity reinsurance agreement.

23 (j) The board of directors of the association shall have discretion and
24 may exercise reasonable business judgment to determine the means by which the
25 association is to provide the benefits of this chapter in an economical and
26 efficient manner and may provide additional or alternative coverages and
27 benefits in appropriate situations.

28 (k) Where the association has arranged or offered to provide the
29 benefits of this chapter to a covered person under a plan or arrangement that
30 fulfills the association's obligations under this chapter, the person shall
31 not be entitled to benefits from the association in addition to or other than
32 those provided under the plan or arrangement.

33 (l) Venue in a suit against the association arising under this chapter
34 shall be in Pulaski County. The association shall not be required to give an
35 appeal bond in an appeal that relates to a cause of action arising under this
36 chapter.

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23-96-111. IMPAIRED INSURERS.

(a) If a member insurer is an impaired ~~domestic~~ insurer, the association may, in its discretion and subject to any conditions imposed by the association that do not impair the contractual obligations of the impaired insurer and that are approved by commissioner ~~and that are, except in cases of court-ordered conservation or rehabilitation, also approved by the impaired insurer:~~

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

(2) Provide such moneys, pledges, loans, notes, guarantees, or other means as are proper to effectuate subdivision (a)(1) of this section and assure payment of the contractual obligations of the impaired insurer pending action under subdivision (a)(1) of this section. ~~;~~ ~~or~~

~~_____ (3) Loan money to the impaired insurer.~~

~~_____ (b)(1) If a member insurer is an impaired insurer, whether domestic, foreign, or alien, and the insurer is not paying claims timely, then, subject to the preconditions specified in subdivision (b)(2) of this section, the association shall, in its discretion, either:~~

~~_____ (A) Take any of the actions specified in subsection (a) of this section, subject to the conditions therein; or~~

~~_____ (B) Provide substitute benefits in lieu of the contractual obligations of the impaired insurer solely for:~~

- ~~_____ (i) Disability claims;~~
- ~~_____ (ii) Periodic annuity benefit payments;~~
- ~~_____ (iii) Death benefits;~~
- ~~_____ (iv) Supplemental benefits; and~~
- ~~_____ (v) Cash withdrawals for policy or contract owners who~~

~~petition therefor under claims of emergency or hardship in accordance with standards proposed by the association and approved by the commissioner.~~

~~_____ (2) The association shall be subject to the requirements of subdivision (b)(1) of this section only if:~~

~~_____ (A) The laws of the impaired insurer's state of domicile provide that, until all payments of or on account of the impaired insurer's contractual obligations by all guaranty associations, along with all expenses~~

1 ~~thereof and interest on all such payments and expenses, shall have been repaid~~
2 ~~to the guaranty associations or a plan of repayment by the impaired insurer~~
3 ~~shall have been approved by the guaranty associations:~~

4 ~~_____ (i) The delinquency proceeding shall not be dismissed;~~

5 ~~_____ (ii) Neither the impaired insurer nor its assets shall~~
6 ~~be returned to the control of it's shareholders or private management; and~~

7 ~~_____ (iii) It shall not be permitted to solicit or accept~~
8 ~~new business or have any suspended or revoked license restored; and~~

9 ~~_____ (B)(i) If the impaired insurer is a domestic insurer, it has~~
10 ~~been placed under an order of rehabilitation by a court of competent juris-~~
11 ~~isdiction in this state; or~~

12 ~~_____ (ii) If the impaired insurer is a foreign or alien~~
13 ~~insurer:~~

14 ~~_____ (a) It has been prohibited from soliciting or~~
15 ~~accepting new business in this state;~~

16 ~~_____ (b) Its certificate of authority has been~~
17 ~~suspended or revoked in this state; and~~

18 ~~_____ (c) A petition for rehabilitation or liquidation~~
19 ~~has been filed in a court of competent jurisdiction in its state of domicile~~
20 ~~by the commissioner of the state.~~

21 ~~_____ (c) The liquidator, rehabilitator, or conservator of any impaired in-~~
22 ~~surer may notify all interested persons of the effect of this chapter.~~

23

24 23-96-112. INSOLVENT INSURERS.

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

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

29 (B) Assure payment of the contractual obligations of the
30 insolvent insurer; and

31 (C) Provide such moneys, pledges, loans, notes, guarantees, or
32 other means as are reasonably necessary to discharge such duties; or

33 (2) ~~With respect only to life and health insurance policies, p~~
34 Provide benefits and coverages in accordance with ~~§~~ 23-96-113.

35 (b) All proceedings in which the insolvent insurer is a party in any
36 court in this state shall be stayed sixty (60) days from the date an order of

1 liquidation, rehabilitation, or conservation is final to permit proper legal
2 action by the association on any matters germane to its powers or duties. As
3 to judgment under any decision, order, verdict, or finding based on default,
4 the association may apply to have such judgment set aside by the same court
5 that made such judgment and shall be permitted to defend against such suit on
6 the merits.

7

8 23-96-113. AUTHORITY OF ASSOCIATION WHEN PROCEEDING UNDER

9 ~~§~~ 23-96-111 OR ~~§~~ 23-96-112.

10 (a)(1) When proceeding under ~~§~~ 23-96-111 ~~(b)(1)(B)~~ or ~~§~~ 23-96-112(a)(2),
11 the association shall, ~~with respect to only life and health insurance~~
12 ~~policies~~:

13 (A) With respect to life and disability insurance policies and
14 annuities, assure ~~Assure~~ payment of benefits for premiums identical to the
15 premiums and benefits, except for terms of conversion and renewability, that
16 would have been payable under the policies or contracts of the insolvent
17 insurer, for claims incurred:

18 (i) With respect to group policies, and contracts, not later
19 than the earlier of the next renewal date under such policies or contracts or
20 forty-five (45) days, but in no event less than thirty (30) days, after the
21 date on which the association becomes obligated with respect to such policies
22 and contracts;

23 (ii) With respect to individual nongroup policies, contracts
24 and annuities, not later than the earlier of the next renewal date, if any,
25 under such policies or contracts or one (1) year, but in no event less than
26 thirty (30) days, from the date on which the association becomes obligated
27 with respect to such policies or contracts;

28 (B) Make diligent efforts to provide all known insureds or ~~group~~
29 ~~policyholders~~ annuitants (for non-group policies and contracts) or group
30 policy owners with respect to group policies and contracts thirty (30) days'
31 notice of the termination (pursuant to subsection (a)(1) of this section) of
32 the benefits provided; ~~and~~

33 (C) With respect to individual non-group life and disability
34 insurance policies and annuities covered by the association, make available to
35 each known insured or annuitant, or owner if other than the insured or
36 annuitant, and with respect to an individual formerly insured or formerly an

1 annuitant under a group policy who is not eligible for replacement group
2 coverage, make available substitute coverage on an individual basis in
3 accordance with the provisions of subdivision (a)(2)(A) of this section, if
4 the insureds or annuitants had a right under law or the terminated policy or
5 annuity to convert coverage to individual coverage or to continue an
6 individual policy or annuity in force until a specified age or for a specified
7 time, during which the insurer had no right unilaterally to make changes in
8 any provisions of the policy or annuity or had a right only to make changes in
9 premium by class.

10 (2)(A) In providing the substitute coverage required under
11 subdivision (a)(1)(C) of this section, the association may offer either to
12 reissue the terminated coverage or to issue an alternative policy.

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

16 (C) The association may reinsure any alternative or reissued
17 policy;

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

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

30 (C) Any alternative policy issued by the association shall provide
31 coverage of a type similar to that of the policy issued by the impaired or
32 insolvent insurer, as determined by the association.

33 (b) When proceeding under ~~§ 23-96-111(b)(1)(B)~~ or § 23-96-112(a) with
34 respect to ~~any~~ a policy or contract carrying guaranteed minimum interest
35 rates, the association shall assure the payment or crediting of a rate of
36 interest consistent with § 23-96-106(a)(3).

1 (c) In carrying out its duties under §§ 23-96-111(b) and 23-96-112(a),
2 the association may, ~~subject to approval by the court:~~

3 (1) Subject to approval by a court in this state, impose ~~Impose~~
4 permanent policy or contract liens in connection with any guarantee,
5 assumption, or reinsurance agreement, if the association finds that the
6 amounts which can be assessed under this chapter are less than the amounts
7 needed to assure full and prompt performance of the association's duties under
8 this chapter or that the economic or financial conditions as they affect
9 member insurers are sufficiently adverse to render the imposition of such
10 permanent policy or contract liens to be in the public interest;

11 (2) Subject to approval by a court in this state, impose ~~Impose~~
12 temporary ~~moratoria~~ moratoriums or liens on payments of cash values and policy
13 loans, or any other right to withdraw funds held in conjunction with policies
14 or contracts, in addition to any contractual provisions for deferral of cash
15 or policy loan value. In addition, in the event of a temporary moratorium or
16 moratorium charge imposed by the receivership court on payment of cash values
17 or policy loans, or on any other right to withdraw funds held in conjunction
18 with policies or contract, out of the assets of the impaired or insolvent
19 insurer, the association may defer the payment of cash values, policy loans or
20 other rights by the association for the period of the moratorium or moratorium
21 charge imposed by the receivership court, except for claims covered by the
22 association to be paid in accordance with a hardship procedure established by
23 the liquidator or rehabilitator and approved by the receivership court.

24 (3) A deposit in this state, held pursuant to law or required by the
25 commissioner for the benefit of creditors, including policy owners, not turned
26 over to the domiciliary liquidator upon the entry of a final order of
27 liquidation or order approving a rehabilitation plan of an insurer domiciled
28 in this state or in a reciprocal state, pursuant to Ark. Code Ann. §23-68-115,
29 shall be promptly paid to the association. The association (i) shall be
30 entitled to retain a portion of any amount so paid to it equal to the
31 percentage determined by dividing the aggregate amount of policy owners claims
32 related to that insolvency for which the association has provided statutory
33 benefits by the aggregate amount of all policy owners' claims in this state
34 related to that insolvency and (ii) shall remit to the domiciliary receiver
35 the amount so paid to the association and retained pursuant to clause (i).
36 Any amount so paid to the association and retained by it pursuant to clause

1 (i) shall be treated as a distribution of estate assets pursuant to Ark. Code
2 Ann. §23-68-126 or similar provision of the state of domicile of the impaired
3 or insolvent insurer.

4
5 23-96-114. LIABILITY FOR BENEFITS - ASSIGNMENT OR SUBROGATION OF
6 RIGHTS.

7 (a) The benefits ~~for which that~~ the association may become ~~liable~~
8 obligated to cover shall in no event exceed the lesser of:

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

11 (2)(A) With respect to any one life, regardless of the number of poli-
12 cies or contracts:

13 (i) One hundred thousand dollars (\$100,000) in life insurance
14 death benefits or net cash surrender and net cash withdrawal values for life
15 insurance;

16 (ii) One hundred thousand dollars (\$100,000) in disability
17 insurance benefits, including any net cash surrender and net cash withdrawal
18 values;

19 (iii) One hundred thousand dollars (\$100,000) in the present
20 value of annuity benefits, including net cash surrender and net cash with-
21 drawal values;

22 (B) With respect to each individual participating in a governmental
23 retirement benefit plan established under sections 401(k), 403(b), or 457, of
24 the United States Internal Revenue Code covered by an unallocated annuity
25 contract or the beneficiaries of each such individual if deceased, in the
26 aggregate, one hundred thousand dollars (\$100,000) in present value annuity
27 benefits, including net cash surrender and net cash withdrawal values;

28 (C) With respect to any one (1) contract holder, one million
29 dollars (\$1,000,000) in unallocated annuity contract benefits, irrespective of
30 the number of such contracts held by that contract holder.

31 (b)(1) Provided, however, that in no event shall the association be liable to
32 expend more than the three hundred thousand dollars (\$300,000) in the
33 aggregate with respect to any one life under §§ 23-96-106, 23-96-107, and this
34 section.

35 (2) The limitations set forth in this subsection are limitations on the
36 benefits for which the association is obligated before taking into account

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

7 (3) In performing its obligations to provide coverage under Section
8 23-96-111 of this chapter, the association shall not be required to guarantee,
9 assume, reinsure, or perform, or cause to be guaranteed, assumed, reinsured or
10 performed, the contractual obligations of the insolvent or impaired insurer
11 under a covered policy or contract that do not materially affect the economic
12 values or economic benefits of the covered policy or contract.

13 (c)(1) Any person receiving benefits under this chapter shall be deemed
14 to have assigned the rights under, and any causes of action against any person
15 for losses arising under, resulting from or otherwise relating to, the covered
16 policy or contract to the association to the extent of the benefits received
17 because of this chapter, whether the benefits are payments of or on account of
18 contractual obligations, continuation of coverage, or provision of substitute
19 or alternative coverages. The association may require an assignment to it of
20 such rights and cause of action by any payee, policy, or contract owner,
21 beneficiary, insured, or annuitant as a condition precedent to the receipt of
22 any right or benefits conferred by this chapter upon such person.

23 (2) The subrogation rights of the association under this subsection
24 shall have the same priority against the assets of the impaired or insolvent
25 insurer as that possessed by the person entitled to receive benefits under
26 this chapter.

27 (3) In addition to ~~subsections divisions~~ (c)(1) and (2) above, the
28 association shall have all common law rights of subrogation and any other
29 equitable or legal remedy ~~which that~~ which that would have been available to the impaired
30 or insolvent insurer or ~~holder~~ owner, beneficiary or payee of a policy or
31 contract with respect to such policy or contracts.

32 (4) If the preceding provisions of this subsection are invalid or
33 ineffective with respect to any person or claim for any reason, the amount
34 payable by the association with respect to the related covered obligations
35 shall be reduced by the amount realized by any other person with respect to
36 the person or claim that is attributable to the policies (or portion thereof)

1 covered by the association.

2 (5) If the association has provided benefits with respect to a
3 covered obligation and a person recovers amounts as to which the association
4 has rights as described in the preceding paragraphs of this subsection, the
5 person shall pay to the association the portion of the recovery attributable
6 to the policies (or portion thereof) covered by the association.

7 (d)(1) For the purpose of carrying out its obligations under this chap-
8 ter, the association shall be deemed to be a creditor of the impaired or
9 insolvent insurer to the extent of assets attributable to covered policies
10 reduced by any amounts to which the association is entitled as subrogee
11 pursuant to subsection (c) of this section. Assets of the impaired or
12 insolvent insurer attributable to covered policies shall be used to continue
13 all covered policies and pay all contractual obligations of the impaired or
14 insolvent insurer as required by this chapter.

15 (2) Assets attributable to covered policies, as used in this subsec-
16 tion, are that proportion of the assets which the reserves that should have
17 been established for such policies bear to the reserves that should have been
18 established for all policies of insurance written by the impaired or insolvent
19 insurer.

20 (e) As a creditor of the impaired or insolvent insurer as established in
21 subsection (d) of this section and consistent with Ark. Code Ann. §23-68-126,
22 the association and other similar associations shall be entitled to receive a
23 disbursement of assets out of the marshaled assets, from time to time as the
24 assets become available, to reimburse it, as a credit against contractual
25 obligations under this chapter. If the liquidator has not, within one hundred
26 twenty (120) days of a final determination of insolvency of an insurer by the
27 receivership court, made an application to the court for the approval of a
28 proposal to disburse assets out of marshaled assets to guaranty associations
29 having obligations because of the insolvency, then the association shall be
30 entitled to make application to the receivership court for approval of its own
31 proposal to disburse these assets.

32 (ef) It is the intent of the General Assembly that the coverage provided
33 through the Arkansas Life and Disability Insurance Guaranty Association for
34 any annuity contract executed pursuant to § 11-9-210 shall be the lesser of
35 the contractual obligations of the insurer or one hundred thousand dollars
36 (\$100,000) in the present value of annuity benefits including net cash

1 surrender and net cash withdrawal values as provided in subsection (a) of this
2 section;

3 (¶g) It is the intent of the General Assembly that coverage provided by
4 the Arkansas Life and Disability Insurance Guaranty Association for annuity
5 contracts executed pursuant to ¶ 11-9-210, shall not be affected by the fact
6 that the annuity payments are sent to the Workers' Compensation Commission for
7 distribution to the claimants and beneficiaries, and that any funds provided
8 by the Arkansas Life and Disability Insurance Guaranty Association for payment
9 to claimants or beneficiaries for whom annuity contracts are executed under ¶
10 11-9-210 shall be sent to the Workers' Compensation Commission for
11 distribution to claimants or beneficiaries.

12

13 23-96-115. ASSESSMENTS - TAX CREDITS.

14 (a)(1) For the purpose of providing the funds necessary to carry out the
15 powers and duties of the association, the board of directors shall assess the
16 member insurers, separately for each account, at such time and for such
17 amounts as the board finds necessary.

18 (2) Assessments shall be due not less than thirty (30) days after
19 prior written notice to the member insurers and shall accrue interest at ten
20 percent (10%) per annum on and after the due date.

21 (b) There shall be two (2) classes of assessments, as follows:

22 (1) Class A assessments shall be ~~made~~ authorized and called for the
23 purpose of meeting administrative and legal costs and other expenses ~~and~~
24 ~~examinations conducted under the authority of ¶ 23-96-117(5)~~. Class A
25 assessments may be ~~made~~ authorized and called whether or not related to a
26 particular impaired or insolvent insurer;

27 (2) Class B assessments shall be ~~made~~ authorized and called to the
28 extent necessary to carry out the powers and duties of the association under
29 ¶¶ 23-96-106(b), 23-96-110 -- 23-96-114, and 23-96-120 with regard to an
30 impaired or an insolvent insurer.

31 (c)(1)(A) The amount of ~~any~~ a Class A assessment shall be determined by
32 the board and may be authorized and called on a pro rata or non-pro rata
33 basis. If pro rata, the board may provide that it be credited against future
34 Class B assessments. A The total of all non-pro rata assessments shall not
35 exceed one hundred fifty dollars (\$150) per member insurer in any one (1)
36 calendar year.

1 (B) The amount of ~~any~~ a Class B assessment shall be allocated for
2 assessment purposes among the accounts pursuant to an allocation formula which
3 may be based on the premiums or reserves of the impaired or insolvent insurer
4 or any other standard deemed by the board in its sole discretion as being fair
5 and reasonable under the circumstances.

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

16 (3) Assessments for funds to meet the requirements of the associa-
17 tion with respect to an impaired or insolvent insurer shall not be ~~made~~
18 authorized or called until necessary to implement the purpose of this chapter.

19 (d) Classification of assessments under subsection (b) of this section
20 and computation of assessments under subsection (c) of this section shall be
21 made with a reasonable degree of accuracy, recognizing that exact
22 determinations may not always be possible. The association shall notify each
23 member insurer of its anticipated pro rata share of an authorized assessment
24 not yet called within one hundred eighty (180) days after the assessment is
25 authorized.

26 (e) The association may abate or defer, in whole or in part, the
27 assessment of a member insurer if, in the opinion of the board, payment of the
28 assessment would endanger the ability of the member insurer to fulfill its
29 contractual obligations. In the event an assessment against a member insurer
30 is abated or deferred in whole or in part, the amount by which such assessment
31 is abated or deferred may be assessed against the other member insurers in a
32 manner consistent with the basis for assessments set forth in this section.
33 Once the conditions that caused a deferral have been removed or rectified, the
34 member insurer shall pay all assessments that were deferred pursuant to a
35 repayment plan approved by the association.

36 (f)(1)(A) ~~The~~ Subject to the provisions of paragraph (B) of this

1 subsection the total of all assessments upon authorized by the association
2 with respect to a member insurer for each account subaccount of the life
3 insurance and annuity account and for the disability account shall not in any
4 one (1) calendar year exceed two percent (2%) ~~and for the health account shall~~
5 ~~not in any one (1) calendar year exceed two percent (2%)~~ of such insurer's
6 average annual premiums received in this state on the policies and contracts
7 covered by the subaccount or account during the three (3) calendar years
8 preceding the year in which the insurer became an impaired or insolvent
9 insurer.

10 (B) If two (2) or more assessments are authorized in one (1)
11 calendar year with respect to insurers that become impaired or insolvent in
12 different calendar years, the average annual premiums for purposes of the
13 aggregate assessment percentage limitation referenced in paragraph (A) of this
14 subsection shall be equal and limited to the higher of the three-year average
15 annual premiums for the applicable subaccount or account as calculated
16 pursuant to this section.

17 (BC) If the maximum assessment, together with the other assets of
18 the association in any account, does not provide in any one (1) year in either
19 account an amount sufficient to carry out the responsibilities of the
20 association, the necessary additional funds shall be assessed as soon
21 thereafter as permitted by this chapter.

22 (2) The board may provide in the plan of operation a method of
23 allocating funds among claims, whether relating to one (1) or more impaired or
24 insolvent insurers, when the maximum assessment will be insufficient to cover
25 anticipated claims.

26 (3) If ~~a one percent (1%)~~ the maximum assessment for any subaccount
27 of the life and annuity account in any one (1) year does not provide an amount
28 sufficient to carry out the responsibilities of the association, then pursuant
29 to subdivision (c)(2) of this section, the board shall assess ~~all~~ the other
30 subaccounts of the life and annuity account for the necessary additional
31 amount, subject to the maximum stated in subdivision (f)(1) above.

32 (g) The board may, by an equitable method as established in the plan of
33 operation, refund to member insurers, in proportion to the contribution of
34 each insurer to that account, the amount by which the assets of the account
35 exceed the amount the board finds is necessary to carry out during the coming
36 year the obligations of the association with regard to that account, including

1 assets accruing from assignment, subrogation, net realized gains, and income
2 from investments. A reasonable amount may be retained in any account to
3 provide funds for the continuing expenses of the association and for future
4 losses claims.

5 (h) It shall be proper for any member insurer, in determining its
6 premium rates and policyholder dividends as to any kind of insurance within
7 the scope of this chapter, to consider the amount reasonably necessary to meet
8 its assessment obligations under this chapter.

9 (i)(1) The association shall issue to each insurer paying an assessment
10 under this chapter, other than Class A assessment, a certificate of
11 contribution, in a form prescribed by the commissioner, for the amount of the
12 assessment so paid.

13 (2) All outstanding certificates shall be of equal dignity and
14 priority without reference to amounts or dates of issue.

15 (3) A certificate of contribution may be shown by the insurer in its
16 financial statement as an asset in such form and for such amount, if any, and
17 period of time as the commissioner may approve.

18 (j)(1)(A) A member insurer may offset against its premium tax liability
19 to this state an assessment described in subsection (i) of this section to the
20 extent of twenty percent (20%) of the amount of such assessment for each of
21 the five (5) calendar years following the year in which such assessment was
22 paid.

23 (B) In the event a member insurer should cease doing business, all
24 uncredited assessments may be credited against its premium tax liability for
25 the year it ceases doing business.

26 (2)(A) Any sums which are acquired by refund, pursuant to subsection
27 (g) of this section, from the association by member insurers and which have
28 theretofore been offset against premium ~~franchise or income~~ taxes as provided
29 in subdivision (j)(1)(A) above, shall be paid by such insurers to this state
30 in such manner as the tax authorities may require.

31 (B) The association shall notify the commissioner that such re-
32 funds have been made.

33

34 23-96-116. PLAN OF OPERATION.

35 (a)(1) The association shall submit to the commissioner a plan of
36 operation and any amendments thereto necessary or suitable to assure the fair,

1 reasonable, and equitable administration of the association. The plan of
2 operation and any amendments thereto shall become effective upon the
3 commissioner's written approval or unless he has not disapproved it within
4 thirty (30) days.

5 (2) If the association fails to submit a suitable plan of operation
6 within one hundred twenty (120) days following March 9, 1989, or if at any
7 time thereafter the association fails to submit suitable amendments to the
8 plan, the commissioner shall, after notice and hearing, adopt and promulgate
9 such reasonable rules as are necessary or advisable to effectuate the
10 provisions of this chapter. Such rules shall continue in force until modified
11 by the commissioner or superseded by a plan submitted by the association and
12 approved by the commissioner.

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

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

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

17 (2) Establish the amount and method of reimbursing members of the
18 board of directors under § 23-96-109(b);

19 (3) Establish regular places and times for meetings including
20 telephone conference calls of the board of directors;

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

23 (5) Establish the procedures whereby selections for the board of di-
24 rectors will be made and submitted to the commissioner;

25 (6) Establish any additional procedures for assessments under § 23-
26 96-115;

27 (7) Contain additional provisions necessary or proper for the execu-
28 tion of the powers and duties of the association.

29 (d)(1) The plan of operation may provide that any or all powers and
30 duties of the association, except those under §§ 23-96-114(c)(3) and 23-96-
31 115, are may be delegated to the State Insurance Department or to a
32 corporation, association, or other organization or other entity which performs
33 or will perform functions similar to those of this association, or its
34 equivalent, in two (2) or more states. Such a corporation, association, ~~or~~
35 organization or other entity, including, as applicable, the State Insurance
36 Department, shall be reimbursed for any payments made on behalf of the

1 association and shall be paid for its performance of any function of the
2 association.

3 (2) A delegation under this subsection shall take effect only with
4 the approval of both the board of directors and the commissioner, and may be
5 made only to a corporation, association, ~~or~~ organization or other entity,
6 including the State Insurance Department, which extends protection not
7 substantially less favorable and effective than that provided by this chapter.
8

9 23-96-117. DETECTION AND PREVENTION OF INSOLVENCIES OR IMPAIRMENTS.

10 To aid in the detection and prevention of insurer insolvencies or
11 impairments:

12 (1) It shall be the duty of the commissioner:

13 (A)(i) To notify the commissioners of all the other states,
14 territories of the United States, and the District of Columbia when he takes
15 any of the following actions against a member insurer:

16 (a) Revocation of license;

17 (b) Suspension of license; or

18 (c) Makes any formal order that such company restrict its
19 premium writing, obtain additional contributions to surplus, withdraw from the
20 state, reinsure all or any part of its business, or increase capital, surplus,
21 or any other account for the security of ~~policyholders~~ owners or creditors.

22 (ii) Such notice shall be mailed to all commissioners within
23 thirty (30) days following the action taken or the date on which such action
24 occurs.

25 (B)(i) To report to the board of directors when he has taken any
26 of the actions set forth in subdivision (1)(A) of this section or has received
27 a report from any other commissioner indicating that any such action has been
28 taken in another state.

29 (ii) Such report to the board of directors shall contain all
30 significant details of the action taken or the report received from another
31 commissioner.

32 (C) To report to the board of directors when he has reasonable
33 cause to believe from any examination, whether completed or in process, of any
34 member ~~company~~ insurer that such ~~company~~ insurer may be an impaired or
35 insolvent insurer.

36 (D)(i) To furnish to the board of directors the National

1 Association of Insurance Commissioners' Insurance Regulatory Information Sys-
2 tem (IRIS) ratios and listings of companies not included in the ratios
3 developed by the National Association of Insurance Commissioners, and the
4 board may use the information contained therein in carrying out its duties and
5 responsibilities under this section.

6 (ii) Such report and the information contained therein shall
7 be kept confidential by the board of directors until such time as made public
8 by the commissioner or other lawful authority.

9 (2) The commissioner may seek the advice and recommendations of the
10 board of directors concerning any matter affecting his duties and
11 responsibilities regarding the financial condition of member insurers and
12 companies seeking admission to transact insurance business in this state.

13 (3)(A) The board of directors may, upon majority vote, make reports and
14 recommendations to the commissioner upon any matter germane to the solvency,
15 liquidation, rehabilitation, or conservation of any member insurer or germane
16 to the solvency of any company seeking to do an insurance business in this
17 state.

18 (B) Such reports and recommendations shall not be considered public
19 documents.

20 (4) ~~It shall be the duty of t~~ The board of directors may, upon majority
21 vote, ~~to~~ notify the commissioner of any information indicating any member
22 insurer may be an impaired or insolvent insurer.

23 ~~_____ (5)(A)(i) The board of directors may, upon majority vote, request that~~
24 ~~the commissioner order an examination of any member insurer which the board in~~
25 ~~good faith believes may be an impaired or insolvent insurer.~~

26 ~~_____ (ii) Within thirty (30) days of the receipt of such request, the~~
27 ~~commissioner shall begin such examination.~~

28 ~~_____ (iii) The examination may be conducted as a National Association~~
29 ~~of Insurance Commissioners' examination or may be conducted by such persons as~~
30 ~~the commissioner designates.~~

31 ~~_____ (iv) The cost of such examination shall be paid by the association~~
32 ~~and the examination report shall be treated as are other examination reports.~~

33 ~~_____ (v) In no event shall such examination report be released to the~~
34 ~~board of directors prior to its release to the public, but this shall not~~
35 ~~preclude the commissioner from complying with subdivision (1) of this section.~~

36 ~~_____ (B) The commissioner shall notify the board of directors when the~~

1 ~~examination is completed.~~

2 ~~_____ (C) The request for an examination shall be kept on file by the~~
3 ~~commissioner but it shall not be open to public inspection prior to the~~
4 ~~release of the examination report to the public.~~

5 (65) The board of directors may, upon majority vote, make recommen-
6 dations to the commissioner for the detection and prevention of insurer
7 insolvencies.

8 ~~_____ (7)(A) The board of directors shall, at the conclusion of any insurer~~
9 ~~insolvency in which the association was obligated to pay covered claims,~~
10 ~~prepare a report to the commissioner containing such information as it may~~
11 ~~have in its possession bearing on the history and causes of such insolvency.~~

12 ~~_____ (B) The board shall cooperate with the boards of directors of guar-~~
13 ~~anty associations in other states in preparing a report on the history and~~
14 ~~causes of insolvency of a particular insurer, and may adopt by reference any~~
15 ~~report prepared by such other associations.~~

16

17 23-96-118. DUTIES AND POWERS OF THE COMMISSIONER.

18 (a) In addition to the duties and powers enumerated elsewhere in this
19 chapter:

20 (1) The commissioner shall:

21 (A) Upon request of the board of directors, provide the
22 association with a statement of the premiums in this and any other appropriate
23 states for each member insurer;

24 (B)(i) When an impairment is declared and the amount of the
25 impairment is determined, serve a demand upon the impaired insurer to make
26 good the impairment within a reasonable time.

27 (ii) Notice to the impaired insurer shall constitute notice to
28 its shareholders, if any.

29 (iii) The failure of the insurer to promptly comply with such
30 demand shall not excuse the association from the performance of its powers and
31 duties under this chapter;

32 (C) In any liquidation or rehabilitation proceeding involving a
33 domestic insurer, be appointed as the liquidator or rehabilitator;

34 (2)(A) The commissioner may suspend or revoke, after notice and
35 hearing, the certificate of authority to transact insurance in this state of
36 any member insurer which fails to pay an assessment when due or fails to

1 comply with the plan of operation.

2 (B) As an alternative, the commissioner may levy a forfeiture on
3 any member insurer which fails to pay an assessment when due. Such forfeiture
4 shall not exceed five percent (5%) of the unpaid assessment per month, but no
5 forfeiture shall be less than one hundred dollars (\$100) per month.

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

16 (c) If the association fails to act within a reasonable period of time
17 as provided in §§ 23-96-111(b)(1)(B), 23-96-112(a), 23-96-113, and 23-96-120,
18 the commissioner shall have the powers and duties of the association under
19 this chapter with respect to impaired or insolvent insurers.

20

21 23-96-119. DISTRIBUTIONS OF OWNERSHIP RIGHTS.

22 (a)(1) Prior to the termination of any liquidation, rehabilitation, or
23 conservation proceeding, the court may take into consideration the
24 contributions of the respective parties, including the association, the
25 shareholders, and policy owners of the insolvent insurer, and any other party
26 with a bona fide interest, in making an equitable distribution of the
27 ownership rights of such insolvent insurer. In such determination,
28 consideration shall be given to the welfare of the ~~policyholders~~ owners of the
29 continuing or successor insurer.

30 (2) No distribution to stockholders, if any, of an impaired or insol-
31 vent insurer shall be made until and unless the total amount of valid claims
32 of the association with interest thereon for funds expended in carrying out
33 its powers and duties under 23-96-111 - 23-96-114, and 23-96-120 with respect
34 to such insurer have been fully recovered by the association.

35 (b)(1) If an order for liquidation or rehabilitation of an insurer domi-
36 ciled in this state has been entered, the receiver appointed under such order

1 shall have a right to recover on behalf of the insurer, from any affiliate
2 that controlled it, the amount of distributions, other than stock dividends
3 paid by the insurer on its capital stock, made at any time during the five (5)
4 years preceding the petition for liquidation or rehabilitation subject to the
5 limitations of subdivisions (b)(2), (3), and (4) of this section.

6 (2) No such distribution shall be recoverable if the insurer shows
7 that, when paid, the distribution was lawful and reasonable and that the
8 insurer did not know and could not reasonably have known that the distribution
9 might adversely affect the ability of the insurer to fulfill its contractual
10 obligations.

11 (3)(A) Any person who was an affiliate that controlled the insurer at
12 the time the distributions were paid shall be liable up to the amount of
13 distributions he received.

14 (B) Any person who was an affiliate that controlled the insurer at
15 the time the distributions were declared, shall be liable up to the amount of
16 distributions he would have received if they had been paid immediately.

17 (C) If two (2) or more persons are liable with respect to the same
18 distributions, they shall be jointly and severally liable.

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

22 (5) If any person liable under subdivision (b)(3) of this section is
23 insolvent, all its affiliates that controlled it at the time the distribution
24 was paid, shall be jointly and severally liable for any resulting deficiency
25 in the amount recovered from the insolvent affiliate.

26

27 23-96-120. PAYMENT OF PREMIUMS.

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

35 (b) Premiums due for coverage after entry of an order of liquidation of
36 an insolvent insurer shall belong to and be payable at the direction of the

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

3

4 23-96-121. REISSUANCE OF TERMINATED COVERAGE.

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

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

16

17 SECTION 2. All provisions of this act of a general and permanent nature
18 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
19 Revision Commission shall incorporate the same in the Code.

20

21 SECTION 3. If any provision of this act or the application thereof to
22 any person or circumstance is held invalid, such invalidity shall not affect
23 other provisions or applications of the act which can be given effect without
24 the invalid provision or application, and to this end the provisions of this
25 act are declared to be severable.

26

27 SECTION 4. All laws and parts of laws in conflict with this act are
28 hereby repealed.

29

30 /s/Pollan et al

31

32

33