By: Representative Stevens To: Insurance

HOUSE BILL NO. 1151
(As Passed the House)

1 AN ACT TO AMEND SECTION 83-23-205, MISSISSIPPI CODE OF 1972,
2 TO CLARIFY THE COVERAGES PROVIDED UNDER THE MISSISSIPPI LIFE AND
3 HEALTH INSURANCE GUARANTY ASSOCIATION ACT; TO AMEND SECTION
4 83-23-207, MISSISSIPPI CODE OF 1972, TO CLARIFY THE CONSTRUCTION
5 OF THE ACT; TO AMEND SECTION 83-23-209, MISSISSIPPI CODE OF 1972,
6 TO REVISE THE DEFINITION OF CERTAIN TERMS; TO AMEND SECTION
7 83-23-211, MISSISSIPPI CODE OF 1972, TO CLARIFY THE ANNUITY
8 CONTRACTS INCLUDED IN THE ANNUITY ACCOUNT MAINTAINED BY THE
9 ASSOCIATION; TO AMEND SECTION 83-23-215, MISSISSIPPI CODE OF 1972,
10 TO REVISE THE POWERS OF THE ASSOCIATION; TO AMEND SECTION
11 83-23-217, MISSISSIPPI CODE OF 1972, TO REVISE THE MANNER IN WHICH
12 ASSESSMENTS AGAINST MEMBER INSURERS SHALL BE MADE; TO AMEND
13 SECTION 83-23-221, MISSISSIPPI CODE OF 1972, IN CONFORMITY
14 THERETO; TO AMEND SECTION 83-23-223, MISSISSIPPI CODE OF 1972, TO
15 REVISE CERTAIN ACTIONS WHICH MAY BE TAKEN BY THE BOARD OF
16 DIRECTORS TO PROVIDE AID IN THE DETECTION AND PREVENTION OF
17 INSURER INSOLVENCIES OR IMPAIRMENTS; TO AMEND SECTION 83-23-225,
18 MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE ASSOCIATION TO APPLY TO
19 RECEIVERSHIP COURT TO RECEIVE DISBURSEMENT OF ASSETS; TO AMEND
20 SECTION 83-23-235, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR A
21 SUMMARY DOCUMENT DESCRIBING THE GENERAL PURPOSES AND CURRENT
22 LIMITATIONS OF THE ASSOCIATION; AND FOR RELATED PURPOSES.

23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

24 SECTION 1. Section 83-23-205, Mississippi Code of 1972, is
25 amended as follows:

26 83-23-205. (1) This article shall provide coverage for the
27 policies and contracts specified in subsection (2)(a) of this
28 section:

29 (a) To persons who, regardless of where they reside
30 (except for nonresident certificate holders under group policies
31 or contracts), are the beneficiaries, assignees or payees of the
32 persons covered under paragraph (b); *** * ***

33 (b) To persons who are owners of or certificate holders
34 under the policies or contracts (other than unallocated annuity
35 contracts *** * *** and structured settlement annuities) and in each
36 case who:

37 (i) Are residents; or
38 (ii) Are not residents, but only under all of the
39 following conditions:
40 1. The insurer that issued the policies or
41 contracts is domiciled in this state;
42 2. * * * The states in which the persons
43 reside * * * have associations similar to the association created
44 by this article; * * *
45 3. The persons are not eligible for coverage
46 by an association in any other state due to the fact that the
47 insurer was not licensed in the state at the time specified in the
48 state's guaranty association law.
49 (c) For unallocated annuity contracts specified in
50 subsection (2)(a) of this section, paragraphs (a) and (b) of this
51 subsection shall not apply, and this article shall (except as
52 provided in paragraphs (e) and (f) of this subsection) provide
53 coverage to:
54 (i) Persons who are the owners of the unallocated
55 annuity contracts if the contracts are issued to or in connection
56 with a specific benefit plan whose plan sponsor has its principal
57 place of business in this state; and
58 (ii) Persons who are owners of unallocated annuity
59 contracts issued to or in connection with government lotteries if
60 the owners are residents.
61 (d) For structured settlement annuities specified in
62 subsection (2)(a) of this section, paragraphs (a) and (b) of this
63 subsection shall not apply, and this article shall (except as
64 provided in paragraphs (e) and (f) of this subsection) provide
65 coverage to a person who is a payee under a structured settlement
66 annuity (or beneficiary of a payee if the payee is deceased), if
67 the payee:
68 (i) Is a resident, regardless of where the
69 contract owner resides, or

70 (ii) Is not a resident, but only under both of the
71 following conditions:
72 1. a. The contract owner of the structured
73 settlement annuity is a resident, or
74 b. The contract owner of the structured
75 settlement annuity is not a resident, but (1) the insurer that
76 issued the structured settlement annuity is domiciled in this
77 state; and (2) the state in which the contract owner resides has
78 an association similar to the association created by this article;
79 and
80 2. Neither the payee (or beneficiary) nor the
81 contract owner is eligible for coverage by the association of the
82 state in which the payee or contract owner resides.
83 (e) This article shall not provide coverage to:
84 (i) A person who is a payee (or beneficiary) or a
85 contract owner resident of this state, if the payee (or
86 beneficiary) is afforded any coverage by the association of
87 another state; or
88 (ii) A person covered under paragraph (c) of this
89 subsection, if any coverage is provided by the association of
90 another state to the person.
91 (f) This article is intended to provide coverage to a
92 person who is a resident of this state and in special
93 circumstances, to a nonresident. In order to avoid duplicate
94 coverage, if a person who would otherwise receive coverage under
95 this article is provided coverage under the laws of any other
96 state, the person shall not be provided coverage under this
97 article. In determining the application of the provisions of this
98 paragraph, in situations where a person could be covered by the
99 association of more than one (1) state, whether as an owner,
100 payee, beneficiary or assignee, this article shall be construed in
101 conjunction with other state laws to result in coverage by only
102 one (1) association.

103 (2) (a) This article shall provide coverage to the persons
104 specified in subsection (1) of this section for direct, nongroup
105 life, health, or annuity * * * policies or contracts and
106 supplemental contracts to any of these, for certificates under
107 direct group policies and contracts, and for unallocated annuity
108 contracts issued by member insurers, except as limited by this
109 article. Annuity contracts and certificates under group annuity
110 contracts include, but are not limited to, guaranteed investment
111 contracts, deposit administration contracts, unallocated funding
112 agreements, allocated funding agreements, structured settlement
113 annuities, annuities issued to or in connection with government
114 lotteries and any immediate or deferred annuity contracts.
115 (b) This article shall not provide coverage for:
116 (i) A portion of a policy or contract not
117 guaranteed by the insurer, or under which the risk is borne by the
118 policy or contract owner;
119 (ii) A policy or contract of reinsurance, unless
120 assumption certificates have been issued pursuant to the
121 reinsurance policy or contract;
122 (iii) A portion of a policy or contract to the
123 extent that the rate of interest on which it is based:
124 1. Averaged over the period of four (4) years
125 prior to the date on which the association becomes obligated with
126 respect to such policy or contract, exceeds a rate of interest
127 determined by subtracting two (2) percentage points from Moody's
128 Corporate Bond Yield Average averaged for that same four-year
129 period or for such lesser period if the policy or contract was
130 issued less than four (4) years before the association became
131 obligated; and
132 2. On and after the date on which the
133 association becomes obligated with respect to such policy or
134 contract, exceeds the rate of interest determined by subtracting
135 three (3) percentage points from Moody's Corporate Bond Yield

136 Average as most recently available;

137 (iv) A portion of a policy or contract issued to a

138 plan or program of an employer, association or other person to

139 provide life, health or annuity benefits to its employees, members

140 or others to the extent that the plan or program is self-funded or

141 uninsured, including, but not limited to, benefits payable by an

142 employer, association or other person under:

143 1. A Multiple Employer Welfare Arrangement as

144 defined in 29 USCS Section 1144;

145 2. A minimum premium group insurance plan;

146 3. A stop-loss group insurance plan; or

147 4. An administrative services only contract;

148 (v) A portion of a policy or contract to the

149 extent that it provides for:

150 1. Dividends or experience rating

151 credits * * *;

152 2. Voting rights; or

153 3. Payment of any fees or allowances * * * to

154 any person, including the policy or contract owner, in connection

155 with the service to or administration of the policy or contract;

156 (vi) A policy or contract issued in this state by

157 a member insurer at a time when it was not licensed or did not

158 have a certificate of authority to issue such policy or contract

159 in this state;

160 (vii) An unallocated annuity contract issued to or

161 in connection with a benefit plan protected under the federal

162 Pension Benefit Guaranty Corporation, regardless of whether the

163 federal Pension Benefit Guaranty Corporation has yet become liable

164 to make any payments with respect to the benefit plan; * * *

165 (viii) A portion of any unallocated annuity

166 contract that is not issued to or in connection with a specific

167 employee, union or association of natural persons benefit plan or

168 a government lottery;

169 (ix) A portion of a policy or contract to the
170 extent that the assessments required by Section 83-23-217 with
171 respect to the policy or contract are preempted by federal or
172 state law;
173 (x) An obligation that does not arise under the
174 express written terms of the policy or contract issued by the
175 insurer to the contract owner or policy owner, including without
176 limitation:
177 1. Claims based on marketing materials;
178 2. Claims based on side letters, riders or
179 other documents that were issued by the insurer without meeting
180 applicable policy form filing or approval requirements;
181 3. Misrepresentations of or regarding policy
182 benefits;
183 4. Extra-contractual claims; or
184 5. A claim for penalties or consequential or
185 incidental damages; and
186 (xi) A contractual agreement that establishes the
187 member insurer's obligations to provide a book value accounting
188 guaranty for defined contribution benefit plan participants by
189 reference to a portfolio of assets that is owned by the benefit
190 plan or its trustee, which in each case is not an affiliate of the
191 member insurer.
192 (3) The benefits that the association may become obligated
193 to cover shall in no event exceed the lesser of:
194 (a) The contractual obligations for which the insurer
195 is liable or would have been liable if it were not an impaired or
196 insolvent insurer; or
197 (b) (i) With respect to any one (1) life, regardless
198 of the number of policies or contracts:
199 1. Three Hundred Thousand Dollars
200 ($300,000.00) in life insurance death benefits, but not more than
201 One Hundred Thousand Dollars ($100,000.00) in net cash surrender

202 and net cash withdrawal values for life insurance;

203 2. * * * In health insurance benefits * * *;

204 a. One Hundred Thousand Dollars

205 ($100,000.00) for coverages not defined as disability insurance or

206 basic hospital, medical and surgical insurance or major medical

207 insurance, including any net cash surrender and net cash

208 withdrawal values;

209 b. Three Hundred Thousand Dollars

210 ($300,000.00) for disability insurance;

211 c. Five Hundred Thousand Dollars

212 ($500,000.00) for basic hospital medical and surgical insurance or

213 major medical insurance; or

214 3. One Hundred Thousand Dollars ($100,000.00)

215 in the present value of annuity benefits, including net cash

216 surrender and net cash withdrawal values;

217 (ii) With respect to each individual participating

218 in a governmental retirement benefit plan established under

219 Section 401 * * *, 403(b) or 457 of the United States Internal

220 Revenue Code covered by an unallocated annuity contract or the

221 beneficiaries of each such individual if deceased, in the

222 aggregate, One Hundred Thousand Dollars ($100,000.00) in present

223 value annuity benefits, including net cash surrender and net cash

224 withdrawal values;

225 * * *

226 (iii) With respect to each payee of a structured

227 settlement annuity (or beneficiary or beneficiaries of the payee

228 if deceased), One Hundred Thousand Dollars ($100,000.00) in

229 present value annuity benefits, in the aggregate, including net

230 cash surrender and net cash withdrawal values, if any;

231 (iv) * * * However, * * * in no event shall the

232 association be obligated to cover more than (a) an aggregate of

233 Three Hundred Thousand Dollars ($300,000.00) in benefits with

234 respect to any one (1) life under paragraphs (b)(i), (b)(ii) and

235 (b)(iii) of this subsection except with respect to benefits for
236 basic hospital, medical and surgical insurance and major medical
237 insurance under paragraph (b)(i) of this subsection, in which case
238 the aggregate liability of the association shall not exceed Five
239 Hundred Thousand Dollars ($500,000.00) with respect to any one (1)
240 individual, or (b) with respect to one (1) owner of multiple
241 nongroup policies of life insurance, whether the policy owner is
242 an individual, firm, corporation or other person, and whether the
243 persons insured are officers, managers, employees or other
244 persons, more than Five Million Dollars ($5,000,000.00) in
245 benefits, regardless of the number of policies and contracts held
246 by the owner;
247 (v) With respect to either (a) one (1) contract
248 owner provided coverage under subsection (1)(c)(ii) of this
249 section; or (b) one (1) plan sponsor whose plans own directly or
250 in trust one or more unallocated annuity contracts not included in
251 paragraph (b)(ii) of this subsection, Five Million Dollars
252 ($5,000,000.00) in benefits, irrespective of the number of * * *
253 contracts with respect to the contract owner or plan sponsor.
254 However, in the case where one or more unallocated annuity
255 contracts are covered contracts under this article and are owned
256 by a trust or other entity for the benefit of two (2) or more plan
257 sponsors, coverage shall be afforded by the association if the
258 largest interest in the trust or entity owning the contract or
259 contracts is held by a plan sponsor whose principal place of
260 business is in this state and in no event shall the association be
261 obligated to cover more than Five Million Dollars ($5,000,000.00)
262 in benefits with respect to all these unallocated contracts.
263 (vi) The limitations set forth in this subsection
264 are limitations on the benefits for which the association is
265 obligated before taking into account either its subrogation and
266 assignment rights or the extent to which those benefits could be
267 provided out of the assets of the impaired or insolvent insurer

268 attributable to covered policies. The costs of the association's
269 obligations under this article may be met by the use of assets
270 attributable to covered policies or reimbursed to the association
271 pursuant to its subrogation and assignment rights.
272 (4) In performing its obligations to provide coverage under
273 Section 83-23-215 of this article, the association shall not be
274 required to guarantee, assume, reinsure or perform, or cause to be
275 guaranteed, assumed, reinsured or performed, the contractual
276 obligations of the insolvent or impaired insurer under a covered
277 policy or contract that do not materially affect the economic
278 values or economic benefits of the covered policy or contract.
279 SECTION 2. Section 83-23-207, Mississippi Code of 1972, is
280 amended as follows:
281 83-23-207. This article shall be *** construed to effect
282 the purpose under Section 85-23-203 ***.
283 SECTION 3. Section 83-23-209, Mississippi Code of 1972, is
284 amended as follows:
285 83-23-209. As used in this article:
286 (a) "Account" means either of the two (2) accounts
287 created under Section 83-23-211.
288 (b) "Association" means the Mississippi Life and Health
289 Insurance Guaranty Association created under Section 83-23-211.
290 (c) "Authorized assessment" or the term "authorized"
291 when used in the context of assessments means a resolution by the
292 board of directors has been passed whereby an assessment will be
293 called immediately or in the future from member insurers for a
294 specified amount. An assessment is authorized when the resolution
295 is passed.
296 (d) "Benefit plan" means a specific employee, union or
297 association of natural persons benefit plan.
298 (e) "Called assessment" or the term "called" when used
299 in the context of assessments means that a notice has been issued
300 by the association to member insurers requiring that an authorized

301 assessment be paid within the time frame set forth within the
302 notice. An authorized assessment becomes a called assessment when
303 notice is mailed by the association to member insurers.
304 (f) "Commissioner" means the Commissioner of Insurance
305 of this state.
306 (g) "Contractual obligation" means an obligation under
307 a policy or contract or certificate under a group policy or
308 contract, or portion thereof for which coverage is provided under
309 Section 83-23-205.
310 (h) "Covered policy" means a policy or contract or
311 portion of a policy or contract for which coverage is provided
312 under Section 83-23-205.
313 (i) "Extra-contractual claims" shall include, for
314 example, claims relating to bad faith in the payment of claims,
315 punitive or exemplary damages or attorney's fees and costs.
316 (j) "Impaired insurer" means a member insurer which,
317 after the effective date of this article, is not an insolvent
318 insurer, and *** * *** is placed under an order of rehabilitation or
319 conservation by a court of competent jurisdiction.
320 (k) "Insolvent insurer" means a member insurer which
321 after the effective date of this article, is placed under an order
322 of liquidation by a court of competent jurisdiction with a finding
323 of insolvency.
324 (l) "Member insurer" means an insurer licensed or that
325 holds a certificate of authority to transact in this state any
326 kind of insurance for which coverage is provided under Section
327 83-23-205, and includes any insurer whose license or certificate
328 of authority in this state may have been suspended, revoked, not
329 renewed or voluntarily withdrawn, but does not include:
330 (i) A *** * *** hospital or medical service
331 organization whether profit or nonprofit;
332 (ii) A health maintenance organization;
333 (iii) A fraternal benefit society;

334 (iv) A mandatory state pooling plan;
335 (v) A mutual assessment company or other person
336 that operates on an assessment basis;
337 (vi) An insurance exchange; or
338 (vii) Any entity similar to any of the above.
339 (m) "Moody's Corporate Bond Yield Average" means the
340 Monthly Average Corporates as published by Moody's Investors
341 Service, Inc., or any successor thereto.
342 (n) "Owner" of a policy or contract and "policy owner"
343 and "contract owner" mean the person who is identified as the
344 legal owner under the terms of the policy or contract or who is
345 otherwise vested with legal title to the policy or contract
346 through a valid assignment completed in accordance with the terms
347 of the policy or contract and properly recorded as the owner on
348 the books of the insurer. The terms owner, contract owner and
349 policy owner do not include persons with a mere beneficial
350 interest in a policy or contract.
351 (o) "Person" means any individual, corporation, limited
352 liability company, partnership, association, governmental body or
353 entity or voluntary organization.
354 (p) "Plan sponsor" means:
355 (i) The employer in the case of a benefit plan
356 established or maintained by a single employer;
357 (ii) The employee organization in the case of a
358 benefit plan established or maintained by an employee
359 organization; or
360 (iii) In a case of a benefit plan established or
361 maintained by two (2) or more employers or jointly by one or more
362 employers and one or more employee organizations, the association,
363 committee, joint board of trustees, or other similar group of
364 representatives of the parties who establish or maintain the
365 benefit plan.
366 (q) "Premiums" means amounts or considerations (by

367 whatever name called) received on covered policies or contracts
368 less returned premiums, considerations and deposits * * *, and
369 less dividends and experience credits * * *. "Premiums" does not
370 include any amounts or considerations received for * * * policies
371 or contracts or for the portions of * * * policies or contracts
372 for which coverage is not provided under Section 83-23-205(2),
373 except that assessable premium shall not be reduced on account of
374 Sections 83-23-205(2)(b)(iii) relating to interest limitations and
375 83-23-205(3)(b) relating to limitations with respect to * * * one
376 (1) individual, * * * one (1) participant and * * * one (1)
377 contract owner. * * * "Premiums" shall not include * * *:
378 (i) Premiums in excess of Five Million Dollars
379 ($5,000,000.00) on an unallocated annuity contract not issued
380 under a governmental retirement benefit plan (or its trustee)
381 established under Section 401 * * *, 403(b) or 457 of the United
382 States Internal Revenue Code; or
383 (ii) With respect to multiple nongroup policies of
384 life insurance owned by one (1) owner, whether the policy owner is
385 an individual, firm, corporation or other person, and whether the
386 persons insured are officers, managers, employees or other
387 persons, premiums in excess of Five Million Dollars
388 ($5,000,000.00) with respect to these policies or contracts,
389 regardless of the number of policies or contracts held by the
390 owner.
391 (r) "Principal place of business" of a plan sponsor or
392 a person other than a natural person means the single state in
393 which the natural persons who establish policy for the direction,
394 control and coordination of the operations of the entity as a
395 whole primarily exercise that function, determined by the
396 association in its reasonable judgment by considering the
397 following factors:
398 (i) The state in which the primary executive and
399 administrative headquarters of the entity is located;

400 (ii) The state in which the principal office of
401 the chief executive officer of the entity is located;
402 (iii) The state in which the board of directors
403 (or similar governing person or persons) of the entity conducts
404 the majority of its meetings;
405 (iv) The state in which the executive or
406 management committee of the board of directors (or similar
407 governing person or persons) of the entity conducts the majority
408 of its meetings;
409 (v) The state from which the management of the
410 overall operations of the entity is directed; and
411 (vi) In the case of a benefit plan sponsored by
412 affiliated companies comprising a consolidated corporation, the
413 state in which the holding company or controlling affiliate has
414 its principal place of business as determined using the above
415 factors.
416 However, in the case of a plan sponsor, if more than fifty
417 percent (50%) of the participants in the benefit plan are employed
418 in a single state, that state shall be deemed to be the principal
419 place of business of the plan sponsor.
420 The principal place of business of a plan sponsor of a
421 benefit plan described in paragraph (p)(iii) of this section shall
422 be deemed to be the principal place of business of the
423 association, committee, joint board of trustees or other similar
424 group of representatives of the parties who establish or maintain
425 the benefit plan that, in lieu of a specific or clear designation
426 of a principal place of business, shall be deemed to be the
427 principal place of business of the employer or employee
428 organization that has the largest investment in the benefit plan
429 in question.
430 (s) "Receivership court" means the court in the
431 insolvent or impaired insurer's state having jurisdiction over the
432 conservation, rehabilitation or liquidation of the insurer.

433 (t) "Resident" means a person * * * to whom a
434 contractual obligation is owed and who resides in this state on
435 the date of entry of a court order that determines a member
436 insurer to be an impaired insurer or a court order that determines
437 a member insurer to be an insolvent insurer, whichever occurs
438 first. A person may be a resident of only one (1) state, which in
439 the case of a person other than a natural person shall be its
440 principal place of business. Citizens of the United States that
441 are either (i) residents of foreign countries, or (ii) residents
442 of United States possessions, territories or protectorates that do
443 not have an association similar to the association created by this
444 article, shall be deemed residents of the state of domicile of the
445 insurer that issued the policies or contracts.
446 (u) "Structured settlement annuity" means an annuity
447 purchased in order to fund periodic payments for a plaintiff or
448 other claimant in payment for or with respect to personal injury
449 suffered by the plaintiff or other claimant.
450 (v) "State" means a state, the District of Columbia,
451 Puerto Rico, and a United States possession, territory or
452 protectorate.
453 (w) "Supplemental contract" means a written agreement
454 entered into for the distribution of proceeds under a life, health
455 or annuity policy or contract * * *.
456 (x) "Unallocated annuity contract" means an annuity
457 contract or group annuity certificate which is not issued to and
458 owned by an individual, except to the extent of any annuity
459 benefits guaranteed to an individual by an insurer under such
460 contract or certificate.
461 SECTION 4. Section 83-23-211, Mississippi Code of 1972, is
462 amended as follows:
463 83-23-211. (1) There is created a nonprofit legal entity to
464 be known as the Mississippi Life and Health Insurance Guaranty
465 Association. All member insurers shall be and remain members of

466 the association as a condition of their authority to transact
467 insurance in this state. The association shall perform its
468 functions under the plan of operation established and approved
469 under Section 83-23-219 and shall exercise its powers through a
470 board of directors established under Section 83-23-213. For
471 purposes of administration and assessment the association shall
472 maintain two (2) accounts:
473 (a) The life insurance and annuity account which
474 includes the following subaccounts:
475 (i) Life insurance account;
476 (ii) Annuity account which shall include annuity
477 contracts owned by a governmental retirement plan (or its trustee)
478 established under Section 401, 403(b) or 457 of the United States
479 Internal Revenue Code, but shall otherwise exclude unallocated
480 annuities; and
481 (iii) Unallocated annuity account which shall
482 exclude contracts owned by a governmental retirement benefit plan
483 (or its trustee) established under Section 401, 403(b) or 457 of
484 the United States Internal Revenue Code.
485 (b) The health insurance account.
486 (2) The association shall come under the immediate
487 supervision of the commissioner and shall be subject to the
488 applicable provisions of the insurance laws of this state.
489 Meetings or records of the association may be opened to the public
490 upon majority vote of the board of directors of the association.
491 SECTION 5. Section 83-23-215, Mississippi Code of 1972, is
492 amended as follows:
493 83-23-215. (1) If a member insurer is an impaired * * *
494 insurer, the association may, in its discretion, and subject to
495 any conditions imposed by the association that do not impair the
496 contractual obligations of the impaired insurer, and that are
497 approved by the commissioner * * *:
498 (a) Guarantee, assume or reinsure, or cause to be

499 guaranteed, assumed or reinsured, any or all of the policies or
500 contracts of the impaired insurer; or
501 (b) Provide such monies, pledges, loans, notes,
502 guarantees or other means as are proper to effectuate paragraph
503 (a), and assure payment of the contractual obligations of the
504 impaired insurer pending action under paragraph (a) *** * ***.
505 *** * ***
506 (2) If a member insurer is an insolvent insurer, the
507 association shall, in its discretion, either:
508 (a) (i) 1. Guarantee, assume or reinsure, or cause to
509 be guaranteed, assumed or reinsured, the policies or contracts of
510 the insolvent insurer; or
511 2. Assure payment of the contractual
512 obligations of the insolvent insurer; and
513 (ii) Provide *** * *** monies, pledges, loans, notes,
514 guarantees or other means *** * *** reasonably necessary to discharge
515 the association's duties; or
516 (b) *** * *** Provide benefits and coverages in accordance
517 with the following provisions:
518 (i) *** * *** With respect to *** * *** life and health
519 insurance policies and annuities, *** * *** assure payment of benefits
520 for premiums identical to the premiums and benefits (except for
521 terms of conversion and renewability) that would have been payable
522 under the policies or contracts of the insolvent insurer, for
523 claims incurred:
524 1. With respect to group policies and
525 contracts, not later than the earlier of the next renewal date
526 under those policies or contracts or forty-five (45) days, but in
527 no event less than thirty (30) days, after the date on which the
528 association becomes obligated with respect to the policies and
529 contracts;
530 2. With respect to nongroup policies,
531 contracts and annuities not later than the earlier of the next

532 renewal date (if any) under the policies or contracts or one (1)
533 year, but in no event less than thirty (30) days, from the date on
534 which the association becomes obligated with respect to the
535 policies or contracts;

536 (ii) Make diligent efforts to provide all known
537 insureds or annuitants (for nongroup policies and contracts), or
538 group policy owners with respect to group policies and contracts,
539 thirty (30) days' notice of the termination (pursuant to
540 subparagraph (i) of this paragraph) of the benefits provided;

541 (iii) With respect to nongroup life and health
542 insurance policies and annuities covered by the association, make
543 available to each known insured or annuitant, or owner if other
544 than the insured, or annuitant, and with respect to an individual
545 formerly insured or formerly an annuitant under a group policy who
546 is not eligible for replacement group coverage, make available
547 substitute coverage on an individual basis in accordance with the
548 provisions of subparagraph (iv), if the insureds or annuitants had
549 a right under law or the terminated policy or annuity to convert
550 coverage to individual coverage or to continue an individual
551 policy or annuity in force until a specified age or for a
552 specified time, during which the insurer had no right unilaterally
553 to make changes in any provision of the policy or annuity or had a
554 right only to make changes in premium by class;

555 (iv) 1. In providing the substitute coverage
556 required under subparagraph (iii), the association may offer
557 either to reissue the terminated coverage or to issue an
558 alternative policy;

559 2. Alternative or reissued policies shall be
560 offered without requiring evidence of insurability, and shall not
561 provide for any waiting period or exclusion that would not have
562 applied under the terminated policy;

563 3. The association may reinsure any
564 alternative or reissued policy.

565 (v) 1. Alternative policies adopted by the
566 association shall be subject to the approval of the domiciliary
567 insurance commissioner and the receivership court. The
568 association may adopt alternative policies of various types for
569 future issuance without regard to any particular impairment or
570 insolvency;
571 2. Alternative policies shall contain at
572 least the minimum statutory provisions required in this state and
573 provide benefits that shall not be unreasonable in relation to the
574 premium charged. The association shall set the premium in
575 accordance with a table of rates which it shall adopt. The
576 premium shall reflect the amount of insurance to be provided and
577 the age and class of risk of each insured, but shall not reflect
578 any changes in the health of the insured after the original policy
579 was last underwritten;
580 3. Any alternative policy issued by the
581 association shall provide coverage of a type similar to that of
582 the policy issued by the impaired or insolvent insurer, as
583 determined by the association;
584 (vi) If the association elects to reissue
585 terminated coverage at a premium rate different from that charged
586 under the terminated policy, the premium shall be set by the
587 association in accordance with the amount of insurance provided
588 and the age and class of risk, subject to approval of the
589 domiciliary insurance commissioner and the receivership
590 court; * * *
591 (vii) The association's obligations with respect
592 to coverage under any policy of the impaired or insolvent insurer
593 or under any reissued or alternative policy shall cease on the
594 date such coverage or policy is replaced by another similar policy
595 by the policy owner, the insured or the association; and
596 (viii) When proceeding under subsection (2) * * *
597 of this section with respect to any policy or contract carrying

598 guaranteed minimum interest rates, the association shall assure
599 the payment or crediting of a rate of interest consistent with
600 Section 83-23-205(2)(b)(iii).

601 (3) Nonpayment of premiums within thirty-one (31) days after
602 the date required under the terms of any guaranteed, assumed,
603 alternative or reissued policy or contract or substitute coverage
604 shall terminate the association's obligations under the policy or
605 coverage under this article with respect to the policy or
606 coverage, except with respect to any claims incurred or any net
607 cash surrender value which may be due in accordance with the
608 provisions of this article.

609 (4) Premiums due for coverage after entry of an order of
610 liquidation of an insolvent insurer shall belong to and be payable
611 at the direction of the association, and the association shall be
612 liable for unearned premiums due to policy or contract owners
613 arising after the entry of such order.

614 (5) The protection provided by this article shall not apply
615 where any guaranty protection is provided to residents of this
616 state by the laws of the domiciliary state or jurisdiction of the
617 impaired or insolvent insurer other than this state.

618 (6) In carrying out its duties under subsection (2) * * * of
619 this section, the association may * * *:

620 (a) Subject to approval by a court in this state,
621 impose permanent policy or contract liens in connection with any
622 guarantee, assumption or reinsurance agreement, if the association
623 finds that the amounts which can be assessed under this article
624 are less than the amounts needed to assure full and prompt
625 performance of the association's duties under this article, or
626 that the economic or financial conditions as they affect member
627 insurers are sufficiently adverse to render the imposition of such
628 permanent policy or contract liens, to be in the public interest;

629 (b) Subject to approval by a court in this state,
630 impose temporary moratoriums or liens on payments of cash values

631 and policy loans, or any other right to withdraw funds held in
632 conjunction with policies or contracts, in addition to any
633 contractual provisions for deferral of cash or policy loan value.
634 In addition, in the event of a temporary moratorium or moratorium
635 charge imposed by the receivership court on payment of cash values
636 or policy loans, or on any other right to withdraw funds held in
637 conjunction with policies or contracts, out of the assets of the
638 impaired or insolvent insurer, the association may defer the
639 payment of cash values, policy loans or other rights by the
640 association for a period of the moratorium or moratorium charge
641 imposed by the receivership court, except for claims covered by
642 the association to be paid in accordance with a hardship procedure
643 established by the liquidator or rehabilitator and approved by the
644 receivership court.
645 (7) A deposit in this state, held pursuant to law or
646 required by the commissioner for the benefit of creditors,
647 including policy owners, not turned over to the domiciliary
648 liquidator upon the entry of a final order of liquidation or order
649 approving a rehabilitation plan of an insurer domiciled in this
650 state or in a reciprocal state, pursuant to Section 83-24-103 of
651 the Insurers Rehabilitation and Liquidation Act, shall be promptly
652 paid to the association. The association shall be entitled to
653 retain a portion of any amount so paid to it equal to the
654 percentage determined by dividing the aggregate amount of policy
655 owners' claims related to that insolvency for which the
656 association has provided statutory benefits by the aggregate
657 amount of all policy owners' claims in this state related to that
658 insolvency and shall remit to the domiciliary receiver the amount
659 so paid to the association and retained pursuant to this
660 subsection. Any amount so paid to the association less the amount
661 retained by it shall be treated as a distribution of estate assets
662 pursuant to Section 83-24-67 of the Insurers Rehabilitation and
663 Liquidation Act or similar provision of the state of domicile of

664 the impaired or insolvent insurer.

665 (8) If the association fails to act within a reasonable
666 period of time with respect to an insolvent insurer as provided in
667 subsection (2) * * * of this section, the commissioner shall have
668 the powers and duties of the association under this article with
669 respect to the insolvent insurer.

670 (9) The association may render assistance and advice to the
671 commissioner, upon his request, concerning rehabilitation, payment
672 of claims, continuance of coverage or the performance of other
673 contractual obligations of an impaired or insolvent insurer.

674 (10) The association shall have standing to appear or
675 intervene before a court or agency in this state with jurisdiction
676 over an impaired or insolvent insurer concerning which the
677 association is or may become obligated under this article or with
678 jurisdiction over any person or property against which the
679 association may have rights through subrogation or
680 otherwise. * * * Standing shall extend to all matters germane to
681 the powers and duties of the association, including, but not
682 limited to, proposals for reinsuring, modifying or guaranteeing
683 the policies or contracts of the impaired or insolvent insurer and
684 the determination of the policies or contracts and contractual
685 obligations. The association shall also have the right to appear
686 or intervene before a court or agency in another state with
687 jurisdiction over an impaired or insolvent insurer for which the
688 association is or may become obligated or with jurisdiction over
689 any person or property against whom the association may have
690 rights through subrogation or otherwise.

691 (11) (a) Any person receiving benefits under this article
692 shall be deemed to have assigned the rights under, and any causes
693 of action against any person for losses arising under, resulting
694 from or otherwise relating to, the covered policy or contract to
695 the association to the extent of the benefits received because of
696 this article, whether the benefits are payments of or on account

697 of contractual obligations, continuation of coverage or provision
698 of substitute or alternative coverages. The association may
699 require an assignment to it of such rights and causes of action by
700 any payee, policy or contract owner, beneficiary, insured or
701 annuitant as a condition precedent to the receipt of any right or
702 benefits conferred by this article upon the person.
703 (b) The subrogation rights of the association under
704 this subsection shall have the same priority against the assets of
705 the impaired or insolvent insurer as that possessed by the person
706 entitled to receive benefits under this article.
707 (c) In addition to paragraphs (a) and (b) above, the
708 association shall have all common law rights of subrogation and
709 any other equitable or legal remedy that would have been available
710 to the impaired or insolvent insurer or owner, beneficiary or
711 payee of a policy or contract with respect to such policy or
712 contracts (including without limitation, in the case of a
713 structured settlement annuity, any rights of the owner,
714 beneficiary or payee of the annuity, to the extent of benefits
715 received pursuant to this article, against a person originally or
716 by succession responsible for the losses arising from the personal
717 injury relating to the annuity or payment therefor), excepting any
718 such person responsible solely by reason of serving as an assignee
719 in respect of a qualified assignment under Internal Revenue Code
720 Section 130.
721 (d) If the preceding provisions of this subsection are
722 invalid or ineffective with respect to any person or claim for any
723 reason, the amount payable by the association with respect to the
724 related covered obligations shall be reduced by the amount
725 realized by any other person with respect to the person or claim
726 that is attributable to the policies (or portion thereof) covered
727 by the association.
728 (e) If the association has provided benefits with
729 respect to a covered obligation and a person recovers amounts as

730 to which the association has rights as described in the preceding
731 paragraphs of this subsection, the person shall pay to the
732 association the portion of the recovery attributable to the
733 policies (or portion thereof) covered by the association.
734 (12) In addition to the rights and power elsewhere in this
735 article, the association may:
736 (a) Enter into such contracts as are necessary or
737 proper to carry out the provisions and purposes of this article;
738 (b) Sue or be sued, including taking any legal actions
739 necessary or proper to recover any unpaid assessments under
740 Section 83-23-217 and to settle claims or potential claims against
741 it;
742 (c) Borrow money to effect the purposes of this
743 article; any notes or other evidence of indebtedness of the
744 association not in default shall be legal investments for domestic
745 insurers and may be carried as admitted assets;
746 (d) Employ or retain such persons as are necessary or
747 appropriate to handle the financial transactions of the
748 association, and to perform such other functions as become
749 necessary or proper under this article;
750 (e) Take such legal action as may be necessary or
751 appropriate to avoid or recover payment of improper claims;
752 (f) Exercise, for the purposes of this article and to
753 the extent approved by the commissioner, the powers of a domestic
754 life or health insurer, but in no case may the association issue
755 insurance policies or annuity contracts other than those issued to
756 perform its obligations under this article;
757 (g) Organize itself as a corporation or in other legal
758 form permitted by the laws of the state;
759 (h) Request information from a person seeking coverage
760 from the association in order to aid the association in
761 determining its obligations under this article with respect to the
762 person, and the person shall promptly comply with the request; and

763 (i) Take other necessary or appropriate action to
764 discharge its duties and obligations under this article or to
765 exercise its powers under this article.
766 (13) The association may join an organization of one or more
767 other state associations of similar purposes, to further the
768 purposes and administer the powers and duties of the association.
769 (14) (a) At any time within one (1) year after the date on
770 which the association becomes responsible for the obligations of a
771 member insurer (the coverage date), the association may elect to
772 succeed to the rights and obligations of the member insurer, that
773 accrue on or after the coverage date and that relate to contracts
774 covered (in whole or in part) by the association, under any one
775 (1) or more indemnity reinsurance agreements entered into by the
776 member insurer as a ceding insurer and selected by the
777 association. However, the association may not exercise an
778 election with respect to a reinsurance agreement if the receiver,
779 rehabilitator or liquidator of the member insurer has previously
780 and expressly disaffirmed the reinsurance agreement. The election
781 shall be effected by a notice to the receiver, rehabilitator or
782 liquidator and to the affected reinsurers. If the association
783 makes an election, subparagraphs (i) through (iv) below shall
784 apply with respect to the agreements selected by the association:
785 (i) The association shall be responsible for all
786 unpaid premiums due under the agreements (for periods both before
787 and after the coverage date), and shall be responsible for the
788 performance of all other obligations to be performed after the
789 coverage date, in each case which relate to contracts covered (in
790 whole or in part) by the association. The association may charge
791 contracts covered in part by the association, through reasonable
792 allocation methods, the costs for reinsurance in excess of the
793 obligations of the association;
794 (ii) The association shall be entitled to any
795 amounts payable by the reinsurer under the agreements with respect

796 to losses or events that occur in periods after the coverage date
797 and that relate to contracts covered by the association (in whole
798 or in part), provided that, upon receipt of any such amounts, the
799 association shall be obliged to pay to the beneficiary under the
800 policy or contract on account of which the amounts were paid a
801 portion of the amount equal to the excess of:
802 1. The amount received by the association,
803 over
804 2. The benefits paid by the association on
805 account of the policy or contract less the retention of the
806 impaired or insolvent member insurer applicable to the loss or
807 event;
808 (iii) Within thirty (30) days following the
809 association's election, the association and each indemnity
810 reinsurer shall calculate the net balance due to or from the
811 association under each reinsurance agreement as of the date of the
812 association's election, giving full credit to all items paid by
813 either the member insurer (or its receiver, rehabilitator or
814 liquidator) or the indemnity reinsurer during the period between
815 the coverage date and the date of the association's election.
816 Either the association or indemnity reinsurer shall pay the net
817 balance due the other within five (5) days of the completion of
818 the aforementioned calculation. If the receiver, rehabilitator or
819 liquidator has received any amounts due the association pursuant
820 to subparagraph (ii), the receiver, rehabilitator or liquidator
821 shall remit the same to the association as promptly as
822 practicable;
823 (iv) If the association, within sixty (60) days of
824 the election, pays the premiums due for periods both before and
825 after the coverage date that relate to contracts covered by the
826 association (in whole or in part), the reinsurer shall not be
827 entitled to terminate the reinsurance agreements (insofar as the
828 agreements) relate to contracts covered by the association (in

829 whole or in part) and shall not be entitled to set off any unpaid
830 premium due for periods prior to the coverage date against amounts
831 due the association.
832 (b) In the event the association transfers its
833 obligations to another insurer, and if the association and the
834 other insurer agree, the other insurer shall succeed to the rights
835 and obligations of the association under paragraph (a) effective
836 as of the date agreed upon by the association and the other
837 insurer and regardless of whether the association has made the
838 election referred to above in paragraph (a) provided that:
839 (i) The indemnity reinsurance agreements shall
840 automatically terminate for new reinsurance unless the indemnity
841 reinsurer and the other insurer agree to the contrary;
842 (ii) The obligations described in the proviso to
843 paragraph (a)(ii) of this subsection shall no longer apply on and
844 after the date the indemnity reinsurance agreement is transferred
845 to the third party insurer; and
846 (iii) This paragraph (b) shall not apply if the
847 association has previously expressly determined in writing that it
848 will not exercise the election referred to in paragraph (a);
849 (c) The provisions of this subsection shall supersede
850 the provisions of any law of this state or of any affected
851 reinsurance agreement that provides for or requires any payment of
852 reinsurance proceeds, on account of losses or events that occur in
853 periods after the coverage date, to the receiver, liquidator or
854 rehabilitator of the insolvent member insurer. The receiver,
855 rehabilitator or liquidator shall remain entitled to any amounts
856 payable by the reinsurer under the reinsurance agreement with
857 respect to losses or events that occur in periods prior to the
858 coverage date (subject to applicable setoff provisions); and
859 (d) Except as otherwise expressly provided above,
860 nothing herein shall alter or modify the terms and conditions of
861 the indemnity reinsurance agreements of the insolvent member

862 insurer. Nothing herein shall abrogate or limit any rights of any
863 reinsurer to claim that it is entitled to rescind a reinsurance
864 agreement. Nothing herein shall give a policy owner or
865 beneficiary an independent cause of action against an indemnity
866 reinsurer that is not otherwise set forth in the indemnity
867 reinsurance agreement.

868 (15) The board of directors of the association shall have
869 discretion and may exercise a reasonable business judgment to
870 determine the means by which the association is to provide the
871 benefits of this article in an economical and efficient manner.

872 (16) Where the association has arranged or offered to
873 provide the benefits of this article to a covered person under a
874 plan or arrangement that fulfills the association's obligations
875 under this article, the person shall not be entitled to benefits
876 from the association in addition to or other than those provided
877 under the plan or arrangement.

878 (17) Venue in a suit against the association arising under
879 the article shall be in Hinds County, Mississippi. The
880 association shall not be required to give an appeal bond in an
881 appeal that relates to a cause of action arising under this
882 article.

883 SECTION 6. Section 83-23-217, Mississippi Code of 1972, is
884 amended as follows:

885 83-23-217. (1) For the purpose of providing the funds
886 necessary to carry out the powers and duties of the association,
887 the board of directors shall assess the member insurers,
888 separately for each account, at such time and for such amounts as
889 the board finds necessary. Assessments shall be due not less than
890 thirty (30) days after prior written notice to the member insurers
891 and shall accrue interest at twelve percent (12%) per annum on and
892 after the due date.

893 (2) There shall be two (2) classes of assessments, as
894 follows:

895 (a) Class A assessments shall be authorized and called
896 for the purpose of meeting administrative and legal costs and
897 other expenses * * *. Class A assessments may be authorized and
898 called whether or not related to a particular impaired or
899 insolvent insurer.
900 (b) Class B assessments shall be authorized and called
901 to the extent necessary to carry out the powers and duties of the
902 association under Section 83-23-215 with regard to an impaired or
903 insolvent insurer.
904 (3) (a) The amount of any Class A assessment shall be
905 determined by the board and may be authorized and called on a pro
906 rata or nonpro rata basis. If pro rata, the board may provide
907 that it be credited against future Class B assessments. The total
908 of all nonpro rata assessments shall not exceed One Hundred Fifty
909 Dollars ($150.00) per member insurer in any one (1) calendar year.
910 The amount of a Class B assessment shall be allocated for
911 assessment purposes among the accounts pursuant to an allocation
912 formula which may be based on the premiums or reserves of the
913 impaired or insolvent insurer or any other standard deemed by the
914 board in its sole discretion as being fair and reasonable under
915 the circumstances.
916 (b) Class B assessments against member insurers for
917 each account and subaccount shall be in the proportion that the
918 premiums received on business in this state by each assessed
919 member insurer on policies or contracts covered by each account
920 for the three (3) most recent calendar years for which information
921 is available preceding the year in which the insurer became * * *
922 insolvent * * * (or, in the case of an assessment with respect to
923 an impaired insurer, the three (3) most recent calendar years for
924 which information is available preceding the year in which the
925 insurer became impaired) bears to such premiums received on
926 business in this state for such calendar years by all assessed
927 member insurers.

928 (c) Assessments for funds to meet the requirements of
929 the association with respect to an impaired or insolvent insurer
930 shall not be authorized or called until necessary to implement the
931 purposes of this article. Classification of assessments under
932 subsection (2) and computation of assessments under this
933 subsection shall be made with a reasonable degree of accuracy,
934 recognizing that exact determinations may not always be possible.
935 The association shall notify each member insurer of its
936 anticipated pro rata share of an authorized assessment not yet
937 called within one hundred eighty (180) days after the assessment
938 is authorized.
939 (4) The association may abate or defer, in whole or in part,
940 the assessment of a member insurer if, in the opinion of the
941 board, payment of the assessment would endanger the ability of the
942 member insurer to fulfill its contractual obligations. In the
943 event an assessment against a member insurer is abated, or
944 deferred in whole or in part, the amount by which such assessment
945 is abated or deferred may be assessed against the other member
946 insurers in a manner consistent with the basis for assessments set
947 forth in this section. Once the conditions that caused a deferral
948 have been removed or rectified, the member insurer shall pay all
949 assessments that were deferred pursuant to a repayment plan
950 approved by the association.
951 (5) (a) (i) Subject to the provisions of subparagraph (ii)
952 of this paragraph, the total of all assessments authorized by the
953 association with respect to a member insurer for each subaccount
954 of the life insurance and annuity account and for the health
955 account shall not in any one (1) calendar year exceed two percent
956 (2%) of that member insurer's average annual premiums received in
957 this state on the policies and contracts covered by the subaccount
958 or account during the three (3) calendar years preceding the year
959 in which the insurer became an impaired or insolvent insurer.
960 (ii) If two (2) or more assessments are authorized

961 in one (1) calendar year with respect to insurers that become
962 impaired or insolvent in different calendar years, the average
963 annual premiums for purposes of the aggregate assessment
964 percentage limitation referenced in subparagraph (i) of this
965 paragraph shall be equal and limited to the higher of the
966 three-year average annual premiums for the applicable subaccount
967 or account as calculated pursuant to this section.

968 (iii) If the maximum assessment, together with the
969 other assets of the association in an account, does not provide
970 in *** * *** one (1) year in either account an amount sufficient to
971 carry out the responsibilities of the association, the necessary
972 additional funds shall be assessed as soon thereafter as permitted
973 by this article.

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

978 (c) If the maximum assessment for a subaccount of the
979 life and annuity account in *** * *** one (1) year does not provide an
980 amount sufficient to carry out the responsibilities of the
981 association, then pursuant to subsection (3)(b) of this section,
982 the board shall assess the other subaccounts of the life and
983 annuity account for the necessary additional amount, subject to
984 the maximum stated in subsection (5)(a) above.

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

994 association and for future losses claims.
995 (7) It shall be proper for any member insurer, in
996 determining its premium rates and policy owner dividends as to any
997 kind of insurance within the scope of this article, to consider
998 the amount reasonably necessary to meet its assessment obligations
999 under this article.
1000 (8) The association shall issue to each insurer paying an
1001 assessment under this article, other than a Class A assessment, a
1002 certificate of contribution, in a form prescribed by the
1003 commissioner, for the amount of the assessment so paid. All
1004 outstanding certificates shall be of equal dignity and priority
1005 without reference to amounts or dates of issue. A certificate of
1006 contribution may be shown by the insurer in its financial
1007 statement as an asset in such form and for such amount, if any,
1008 and period of time as the commissioner may approve.
1009 (9) (a) A member insurer that wishes to protest all or part
1010 of an assessment shall pay when due the full amount of the
1011 assessment as set forth in the notice provided by the association.
1012 The payment shall be available to meet association obligations
1013 during the pendency of the protest or any subsequent appeal.
1014 Payment shall be accompanied by a statement in writing that the
1015 payment is made under protest and setting forth a brief statement
1016 of the grounds for the protest.
1017 (b) Within sixty (60) days following the payment of an
1018 assessment under protest by a member insurer, the association
1019 shall notify the member insurer in writing of its determination
1020 with respect to the protest unless the association notifies the
1021 member insurer that additional time is required to resolve the
1022 issues raised by the protest.
1023 (c) Within thirty (30) days after a final decision has
1024 been made, the association shall notify the protesting member
1025 insurer in writing of that final decision. Within sixty (60) days
1026 of receipt of notice of the final decision, the protesting member

1027 insurer may appeal that final action to the commissioner.

1028 (d) In the alternative to rendering a final decision
1029 with respect to a protest based on a question regarding the
1030 assessment base, the association may refer protests to the
1031 commissioner for a final decision, with or without a
1032 recommendation from the association.

1033 (e) If the protest or appeal on the assessment is
1034 upheld, the amount paid in error or excess shall be returned to
1035 the member company. Interest on a refund due a protesting member
1036 shall be paid at the rate actually earned by the association.

1037 (10) The association may request information of member
1038 insurers in order to aid in the exercise of its power under this
1039 section and member insurers shall promptly comply with a request.

1040 SECTION 7. Section 83-23-221, Mississippi Code of 1972, is
1041 amended as follows:

1042 83-23-221. (1) In addition to the duties and powers
1043 enumerated elsewhere in this article, the commissioner shall:

1044 (a) Upon request of the board of directors, provide the
1045 association with a statement of the premiums in this and any other
1046 appropriate states for each member insurer;

1047 (b) When an impairment is declared and the amount of
1048 the impairment is determined, serve a demand upon the impaired
1049 insurer to make good the impairment within a reasonable time;
1050 notice to the impaired insurer shall constitute notice to its
1051 shareholders, if any; the failure of the insurer to promptly
1052 comply with such demand shall not excuse the association from the
1053 performance of its powers and duties under this article;

1054 (c) In any liquidation or rehabilitation proceeding
1055 involving a domestic insurer, be appointed as the liquidator or
1056 rehabilitator.

1057 (2) The commissioner may suspend or revoke, after notice and
1058 hearing, the certificate of authority to transact insurance in
1059 this state of any member insurer which fails to pay an assessment

1060 when due or fails to comply with the plan of operation. As an
1061 alternative the commissioner may levy a forfeiture on any member
1062 insurer which fails to pay an assessment when due. Such
1063 forfeiture shall not exceed five percent (5%) of the unpaid
1064 assessment per month, but no forfeiture shall be less than One
1065 Hundred Dollars ($100.00) per month.

1066 (3) A final action of the board of directors or the
1067 association may be appealed to the commissioner by any member
1068 insurer if such appeal is taken within thirty (30) days of its
1069 receipt of notice of the final action being appealed. * * * A
1070 final action or order of the commissioner shall be subject to
1071 judicial review in a court of competent jurisdiction in accordance
1072 with the laws of this state that apply to the actions or orders of
1073 the commissioner.

1074 (4) The liquidator, rehabilitator or conservator of any
1075 impaired insurer may notify all interested persons of the effect
1076 of this article.

1077 SECTION 8. Section 83-23-223, Mississippi Code of 1972, is
1078 amended as follows:

1079 83-23-223. To aid in the detection and prevention of insurer
1080 insolvencies or impairments:

1081 (1) It shall be the duty of the commissioner;

1082 (a) To notify the commissioners of all the other
1083 states, territories of the United States and the District of
1084 Columbia within thirty (30) days following the action taken or the
1085 date the action occurs, when the commissioner takes any of the
1086 following actions against a member insurer:

1087 (i) Revocation of license;

1088 (ii) Suspension of license; or

1089 (iii) Makes a formal order that such company
1090 restrict its premium writing, obtain additional contributions to
1091 surplus, withdraw from the state, reinsure all or any part of its
1092 business, or increase capital, surplus or any other account for

1093 the security of policy owners or creditors.

1094 * * *

1095 (b) To report to the board of directors when the
1096 commissioner has taken any of the actions set forth in (a) of this
1097 paragraph or has received a report from any other commissioner
1098 indicating that any such action has been taken in another state.
1099 The report to the board of directors shall contain all significant
1100 details of the action taken or the report received from another
1101 commissioner.

1102 (c) To report to the board of directors when the
1103 commissioner has reasonable cause to believe from any examination,
1104 whether completed or in process, of any member insurer that the
1105 insurer may be an impaired or insolvent insurer.

1106 (d) To furnish to the board of directors the NAIC IRIS
1107 ratios and listings of companies not included in the ratios
1108 developed by the National Association of Insurance Commissioners,
1109 and the board may use the information contained therein in
1110 carrying out its duties and responsibilities under this section.
1111 The report and the information contained therein shall be kept
1112 confidential by the board of directors until such time as made
1113 public by the commissioner or other lawful authority.

1114 (2) The commissioner may seek the advice and recommendations
1115 of the board of directors concerning any matter affecting the
1116 duties and responsibilities of the commissioner regarding the
1117 financial condition of member insurers and companies seeking
1118 admission to transact insurance business in this state.

1119 (3) The board of directors may, upon majority vote, make
1120 reports and recommendations to the commissioner upon any matter
1121 germane to the solvency, liquidation, rehabilitation or
1122 conservation of any member insurer or germane to the solvency of
1123 any company seeking to do an insurance business in this state.
1124 The reports and recommendations shall not be considered public
1125 documents.

1126 (4) * * * The board of directors may, upon majority
1127 vote, * * * notify the commissioner of any information indicating
1128 any member insurer may be an impaired or insolvent insurer.
1129 * * *
1130 (5) The board of directors may, upon majority vote, make
1131 recommendations to the commissioner for the detection and
1132 prevention of insurer insolvencies.
1133 * * *
1134 SECTION 9. Section 83-23-225, Mississippi Code of 1972, is
1135 amended as follows:
1136 83-23-225. (1) * * * This article shall not be construed to
1137 reduce the liability for unpaid assessments of the insureds of an
1138 impaired or insolvent insurer operating under a plan with
1139 assessment liability.
1140 (2) Records shall be kept of all * * * meetings of the board
1141 of directors to discuss the activities of the association in
1142 carrying out its powers and duties under Section 83-23-215. The
1143 records of the association with respect to an impaired or
1144 insolvent insurer shall not be disclosed prior to the termination
1145 of a liquidation, rehabilitation or conservation proceeding
1146 involving the impaired or insolvent insurer, upon the termination
1147 of the impairment or insolvency of the insurer, or upon the order
1148 of a court of competent jurisdiction. Nothing in this subsection
1149 shall limit the duty of the association to render a report of its
1150 activities under Section 83-23-227.
1151 (3) For the purpose of carrying out its obligations under
1152 this article, the association shall be deemed to be a creditor of
1153 the impaired or insolvent insurer to the extent of assets
1154 attributable to covered policies reduced by any amounts to which
1155 the association is entitled as subrogee pursuant to Section
1156 83-23-215(11). Assets of the impaired or insolvent insurer
1157 attributable to covered policies shall be used to continue all
1158 covered policies and pay all contractual obligations of the

1159 impaired or insolvent insurer as required by this article. Assets
1160 attributable to covered policies, as used in this subsection, are
1161 that proportion of the assets which the reserves that should have
1162 been established for such policies bear to the reserves that
1163 should have been established for all policies of insurance written
1164 by the impaired or insolvent insurer.

1165 (4) As a creditor of the impaired or insolvent insurer as
1166 established in subsection (3) of this section and consistent with
1167 Section 83-24-67, the association and other similar associations
1168 shall be entitled to receive a disbursement of assets out of the
1169 marshaled assets, from time to time as the assets become available
1170 to reimburse it, as a credit against contractual obligations under
1171 this article. If the liquidator has not, within one hundred
1172 twenty (120) days of a final determination of insolvency of an
1173 insurer by the receivership court, made an application to the
1174 court for the approval of a proposal to disburse assets out of
1175 marshaled assets to guaranty associations having obligations
1176 because of the insolvency, then the association shall be entitled
1177 to make application to the receivership court for approval of its
1178 own proposal to disburse these assets.

1179 (5) (a) Prior to the termination of any liquidation,
1180 rehabilitation or conservation proceeding, the court may take into
1181 consideration the contributions of the respective parties,
1182 including the association, the shareholders, and policy owners of
1183 the insolvent insurer, and any other party with a bona fide
1184 interest, in making an equitable distribution of the ownership
1185 rights of the insolvent insurer. In such a determination,
1186 consideration shall be given to the welfare of the policy owners
1187 of the continuing or successor insurer.

1188 (b) No distribution to stockholders, if any, of an
1189 impaired or insolvent insurer shall be made until and unless the
1190 total amount of valid claims of the association with interest
1191 thereon for funds expended in carrying out its powers and duties

1192 under Section 83-23-215 with respect to such insurer have been
1193 fully recovered by the association.
1194 _(6)_ (a) If an order for liquidation or rehabilitation of an
1195 insurer domiciled in this state has been entered, the receiver
1196 appointed under such order shall have a right to recover on behalf
1197 of the insurer, from any affiliate that controlled it, the amount
1198 of distributions, other than stock dividends paid by the insurer
1199 on its capital stock, made at any time during the five (5) years
1200 preceding the petition for liquidation or rehabilitation subject
1201 to the limitations of paragraphs (b) through (d).
1202 (b) No such distribution shall be recoverable if the
1203 insurer shows that when paid the distribution was lawful and
1204 reasonable, and that the insurer did not know and could not
1205 reasonably have known that the distribution might adversely affect
1206 the ability of the insurer to fulfill its contractual obligations.
1207 (c) Any person who was an affiliate that controlled the
1208 insurer at the time the distributions were paid shall be liable up
1209 to the amount of distributions he received. Any person who was an
1210 affiliate that controlled the insurer at the time the
1211 distributions were declared, shall be liable up to the amount of
1212 distributions he would have received if they had been paid
1213 immediately. If two (2) or more persons are liable with respect
1214 to the same distributions, they shall be jointly and severally
1215 liable.
1216 (d) The maximum amount recoverable under this
1217 subsection shall be the amount needed in excess of all other
1218 available assets of the insolvent insurer to pay the contractual
1219 obligations of the insolvent insurer.
1220 (e) If any person liable under paragraph (c) is
1221 insolvent, all its affiliates that controlled it at the time the
1222 distribution was paid, shall be jointly and severally liable for
1223 any resulting deficiency in the amount recovered from the
1224 insolvent affiliate.

1225 SECTION 10. Section 83-23-235, Mississippi Code of 1972, is
1226 amended as follows:
1227 83-23-235. (1) No person, including an insurer, agent or
1228 affiliate of an insurer shall make, publish, disseminate,
1229 circulate or place before the public, or cause directly or
1230 indirectly, to be made, published, disseminated, circulated or
1231 placed before the public in any newspaper, magazine or other
1232 publication, or in the form of a notice, circular, pamphlet,
1233 letter or poster, or over any radio station or television station,
1234 or in any other way, any advertisement, announcement or statement,
1235 written or oral, which uses the existence of the Insurance
1236 Guaranty Association of this state for the purpose of sales,
1237 solicitation or inducement to purchase any form of insurance
1238 covered by the Mississippi Life and Health Insurance Guaranty
1239 Association Act. *** * *** However, *** * *** this section shall not
1240 apply to the Mississippi Life and Health Insurance Guaranty
1241 Association or any other entity which does not sell or solicit
1242 insurance.
1243 (2) Within one hundred eighty (180) days of the effective
1244 date of this article, the association shall prepare a summary
1245 document describing the general purposes and current limitations
1246 of the article and complying with subsection (3) of this section.
1247 This document shall be submitted to the commissioner for approval.
1248 At the expiration of the sixtieth day after the date on which the
1249 commissioner approves the document, an insurer may not deliver a
1250 policy or contract to a policy or contract owner unless the
1251 summary document is delivered to the policy or contract owner at
1252 the time of delivery of the policy or contract. The document
1253 shall also be available upon request by a policy owner. The
1254 distribution, delivery or contents or interpretation of this
1255 document does not guarantee that either the policy or the contract
1256 or the owner of the policy or contract is covered in the event of
1257 the impairment or insolvency of a member insurer. The description

1258 document shall be revised by the association as amendments to the
1259 article may require. Failure to receive this document does not
1260 give the policy owner, contract owner, certificate holder or
1261 insured any greater rights than those stated in this article.
1262 (3) The document prepared under subsection (2) shall contain
1263 a clear and conspicuous disclaimer on its face. The commissioner
1264 shall establish the form and content of the disclaimer. The
1265 disclaimer shall:
1266 (a) State the name and address of the Life and Health
1267 Insurance Guaranty Association and insurance department;
1268 (b) Prominently warn the policy or contract owner that
1269 the Life and Health Insurance Guaranty Association may not cover
1270 the policy or, if coverage is available, it will be subject to
1271 substantial limitations and exclusions and conditioned on
1272 continued residence in this state;
1273 (c) State the types of policies for which guaranty
1274 funds will provide coverage;
1275 (d) State that the insurer and its agents are
1276 prohibited by law from using the existence of the Life and Health
1277 Insurance Guaranty Association for the purpose of sales,
1278 solicitation or inducement to purchase any form of insurance;
1279 (e) State that the policy or contract owner should not
1280 rely on coverage under the Life and Health Insurance Guaranty
1281 Association when selecting an insurer;
1282 (f) Explain rights available and procedures for filing
1283 a complaint to allege a violation of any provisions of this
1284 article; and
1285 (g) Provide other information as directed by the
1286 commissioner including, but not limited to, sources for
1287 information about the financial condition of insurers provided
1288 that the information is not proprietary and is subject to
1289 disclosure under that state's public records law.
1290 (4) A member insurer shall retain evidence of compliance

1291 with subsection (2) for so long as the policy or contract for
1292 which the notice is given remains in effect.
1293 SECTION 11. This act shall take effect and be in force from
1294 and after its passage, and shall not apply to any insurer that is
1295 insolvent or unable to fulfill its contractual obligations on the
1296 date of passage.