

Act 444 of the 1989 Regular Session.

Act 444

HB1079

By: Representative Pollan

"AN ACT RELATING TO INSURANCE; STATING PURPOSE; CREATING THE ARKANSAS LIFE AND DISABILITY INSURANCE GUARANTY ASSOCIATION; PROVIDING SHORT TITLE; DEFINING TERMS; SPECIFYING APPLICABILITY OF ACT; PROVIDING FOR A BOARD OF DIRECTORS; PROVIDING FOR PROCEDURAL RULES FOR THE ASSOCIATION; SETTING FORTH POWERS AND DUTIES OF THE ASSOCIATION; PROVIDING FOR A METHOD OF ASSESSING CERTAIN LIFE AND HEALTH INSURERS; SETTING FORTH DUTIES AND POWERS OF THE INSURANCE COMMISSIONER; PROVIDING ASSESSMENT PROCEDURES AND REGULATIONS; PROVIDING FOR REGULATION OF ASSOCIATION; PROVIDING PROCEDURES IN CASE OF INSURER INSOLVENCIES; ALLOWING ASSOCIATION CERTAIN TAX EXEMPTIONS; LIMITING LIABILITY OF ASSOCIATION; STAYING CERTAIN LEGAL PROCEEDINGS UNDER CERTAIN CIRCUMSTANCES; PROHIBITING CERTAIN ADVERTISING; AND FOR OTHER PURPOSES."

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

SECTION 1. Short Title. Sections 1 through 20 of this Act shall be known and cited as the Arkansas Life and Disability Insurance Guaranty Association Act.

SECTION 2. Purpose.

(a) The purpose of this Act is to protect, subject to certain limitations, the persons specified in Section 3(a) against failure in the performance of contractual obligations, under life and disability insurance policies and annuity contracts specified in Section 3(b), because of the impairment or insolvency of the member insurer that issued the policies or contracts.

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

SECTION 3. Coverage and Limitations.

(a) This Act shall provide coverage for the policies and contracts specified in subsection (b):

(1) to persons, who, regardless of where they reside (except for non-resident certificate holders under group policies or contracts), are the beneficiaries, assignees or payees of the persons covered under paragraph (2), and;

(2) to persons who are owners of or certificate holders under such policies or contracts, or, in the case of unallocated annuity contracts, to the persons who are the contract holders, and who;

(A) are residents; or

(B) are not residents, but only under all of the following

conditions:

(i) the insurers which issued such policies or contracts are domiciled in this State,

(ii) such insurers never held a license or certificate of

authority in the states in which such persons reside,

(iii) such states have associations similar to the association created by this Act, and

(iv) such persons are not eligible for coverage by such associations.

(b) (1) This Act shall provide coverage to the persons specified in subsection (a) for direct, non-group life, disability, annuity and supplemental policies or contracts, for certificates under direct group policies and contracts, and for unallocated annuity contracts issued by member insurers, except as limited by this Act. Annuity contracts and certificates under group annuity contracts include but are not limited to guaranteed investment contracts, deposit administration contracts, unallocated funding agreements, structured settlement agreements, lottery contracts and any immediate or deferred annuity contracts.

(2) This Act shall not provide coverage for:

(A) any portion of a policy or contract not guaranteed by the insurer, or under which the risk is borne by the policy or contract holder;

(B) any policy or contract of reinsurance, unless assumption certificates have been issued;

(C) any portion of a policy or contract to the extent that the rate of interest on which it is based:

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

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

(D) any plan or program of an employer, association or similar entity to provide life, disability, or annuity benefits to its employees or members to the extent that such plan or program is self-funded or uninsured, including but not limited to benefits payable by an employer, association or similar entity under:

(i) a Multiple Employer Welfare Arrangement as defined in Section 514 of the Employee Retirement Income Security Act of 1974, as amended;

(ii) a minimum premium group insurance plan;

(iii) a stop-loss group insurance plan; or

(iv) an administrative services only contract;

(E) any portion of a policy or contract to the extent that it provides dividends or experience rating credits, or provides that any fees or allowances be paid to any person, including the policy or contract holder, in connection with the service to or administration of such policy or contract;

(F) any policy or contract issued in this State by a member insurer at a time when it was not licensed or did not have a certificate of authority to issue such policy or contract in this State.

(G) any unallocated annuity contract issued to an employee benefit plan protected under the federal Pension Guaranty Corporation; and

(H) any portion of any unallocated annuity contract which is not issued to or in connection with a specific employee, union or association of natural persons benefit plan or a government lottery.

(I) any policy or contract written on the mutual assessment plan or stipulated premium plan prior to January 1, 1968, for which no statutory legal

reserves are required.

(c) The benefits for which the Association may become liable shall in no event exceed the lesser of:

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

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

(i) \$100,000 in life insurance death benefits or net cash surrender and net cash withdrawal values for life insurance;

(ii) \$100,000 in disability insurance benefits, including any net cash surrender and net cash withdrawal values;

(iii) \$100,000 in the present value of annuity benefits, including net cash surrender and net cash withdrawal values;

(B) with respect to each individual participating in a governmental retirement plan established under Section 401(k), 403(b) or 457 of the U. S. Internal Revenue Code covered by an unallocated annuity contract or the beneficiaries of each such individual if deceased, in the aggregate, \$100,000 in present value annuity benefits, including net cash surrender and net cash withdrawal values;

Provided, however, that in no event shall the Association be liable to expend more than the \$300,000 in the aggregate with respect to any one life under subsection (a), (b), and (c) above:

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

SECTION 4. Construction. This Act shall be liberally construed to effect the purpose under Section 2 which shall constitute an aid and guide to interpretation.

SECTION 5. Definitions. As used in this Act:

(a) "Account" means any of the two accounts created under Section 6.

(b) "Association" means the Arkansas Life and Disability Insurance Guaranty Association created under Section 6.

(c) "Commissioner" means the Insurance Commissioner of this State.

(d) "Contractual obligations" means any obligation under a policy or contract or certificate under a group policy or contract, or portion thereof for which coverage is provided under Section 3.

(e) "Covered policy" means any policy or contract within the scope of this Act under Section 3.

(f) "Impaired insurer" means a member insurer which, after the effective date of this Act, is not an insolvent insurer, and (1) is deemed by the Commissioner to be potentially unable to fulfill its contractual obligations or (2) is placed under an order of rehabilitation or conservation by a court of competent jurisdiction.

(g) "Insolvent insurer" means a member insurer which after the effective date of this Act, is placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency.

(h) "Member insurer" means any insurer licensed or which holds a certificate of authority to transact in this State any kind of insurance for which coverage is provided under Section 3, and includes any insurer whose license or certificate of authority in this State may have been suspended, revoked, not renewed or voluntarily withdrawn, but does not include:

(1) A non-profit hospital or medical service organization;

(2) A health maintenance organization;

(3) A fraternal benefit society;

(4) A mandatory state pooling plan;

- (5) A burial association;
- (6) An insurance exchange;
- (7) Prepaid funeral trusts; or
- (8) Any entity similar to any of the above.

(i) "Moody's Corporate Bond Yield Average" means the Monthly Average Corporates as published by Moody's Investors Service, Inc., or any successor thereto.

(j) "Person" means any individual, corporation, partnership, association or voluntary organization.

(k) "Premiums" means amounts received on covered policies or contracts less premiums, considerations and deposits returned thereon, and less dividends and experience credits thereon. "Premiums" does not include any amounts received for any policies or contracts or for the portions of any policies or contracts for which coverage is not provided under Section 3(b) except that assessable premium shall not be reduced on account of Sections 3(b)(2)(C) relating to interest limitations and 3(c)(2) relating to limitations with respect to any one individual, any one participant and any one contract holder; provided that "premiums" shall not include any premiums in excess of one million dollars on any unallocated annuity contract not issued under a governmental retirement plan established under Section 401(k), 403(b) or 457 of the United States Internal Revenue Code.

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

(m) "Supplemental contract" means any agreement entered into for the distribution of policy or contract proceeds.

(n) "Unallocated annuity contract" means any annuity contract or group annuity certificate which is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under such contract or certificate.

#### SECTION 6. Creation of the Association.

(a) There is created a nonprofit legal entity to be known as the Arkansas Life and Disability Insurance Guaranty Association. All member insurers shall be and remain members of the Association as a condition of their authority to transact insurance in this State. The Association shall perform its functions under the plan of operation established and approved under Section 10 and shall exercise its powers through a board of directors established under Section 7. For purposes of administration and assessment the Association shall maintain two accounts:

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

(A) Life Insurance Account;

(B) Annuity Account;

(C) Unallocated Annuity Account which shall include contracts qualified under Section 403(b) of the United States Internal Revenue Code.

(2) The disability insurance account.

(b) The Association shall come under the immediate supervision of the Commissioner and shall be subject to the applicable provisions of the insurance laws of this State. Meetings or records of the Association may be opened to the public upon majority vote of the board of directors of the Association.

#### SECTION 7. Board of Directors.

(a) The board of directors of the Association shall consist of not less

than five (5) nor more than nine (9) member insurers serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the Commissioner. Vacancies on the board shall be filled for the remaining period of the term by a majority vote of the remaining board members, subject to the approval of the Commissioner. The Commissioner may appoint the initial members.

(b) In approving selections or in appointing members to the board, the Commissioner shall consider, among other things, whether all member insurers are fairly represented.

(c) Members of the board may be reimbursed from the assets of the Association for expenses incurred by them as members of the board of directors but members of the board shall not otherwise be compensated by the Association for their services.

#### SECTION 8. Powers and Duties of the Association.

(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, 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;

(2) provide such monies, pledges, notes, guarantees, or other means as are proper to effectuate paragraph (1) and assure payment of the contractual obligations of the impaired insurer pending action under paragraph (1); 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 paragraph (2), the Association shall, in its discretion, either:

(A) take any of the actions specified in subsection (a), subject to the conditions therein, or

(B) provide substitute benefits in lieu of the contractual obligations of the impaired insurer solely for: disability claims; periodic annuity benefit payments; death benefits; supplemental benefits; and 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 paragraph (1) 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 thereof and interest on all such payments and expenses, shall have been repaid to the guaranty associations or a plan of repayment by the impaired insurer shall have been approved by the guaranty associations;

(i) the delinquency proceeding shall not be dismissed;

(ii) neither the impaired insurer nor its assets shall be returned to the control of its shareholders or private management; and

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

(B) (i) if the impaired insurer is a domestic insurer, it has been placed under an order of rehabilitation by a court of competent jurisdiction in this State; or

(ii) if the impaired insurer is a foreign or alien insurer;

(I) it has been prohibited from soliciting or accepting new business in this State;

(II) its certificate of authority has been suspended or revoked in this State; and

(III) a petition for rehabilitation or liquidation has been filed in a court of competent jurisdiction in its state of domicile by the commissioner of the State.

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

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

(B) assure payment of the contractual obligations of the insolvent insurer; and

(C) provide such monies, pledges, guarantees, or other means as are reasonably necessary to discharge such duties; or

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

(d) When proceeding under subsection (b) (1) (B) or (c) (2), the Association shall, with respect to only life and health insurance policies:

(1) assure payment of benefits for premiums identical to the premiums and benefits (except for terms of conversion and renewability) that would have been payable under the policies of the insolvent insurer, for claims incurred:

(A) with respect to group policies, not later than the earlier of the next renewal date under such policies or contracts or forty-five (45) days, but in no event less than thirty (30) days, after the date on which the Association becomes obligated with respect to such policies;

(B) with respect to individual policies, not later than the earlier of the next renewal date (if any) under such policies or one (1) year, but in no event less than thirty (30) days, from the date on which the Association becomes obligated with respect to such policies;

(2) make diligent efforts to provide all known insureds or group policyholders with respect to group policies thirty (30) days notice of the termination of the benefits provided; and

(3) with respect to individual policies, make available to each known insured, or owner if other than the insured, and with respect to an individual formerly insured under a group policy who is not eligible for replacement group coverage, make available substitute coverage on an individual basis in accordance with the provisions of paragraph (4), if the insureds had a right under law or the terminated policy to convert coverage to individual coverage or to continue an individual policy in force until a specified age or for a specified time, during which the insurer had no right unilaterally to make changes in any provisions of the policy or had a right only to make changes in premium by class.

(4) (A) In providing the substitute coverage required under paragraph (3), the Association may offer either to reissue the terminated coverage or to issue an alternative policy.

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

(C) The Association may reinsure any alternative or reissued policy.

(5) (A) Alternative policies adopted by the Association shall be subject to the approval of the Commissioner. The Association may adopt alternative policies of various types for future issuance without regard to

any particular impairment or insolvency.

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

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

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

(7) The Association's obligations with respect to coverage under any policy of the impaired or insolvent insurer or under any reissued or alternative policy shall cease on the date such coverage or policy is replaced by another similar policy by the policyholder, the insured, or the Association.

(e) When proceeding under subsections (b) (1) (B) or (c) with respect to any policy or contract carrying guaranteed minimum interest rates, the Association shall assure the payment or crediting of a rate of interest consistent with Section 3(b) (2) (C).

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

(g) Premiums due for coverage after entry of an order of liquidation of an insolvent insurer shall belong to and be payable at the direction of the Association, and the Association shall be liable for unearned premiums due to policy or contract owners arising after the entry of such order.

(h) The protection provided by this Act shall not apply where any guaranty protection is provided to residents of this State by the laws of the domiciliary state or jurisdiction of the impaired or insolvent insurer other than this State.

(i) In carrying out its duties under this Section (b) and (c), the Association may, subject to approval by the court:

(1) impose permanent policy or contract liens in connection with any guarantee, assumption or reinsurance agreement, if the Association finds that the amounts which can be assessed under this Act are less than the amounts needed to assure full and prompt performance of the Association's duties under this Act, or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of such permanent policy or contract liens, to be in the public interest;

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

(j) If the Association fails to act within a reasonable period of time as provided in subsections (b) (1) (B), (c) and (d) of this Section, the Commissioner shall have the powers and duties of the Association under this Act with respect to impaired or insolvent insurers.

(k) The Association may render assistance and advice to the

Commissioner, upon his request, concerning rehabilitation, payment of claims, continuance of coverage, or the performance of other contractual obligations of any impaired or insolvent insurer.

(1) The Association shall have standing to appear before any court in this State with jurisdiction over an impaired or insolvent insurer concerning which the Association is or may become obligated under this Act. Such standing shall extend to all matters germane to the powers and duties of the Association, including, but not limited to, proposals for reinsuring, modifying or guaranteeing the policies or contracts of the impaired or insolvent insurer and the determination of the policies or contracts and contractual obligations. The Association shall also have the right to appear or intervene before a court in another state with jurisdiction over an impaired or insolvent insurer for which the Association is or may become obligated or with jurisdiction over a third party against whom the Association may have rights through subrogation of the insurer's policyholders.

(m) (1) Any person receiving benefits under this Act shall be deemed to have assigned the rights under, and any causes of action relating to, the covered policy or contract to the Association to the extent of the benefits received because of this Act, whether the benefits are payments of or on account of contractual obligations, continuation of coverage or provision of substitute or alternative coverages. The Association may require an assignment to it of such rights and cause of action by any payee, policy or contract owner, beneficiary, insured or annuitant as a condition precedent to the receipt of any right or benefits conferred by this Act upon such person.

(2) The subrogation rights of the Association under this subsection shall have the same priority against the assets of the impaired or insolvent insurer as that possessed by the person entitled to receive benefits under this Act.

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

(n) The Association may:

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

(2) sue or be sued, including taking any legal actions necessary or proper to recover any unpaid assessments under Section 9 and to settle claims or potential claims against it;

(3) borrow money to effect the purposes of this Act; any notes or other evidence of indebtedness of the Association not in default shall be legal investments for domestic insurers and may be carried as admitted assets;

(4) employ or retain such persons as are necessary to handle the financial transactions of the Association, and to perform such other functions as become necessary or proper under this Act;

(5) take such legal action as may be necessary to avoid payment of improper claims;

(6) exercise, for the purpose of this Act and to the extent approved by the Commissioner, the powers of a domestic life or disability insurer, but in no case may the Association issue insurance policies or annuity contracts other than those issued to perform its obligations under this Act.

(o) The Association 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 Association.

#### SECTION 9. Assessments.

(a) For the purpose of providing the funds necessary to carry out the powers and duties of the Association, the board of directors shall assess the member insurers, separately for each account, at such time and for such amounts as the board finds necessary. Assessments shall be due not less than thirty (30) days after prior written notice to the member insurers and shall accrue interest at ten percent (10%) per annum on and after the due date.

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

(1) Class A assessments shall be made for the purpose of meeting administrative and legal costs and other expenses and examinations conducted under the authority of Section 12(e). Class A assessments may be made whether or not related to a particular impaired or insolvent insurer.

(2) Class B assessments shall be made to the extent necessary to carry out the powers and duties of the Association under Section 8 with regard to an impaired or an insolvent insurer.

(c) (1) The amount of any Class A assessment shall be determined by the board and may be on a pro rata or non-pro rata basis. If pro rata, the board may provide that it be credited against future Class B assessments. A non-pro rata assessment shall not exceed one hundred fifty dollars (\$150) per member insurer in any one calendar year. The amount of any Class B assessment shall be allocated for assessment purposes among the accounts pursuant to an allocation formula which may be based on the premiums or reserves of the impaired or insolvent insurer or any other standard deemed by the board in its sole discretion as being fair and reasonable under the circumstances.

(2) Class B assessments against member insurers for each account shall be in the proportion that the premiums received on business in this State by each assessed member insurer or policies or contracts covered by each account for the three (3) most recent calendar years for which information is available preceding the year in which the insurer became impaired or insolvent, as the case may be, bears to such premiums received on business in this State for such calendar years by all assessed member insurers.

(3) Assessments for funds to meet the requirements of the Association with respect to an impaired or insolvent insurer shall not be made until necessary to implement the purpose of this Act. Classification of assessments under subsection (b) and computation of assessments under this subsection shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

(d) The Association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. In the event an assessment against a member insurer is abated or deferred in whole or in part, the amount by which such assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this Section.

(e) (1) The total of all assessments upon a member insurer for each account shall not in any one (1) calendar year exceed two percent (2%) and for the health account shall not in any one (1) calendar year exceed two percent (2%) of such insurer's average premiums received in this State on the policies and contracts covered by the account during the three (3) calendar years preceding the year in which the insurer became an impaired or insolvent insurer. If the maximum assessment, together with the other assets of the Association in any account, does not provide in any one (1) year in either account an amount sufficient to carry out the responsibilities of the Association, the necessary additional funds shall be assessed as soon thereafter as permitted by this Act.

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

anticipated claims.

(3) If a one percent (1%) assessment for any subaccount of the life and annuity account in any one year does not provide an amount sufficient to carry out the responsibilities of the Association, then pursuant to Subsection (c)(2), the board shall assess all subaccounts of the life and annuity account for the necessary additional amount, subject to the maximum stated in Subsection (e)(1) above.

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

(g) It shall be proper for any member insurer, in determining its premium rates and policyowner dividends as to any kind of insurance within the scope of this Act, to consider the amount reasonably necessary to meet its assessment obligations under this Act.

(h) The Association shall issue to each insurer paying an assessment under this Act, other than Class A assessment, a certificate of contribution, in a form prescribed by the Commissioner, for the amount of the assessment so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in such form and for such amount, if any, and period of time as the Commissioner may approve.

#### SECTION 10. Plan of Operation.

(a) (1) The Association shall submit to the Commissioner a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the Association. The plan of operation and any amendments thereto shall become effective upon the Commissioner's written approval or unless he has not disapproved it within thirty (30) days.

(2) If the Association fails to submit a suitable plan of operation within one hundred twenty (120) days following the effective date of this Act or if at any time thereafter the Association fails to submit suitable amendments to the plan, the Commissioner shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this Act. Such rules shall continue in force until modified by the Commissioner or superseded by a plan submitted by the Association and approved by the Commissioner.

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

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

(1) establish procedures for handling the assets of the Association;

(2) establish the amount and method of reimbursing members of the board of directors under Section 7;

(3) establish regular places and times for meetings including telephone conference call of the board of directors;

(4) establish procedures for records to be kept of all financial transactions of the Association, its agents, and the board of directors;

(5) establish the procedures whereby selections for the board of directors will be made and submitted to the Commissioner;

(6) establish any additional procedures for assessments under Section 9;

(7) contain additional provisions necessary or proper for the execution of the powers and duties of the Association.

(d) The plan of operation may provide that any or all powers and duties of the Association, except those under Section 8(m)(3) and Section 9, are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this Association, or its equivalent, in two or more states. Such a corporation, association, or organization shall be reimbursed for any payments made on behalf of the Association and shall be paid for its performance of any function of the Association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the Commissioner, and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this Act.

SECTION 11. Duties and Powers of the Commissioner. In addition to the duties and powers enumerated elsewhere in this Act,

(a) The Commissioner shall:

(1) upon request of the board of directors, provide the Association with a statement of the premiums in this and any other appropriate states for each member insurer;

(2) when an impairment is declared and the amount of the impairment is determined, serve a demand upon the impaired insurer to make good the impairment within a reasonable time; notice to the impaired insurer shall constitute notice to its shareholders, if any; the failure of the insurer to promptly comply with such demand shall not excuse the Association from the performance of its powers and duties under this Act;

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

(b) The Commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this State of any member insurer which fails to pay assessment when due or fails to comply with the plan of operation. As an alternative the Commissioner may levy a forfeiture on any member insurer which fails to pay an assessment when due. Such forfeiture shall not exceed five percent (5%) of the unpaid assessment per month, but no forfeiture shall be less than one hundred dollars (\$100) per month.

(c) Any action of the board of directors or the Association may be appealed to the Commissioner by any member insurer if such appeal is taken within sixty (60) days of the final action being appealed. If a member company is appealing an assessment, the amount assessed shall be paid to the Association and available to meet Association obligations during the pendency of an appeal. If the appeal on the assessment is upheld, the amount paid in error or excess shall be returned to the member company. Any final action or order of the Commissioner shall be subject to judicial review in a court of competent jurisdiction.

(d) The liquidator, rehabilitator, or conservator of any impaired insurer may notify all interested persons of the effect of this Act.

SECTION 12. Prevention of Insolvencies. To aid in the detection and prevention of insurer insolvencies or impairments:

(a) It shall be the duty of the Commissioner:

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

- (A) revocation of license;
- (B) suspension of license; or
- (C) makes any formal order that such company restricts its

premium writing, obtains additional contributions to surplus, withdraws from the State, reinsures all or any part of its business, or increases capital, surplus, or any other account for the security of policyholders or creditors.

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

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

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

(4) To furnish to the board of directors the NAIC Insurance Regulatory Information System (IRIS) ratios and listings of companies not included in the ratios developed by the National Association of Insurance Commissioners, and the board may use the information contained therein in carrying out its duties and responsibilities under this Section. Such report and the information contained therein shall be kept confidential by the board of directors until such time as made public by the Commissioner or other lawful authority.

(b) The Commissioner may seek the advice and recommendations of the board of directors concerning any matter affecting his duties and responsibilities regarding the financial condition of member insurers and companies seeking admission to transact insurance business in this State.

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

(d) It shall be the duty of the board of directors, upon majority vote, to notify the Commissioner of any information indicating any member insurer may be an impaired or insolvent insurer.

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

The Commissioner shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the Commissioner but it shall not be open to public inspection prior to the release of the examination report to the public.

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

(g) The board of directors shall, at the conclusion of any insurer insolvency in which the Association was obligated to pay covered claims, prepare a report to the Commissioner containing such information as it may

have in its possession bearing on the history and causes of such insolvency. The board shall cooperate with the boards of directors of guaranty associations in other states in preparing a report on the history and causes of insolvency of a particular insurer, and may adopt by reference any report prepared by such other associations.

SECTION 13. Credits for Assessments Paid (Tax Offsets).

(a) A member insurer may offset against its premium tax liability to this State an assessment described in Section 9(h) to the extent of twenty percent (20%) of the amount of such assessment for each of the five (5) calendar years following the year in which such assessment was paid. In the event a member insurer should cease doing business, all uncredited assessments may be credited against its premium tax liability for the year it ceases doing business.

(b) Any sums which are acquired by refund, pursuant to Section 9(f), from the Association by member insurers, and which have theretofore been offset against premium franchise or income taxes as provided in subsection (a) above, shall be paid by such insurers to this State in such manner as the tax authorities may require. The Association shall notify the Commissioner that such refunds have been made.

SECTION 14. Miscellaneous Provisions.

(a) Nothing in this Act shall 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) Records shall be kept of all negotiations and meetings in which the Association or its representatives are involved to discuss the activities of the Association in carrying out its powers and duties under Section 8. Records of such negotiations or meetings shall be made public only upon the termination of a liquidation, rehabilitation, or conservation proceeding involving the impaired or insolvent insurer, upon the termination of the impairment or insolvency of the insurer, or upon the order of a court of competent jurisdiction. Nothing in this subsection shall limit the duty of the Association to render a report of its activities under Section 15.

(c) For the purpose of carrying out its obligations under this Act, the Association shall be deemed to be a creditor of the impaired or insolvent insurer to the extent of assets attributable to covered policies reduced by any amounts to which the Association is entitled as subrogee pursuant to Section 8(m). Assets of the impaired or insolvent insurer attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the impaired or insolvent insurer as required by this Act. Assets attributable to covered policies, as used in this subsection, are that proportion of the assets which the reserves that should have been established for such policies bear to the reserves that should have been established for all policies of insurance written by the impaired or insolvent insurer.

(d) (1) Prior to the termination of any liquidation, rehabilitation, or conservation proceeding, the court may take into consideration the contributions of the respective parties, including the Association, the shareholders, and policyowners of the insolvent insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of such insolvent insurer. In such determination consideration shall be given to the welfare of the policyholders of the continuing or successor insurer.

(2) No distribution to stockholders, if any, of an impaired or insolvent insurer shall be made until and unless the total amount of valid claims of the Association with interest thereon for funds expended in carrying

out its powers and duties under Section 8 with respect to such insurer have been fully recovered by the Association.

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

(2) No such distribution shall be recoverable if the insurer shows that when paid the distribution was lawful and reasonable, and that 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) Any person who was an affiliate that controlled the insurer at the time the distributions were paid shall be liable up to the amount of distributions he received. Any person who was an affiliate that controlled the insurer at the time the distributions were declared, shall be liable up to the amount of distributions he would have received if they had been paid immediately. If two or more persons are liable with respect to the same distributions, they shall be jointly and severally liable.

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

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

#### SECTION 15. Examination of the Association; Annual Report.

The Association shall be subject to examination and regulation by the Commissioner. The board of directors shall submit to the Commissioner each year, not later than one hundred twenty (120) days after the Association's fiscal year, a financial report in a form approved by the Commissioner and a report of its activities during the preceding fiscal year.

#### SECTION 16. Tax Exemptions.

The Association shall be exempt from payment of all fees and all taxes levied by this State or any of its subdivisions, except taxes levied on real property.

#### SECTION 17. Immunity.

There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer or its agents or employees, the Association or its agents or employees, members of the board of directors, or the Commissioner or his representatives, for any action or omission by them in the performance of their powers and duties under this Act. Such immunity shall extend to the participation in any organization of one or more other state associations of similar purposes and to any such organization and its agents or employees.

#### SECTION 18. Stay of Proceedings; Reopening Default Judgments.

All proceedings in which the insolvent insurer is a party in any court in this State shall be stayed sixty (60) days from the date an order of liquidation, rehabilitation, or conservation is final to permit proper legal action by the Association on any matters germane to its powers or duties. As to judgment under any decision, order, verdict, or finding based on default

the Association may apply to have such judgment set aside by the same court that made such judgment and shall be permitted to defend against such suit on the merits.

SECTION 19. Prohibited Advertisement of Association Act in Insurance Sales; Notice to Policyholders.

(a) No person, including an insurer, agent or affiliate of an insurer shall make, publish, disseminate, circulate, or place before the public, or cause directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in any newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio station or television station, or in any other way, any advertisement, announcement or statement, written or oral, which uses the existence of the Insurance Guaranty Association of this State for the purpose of sales, solicitation, or inducement to purchase any form of insurance covered by the Arkansas Life and Disability Insurance Guaranty Association Act. Provided, however, that this section shall not apply to the Arkansas Life and Disability Insurance Guaranty Association or any other entity which does not sell or solicit insurance.

(b) Within one hundred eighty (180) days of the effective date of this Act, the Association shall prepare a summary document describing the general purpose and current limitations of the Act and complying with subsection (c). This document should be submitted to the Commissioner for approval. Sixty (60) days after receiving such approval, no insurer may deliver a policy or contract described in Section 3(b)(1) to a policy or contract holder unless the document is delivered to the policy or contract holder prior to or at the time of delivery of the policy or contract except if subsection (d) applies. The document should also be available upon request by a policyholder. The distribution, delivery, or contents or interpretation of this document shall not mean that either the policy or the contract or the holder thereof would be covered in the event of the impairment or insolvency of a member insurer. The description document shall be revised by the Association as amendments to the Act may require. Failure to receive this document does not give the policyholder, contract holder, certificate holder, or insured any greater rights than those stated in this Act.

(c) The document prepared under subsection (b) shall contain a clear and conspicuous disclaimer on its face. The Commissioner shall promulgate a rule establishing the form and content of the disclaimer. The disclaimer shall:

- (1) state the name and address of the life and health insurance guaranty association and insurance department;
- (2) prominently warn the policy or contract holder that the Life and Health Insurance Guaranty Association may not cover the policy or, if coverage is available, it will be subject to substantial limitations, exclusions and conditioned on continued residence in the State;
- (3) state that the insurer and its agents are prohibited by law from using the existence of the Life and Disability Insurance Guaranty Association for the purpose of sales, solicitation or inducement to purchase any form of insurance;
- (4) emphasize that the policy or contract holder should not rely on coverage under the Life and Disability Insurance Guaranty Association when selecting an insurer;
- (5) provide other information as directed by the Commissioner.

(d) No insurer or agent may deliver a policy contract described in Section 3(b)(1) and excluded under Section 3(b)(2)(A) from coverage under this Act unless the insurer or agent, prior to or at the time of delivery, gives the policy or contract holder a separate written notice which clearly and conspicuously discloses that the policy or contract is not covered by the Life

and Disability Insurance Guaranty Association. The Commissioner shall by rule specify the form and content of the notice.

SECTION 20. Prospective Application.

This Act shall not apply to any insurer which is insolvent or unable to fulfill its contractual obligations on the effective date of this Act.

SECTION 21. Subdivisions (1) and (2) of Subsection (a) of Arkansas Code 23-63-206 are hereby amended to read as follows:

"(1) All insurers authorized to transact only life or disability insurance, or both, shall deposit through the commissioner and subject to the conditions specified in 23-63-909, securities eligible for deposit under 23-63-903 and having at all times a market value of not less than one hundred thousand dollars (\$100,000), conditioned for the payment of policyholders and creditors of the insurer in this State and the prompt payment of all claims arising and accruing to any person in this State; provided, insurers holding a valid certificate of authority to transact life or disability insurance, or both, in this State on July 20, 1987 shall not be required to make and maintain such deposit until January 1, 1990;

(2) In addition to the deposit required under the provisions of Subdivision (1) hereof, all insurers now or hereafter licensed to write disability insurance shall deposit through the Commissioner and subject to the conditions specified in 23-63-909, securities eligible for deposit under 23-63-903 and having at all times a market value of not less than an amount equal to four (4) percent of its disability insurance premiums written in Arkansas as stated in Schedule T of its annual financial report filed with the Commissioner, conditioned for the payment of policyholders and creditors of the insurer in this State and the prompt payment of any person in this State; provided, no such deposit shall be required if such premium is less than \$500,000."

SECTION 22. Arkansas Code 23-63-206 is hereby amended by adding an additional subsection at the end thereof to read as follows:

"(c) The deposit required in subsection (a)(2) above shall be deposited or adjusted by the 1st day of July following the filing of the annual statement."

SECTION 23. Arkansas Code 23-63-909 is hereby amended to read as follows:

"23-63-909. Payment of claims. (a) If any insurer which has made the deposit in this state pursuant to 23-63-206 fails to pay promptly any final judgment in favor of a citizen of this state, the commissioner is authorized to sell at public or private sale, after forty-five (45) days' notice to the insurer by registered mail, a sufficient amount of securities to pay the claim.

(b) The Commissioner may release any part of the deposit required in 23-63-206 (a)(2) to the insurer for the payment of outstanding claims. Provided, that any funds withdrawn pursuant to this subsection shall be replaced within one hundred eighty (180) days after such withdrawal."

SECTION 24. All laws and parts of laws in conflict with this act are hereby repealed.

SECTION 25. All provisions of this Act of a general and permanent nature are amendatory to Title 23 of the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in Title 23 of

the Code.

SECTION 26. EMERGENCY. It is hereby found and determined by the General Assembly that the current insurance laws of this State as to protection of Arkansas policyholders of insolvent life and disability insurers are inadequate, and that the immediate passage of this Act is necessary. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the public peace, health and safety shall be in full force and effect from and after its passage and approval.

APPROVED: March 9, 1989

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