ALABAMA CODE

TITLE 27 INSURANCE

CHAPTER 44 LIFE AND DISABILITY INSURANCE GUARANTY ASSOCIATION.

SECTION 27-44-1 SHORT TITLE.

This chapter shall be known and may be cited as the "Alabama Life and Disability Insurance Guaranty Association Act."
(Acts 1982, No. 82-561, p. 922, §1.)

SECTION 27-44-2 PURPOSE OF CHAPTER.

(a) The purpose of this chapter is to protect, subject to certain limitations, the persons specified in Section 27-44-3(a) against failure in the performance of contractual obligations, under life and disability insurance policies and annuity contracts specified in Section 27-44-3(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 by this chapter, and members of the association are subject to assessment to provide funds to carry out the purpose of this chapter.
(Acts 1982, No. 82-561, p. 922, §2; Act 2012-319, p. 724, §1.)

SECTION 27-42-3 APPLICABILITY OF CHAPTER.

This chapter shall apply to all kinds of direct insurance, excluding all of the following:
(1) Life, annuity, health, or disability insurance.
(2) Mortgage guaranty, financial guaranty, or other forms of insurance offering protection against investment risks.
(3) Fidelity or surety bonds, or any other bonding obligations.
(4) Credit insurance, vendors' single interest insurance, or collateral protection insurance or any similar insurance protecting the interests of a creditor arising out of a creditor-debtor transaction.
(5) Insurance of warranties or service contracts, including insurance that provides for the repair, replacement, or service of goods or property, or indemnification for repair, replacement, or service, for the operational or structural failure of the goods or property due to a defect in materials, workmanship, or normal wear and tear, or provides reimbursement for the liability incurred by the issuer of agreements or service contracts that provide such benefits.

(6) Title insurance.
(7) Ocean marine insurance.
(8) Any insurance provided by or guaranteed by the government.
(Acts 1980, No. 80-806, p. 1639, §3; Act 2018-526, §1.)

SECTION 27-44-4 CONSTRUCTION OF CHAPTER.

This chapter shall be liberally construed to effect the purpose under Section 27-44-2 which shall constitute an aid and guide to interpretation.
(Acts 1982, No. 82-561, p. 922, §4.)

SECTION 27-44-5 DEFINITIONS.

As used in this chapter, the following terms shall have the following meanings, respectively, unless the context clearly indicates otherwise:
(1) ACCOUNT. Either of the three accounts created under Section 27-44-6.
(2) ASSOCIATION. The Alabama Life and Disability Insurance Guaranty Association created under Section 27-44-6.
(3) AUTHORIZED ASSESSMENT or the term AUTHORIZED when used in the context of assessments. A resolution by the board of directors has been passed whereby an assessment will be called immediately or in the future from member insurers for a specified amount. An assessment is authorized when the resolution is passed.
(4) BENEFIT PLAN. A specific employee, union, or association of natural persons benefit plan.
(5) CALLED ASSESSMENT or the term CALLED when used in the context of assessments. A notice that has been issued by the association to member insurers requiring that an authorized assessment be paid within the time frame set forth within the notice. An authorized assessment becomes a called assessment when notice is mailed by the association to member insurers.
(6) COMMISSIONER. The Commissioner of Insurance of this state.
(7) CONTRACTUAL OBLIGATION. An obligation under a policy or contract, or certificate under a group policy or contract, or portion thereof for which coverage is provided under Section 27-44-3.
(8) COVERED POLICY. A policy or contract or portion of a policy or contract for which coverage is provided under Section 27-44-3.
(9) IMPAIRED INSURER. A member insurer which, after January 1, 2013, is not an insolvent insurer and is placed under an order of rehabilitation or conservation by a court of competent jurisdiction.

(10) INSOLVENT INSURER. A member insurer which, after January 1, 2013, is placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency.
(11) MEMBER INSURER. An insurer licensed or that holds a certificate of authority to transact in this state any kind of insurance for which coverage is provided under Section 27-44-3, and includes an insurer whose license or certificate of authority in this state may have been suspended, revoked, not renewed, or voluntarily withdrawn, but does not include any of the following:
a. A hospital or medical service organization, whether profit or non-profit.
b. A health care services plan.
c. A cooperative hospital association.
d. A health maintenance organization.
e. A fraternal benefit society.
f. A mandatory state pooling plan.
g. A mutual assessment company or other person that operates on an assessment basis.
h. An insurance exchange.
i. An organization that has a certificate or license limited to the issuance of charitable gift annuities.
j. An entity substantially similar to any of the above.
(12) MOODY'S CORPORATE BOND YIELD AVERAGE. The Monthly Average Corporates as published by Moody's Investors Service, Inc., or any successor thereto.
(13) OWNER of a policy or contract and POLICY OWNER and CONTRACT OWNER. The person who is identified as the legal owner under the terms of the policy or contract or who is otherwise vested with legal title to the policy or contract through a valid assignment completed in accordance with the terms of the policy or contract and properly recorded as the owner on the books of the insurer. For policies or contracts which do not contractually provide for the designation of an owner, the owner shall be deemed to be the person who has the right to exercise the traditional incidents of ownership of a policy or contract. The terms owner, contract owner, and policy owner do not include person with a mere beneficial interest in a policy or contract.
(14) PERSON. An individual, corporation, limited liability company, partnership, association, governmental body or entity, or voluntary organization.
(15) PREMIUMS. Direct gross insurance premiums and annuity considerations received on covered policies or contracts, less returned premiums and considerations thereon and dividends paid or credited to policyholders on such direct business. "Premiums" do not include premiums and considerations on contracts between insurers and reinsurers.

(16) PRINCIPAL PLACE OF BUSINESS. When referring to a person other than a natural person, the single state in which the natural persons who establish policy for the direction, control, and coordination of the operations of the entity as a whole primarily exercise that function, determined by the association in its reasonable judgment by considering the following factors:
a. The state in which the primary executive and administrative headquarters of the entity is located.
b. The state in which the principal office of the chief executive officer of the entity is located.
c. The state in which the board of directors, or similar governing person or persons, of the entity conducts the majority of its meetings.
d. The state in which the executive or management committee of the board of directors, or similar governing person or persons, of the entity conducts the majority of its meetings.
e. The state from which the management of the overall operations of the entity is directed.
f. In the case of a benefit plan sponsored by affiliated companies comprising a consolidated corporation, the state in which the holding company or controlling affiliate has its principal place of business as determined using the above factors.
(17) RECEIVERSHIP COURT. The court in the insolvent or impaired insurer's state having jurisdiction over the conservation, rehabilitation, or liquidation of the insurer.
(18) RESIDENT. A person who resides in this state on the date of entry of a court order that determines a member insurer 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. Citizens of the United States that are either (i) residents of foreign countries or (ii) residents of United States possessions, territories, or protectorates that do not have an association similar to the association created by this chapter, shall be deemed residents of the state of domicile of the insurer that issued the policies or contracts.
(19) STATE. A state, the District of Columbia, Puerto Rico, and a United States possession, territory, or protectorate.
(20) STRUCTURED SETTLEMENT ANNUITY. An annuity purchased in order to fund periodic payments for a plaintiff or other claimant in payment for or with respect to personal injury suffered by the plaintiff or other claimant.
(21) SUPPLEMENTAL CONTRACT. A written agreement entered into for the distribution of proceeds under a life, disability, or annuity policy or contract.

(22) UNALLOCATED ANNUITY CONTRACT. An 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 the contract or certificate.
(Acts 1982, No. 82-561, p. 922, §5; Act 2012-319, p. 724, §1.)

SECTION 27-44-6 CREATION OF ASSOCIATION; MEMBERSHIP; ACCOUNTS; SUPERVISION.

(a) There is created a nonprofit unincorporated legal entity to be known as the Alabama 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 27-44-10 and shall exercise its powers through a board of directors established under Section 27-44-7. For purposes of administration and assessment the association shall maintain three accounts:
(1) The disability insurance account;
(2) The life insurance account; and
(3) The annuity 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.
(Acts 1982, No. 82-561, p. 922, §6.)

SECTION 27-44-7 BOARD OF DIRECTORS; SELECTION OF MEMBERS; VACANCIES; ORGANIZATIONAL MEETING; REIMBURSEMENT FOR EXPENSES.

(a) The board of directors of the association shall consist of not less than five nor more than nine member insurers serving terms as established in the plan of operation. At all times, at least one member of the board shall be a domestic insurer as defined in Section 27-1-2(6). 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. To select the initial board of directors, and initially organize the association, the commissioner shall give notice to all member insurers of the time and place of the organizational meeting. In determining voting rights at the organizational meeting, each member insurer

shall be entitled to one vote in person or by proxy. If the board of directors is not selected within 60 days after notice of the organizational meeting, 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.
(Acts 1982, No. 82-561, p. 922, §7.)

SECTION 27-44-8 POWERS AND DUTIES OF ASSOCIATION.

(a) If a member insurer is an impaired insurer, the association may, in its discretion and subject to any conditions imposed by the association that do not impair the contractual obligations of the impaired insurer, and that are approved by the commissioner:
(1) Guarantee or reinsure, or cause to be guaranteed, assumed, or reinsured, any or all of the covered policies of the impaired insurers.
(2) Provide such moneys, pledges, notes, guarantees, or other means as are proper to effectuate subdivision (1), and assure payment of the contractual obligations of the impaired insurer pending action under subdivision (1).
(b) If a member insurer is an insolvent insurer, the association shall, in its discretion and subject to the approval of the commissioner, do either of the following:
(1)a. Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the covered policies of the insolvent insurer.
b. Assure payment of the contractual obligations of the insolvent insurer.
c. Provide such moneys, pledges, notes, guarantees, or other means as are reasonably necessary to discharge such duties.
(2) Provide benefits and coverages in accordance with the following provisions:
a. With respect to life and disability insurance policies and annuities, 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 or contracts of the insolvent insurer, for claims incurred:
1. With respect to group policies and contracts, not later than the earlier of the next renewal date under those policies or contracts or 45 days, but in no event

less than 30 days, after the date on which the association becomes obligated with respect to the policies and contracts.
2. With respect to non-group policies, contracts, and annuities not later than the earlier of the next renewal date, if any, under the policies or contracts or one year, but in no event less than 30 days, from the date on which the association becomes obligated with respect to the policies or contracts.
b. Make diligent efforts to provide all known insureds or annuitants (for non-group policies and contracts), or group policy owners with respect to group policies and contracts, 30 days' notice of the termination (pursuant to paragraph a.) of the benefits provided.
c. With respect to non-group life and disability insurance policies and annuities covered by the association, make available to each known insured or annuitant, or owner if other than the insured or annuitant, and with respect to an individual formerly insured or formerly an annuitant 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 d., if the insureds or annuitants had a right under law or the terminated policy or annuity to convert coverage to individual coverage or to continue an individual policy or annuity in force until a specified age or for a specified time, during which the insurer had no right unilaterally to make changes in any provision of the policy or annuity or had a right only to make changes in premium by class.
d.1. In providing the substitute coverage required under paragraph c., the association may offer either to reissue the terminated coverage or to issue an alternative policy.
2. 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.
3. The association may reinsure any alternative or reissued policy.
e.1. 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.
2. 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 that 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.

3. 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.
f. 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.
g. 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 the coverage or policy is replaced by another similar policy by the policy owner, the insured, or the association.
h. When proceeding under this subdivision (2) with respect to a policy or contract carrying guaranteed minimum interest rates, the association shall assure the payment or crediting of a rate of interest consistent with Section 27-44-3(b)(2)c.
(c) Nonpayment of premiums within 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 the policy or coverage under this chapter with respect to the 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 this chapter.
(d) 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. If the liquidator of an insolvent insurer requests, the association shall provide a report to the liquidator regarding such premium collected by the association. The association shall be liable for unearned premiums due to policy or contract owners arising after the entry of the order.
(e) The protection provided by this chapter 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.
(f) In carrying out its duties under subsection (b), the association may, subject to approval by a court in this state:
(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 chapter are less than the amounts needed to assure full and prompt performance of the association's duties under this chapter, 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 values. In addition, in the event of a temporary moratorium or moratorium charge imposed by the receivership court on payment of cash values or policy loans, or on any other right to withdraw funds held in conjunction with policies or contracts, out of the assets of the impaired or insolvent insurer, the association may defer the payment of cash values, policy loans, or other rights by the association for the period of the moratorium or moratorium charge imposed by the receivership court, except for claims covered by the association to be paid in accordance with a hardship procedure established by the liquidator or rehabilitator and approved by the receivership court.

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

(h) The association may render assistance and advice to the commissioner, upon the commissioner's request, concerning rehabilitation, payment of claims, continuance of coverage, or the performance of other contractual obligations of an impaired or insolvent insurer.

(i) The association shall have standing to appear or intervene before a court or agency in this state with jurisdiction over an impaired or insolvent insurer concerning which the association is or may become obligated under this chapter. 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 covered policies or contracts and contractual obligations. The association shall also have the right to appear or intervene before a court or agency in another state with jurisdiction over an impaired or insolvent insurer for which the association is or may become obligated or with jurisdiction over any person or property against whom the association may have rights through subrogation or otherwise.

(j)(1) A person receiving benefits under this chapter shall be deemed to have assigned the rights under, and any causes of action against any person for losses arising under, resulting from or otherwise relating to, the covered policy or contract to the association to the extent of the benefits received because of this chapter, whether the benefits are payments of or on account of contractual obligations, continuation of coverage or provision of substitute or alternative coverage. The association may require an assignment to it of such rights by any payee, policy or contract owner, beneficiary, insured or annuitant as a condition precedent to the receipt of any rights or benefits conferred by this chapter 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 chapter.
(3) In addition to subdivisions (1) and (2), the association shall have all common law rights of subrogation and any other equitable or legal remedy that would have been available to the impaired or insolvent insurer or owner, beneficiary, or payee of a policy or contract with respect to the policy or contract.
(4) If the preceding provisions of this subsection are invalid or ineffective with respect to any person or claim for any reason, the amount payable by the association with respect to the related covered obligations shall be reduced by the amount realized by any other person with respect to the person or claim that is attributable to the policies, or portion thereof, covered by the association.
(5) If the association has provided benefits with respect to a covered obligation and a person recovers amounts as to which the association has rights as described in the preceding subdivisions of this subsection, the person shall pay to the association the portion of the recovery attributable to the policies, or portion thereof, covered by the association.
(k) In addition to the rights and powers elsewhere in this chapter, the association may:
(1) Enter into such contracts as are necessary or proper to carry out the provisions and purposes of this chapter.
(2) Sue or be sued, including taking any legal actions necessary or proper for recovery of any unpaid assessments under Section 27-44-9 and to settle claims or potential claims against it.
(3) Borrow money to effect the purposes of this chapter. 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 chapter.
(5) Take such legal action as may be necessary to avoid payment of improper claims.
(6) Exercise, for the purposes of this chapter and to the extent approved by the commissioner, the powers of a domestic life or health insurer, but in no case may the association issue insurance policies or annuity contracts other than those issued to perform its obligations under this chapter.
(7) Organize itself as a corporation or in other legal forms permitted by the laws of the state.

(8) Request information from a person seeking coverage from the association in order to aid the association in determining its obligations under this chapter with respect to the person, and the person shall promptly comply with the request.
(9) Take other necessary or appropriate action to discharge its duties and obligations under this chapter or to exercise its powers under this chapter.
(l) 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.
(m)(1)a. At any time within 180 days of the date of the order of liquidation, the association may elect to succeed to the rights and obligations of the ceding member insurer that relate to policies or annuities covered, in whole or in part, by the association, in each case under any one or more reinsurance contracts entered into by the insolvent insurer and its reinsurers and selected by the association. Any such assumption shall be effective as of the date of the order of liquidation. The election shall be effected by the association or the National Organization of Life and Health Insurance Guaranty Associations (NOLHGA) on its behalf sending written notice, return receipt requested, to the affected reinsurers.
b. To facilitate the earliest practicable decision about whether to assume any of the contracts of reinsurance, and in order to protect the financial position of the estate, the receiver and each reinsurer of the ceding member insurer shall make available upon request to the association or to NOLHGA on its behalf as soon as possible after commencement of formal delinquency proceedings (i) copies of in-force contracts of reinsurance and all related files and records relevant to the determination of whether such contracts should be assumed, and (ii) notices of any defaults under the reinsurance contracts or any known event or condition which with the passage of time could become a default under the reinsurance contracts.
c. The following paragraphs 1. through 4. shall apply to reinsurance contracts so assumed by the association:
1. The association shall be responsible for all unpaid premiums due under the reinsurance contracts for periods both before and after the date of the order of liquidation, and shall be responsible for the performance of all other obligations to be performed after the date of the order of liquidation, in each case which relate to policies or annuities covered, in whole or in part, by the association. The association may charge policies or annuities covered in part by the association, through reasonable allocation methods, the costs for reinsurance in excess of the obligations of the association and shall provide notice and an accounting of these charges to the liquidator.

2. The association shall be entitled to any amounts payable by the reinsurer under the reinsurance contracts with respect to losses or events that occur in periods after the date of the order of liquidation and that relate to policies or annuities covered, in whole or in part, by the association, provided that, upon receipt of any such amounts, the association shall be obliged to pay to the beneficiary under the policy or annuity on account of which the amounts were paid a portion of the amount equal to the lesser of:
(i) The amount received by the association.
(ii) The excess of the amount received by the association over the amount equal to the benefits paid by the association on account of the policy or annuity less the retention of the insurer applicable to the loss or event.
3. Within 30 days following the association's election (the "election date"), the association and each reinsurer under contracts assumed by the association shall calculate the net balance due to or from the association under each reinsurance contract as of the election date with respect to policies or annuities covered, in whole or in part, by the association, which calculation shall give full credit to all items paid by either the insurer or its receiver or the reinsurer prior to the election date. The reinsurer shall pay the receiver any amounts due for losses or events prior to the date of the order of liquidation, subject to any set-off for premiums unpaid for periods prior to the date, and the association or reinsurer shall pay any remaining balance due the other, in each case within five days of the completion of the aforementioned calculation. Any disputes over the amounts due to either the association or the reinsurer shall be resolved by arbitration pursuant to the terms of the affected reinsurance contracts or, if the contract contains no arbitration clause, as otherwise provided by law. If the receiver has received any amounts due the association pursuant to subparagraph 2., the receiver shall remit the same to the association as promptly as practicable.
4. If the association or receiver, on the association's behalf, within 60 days of the election date, pays the unpaid premiums due for periods both before and after the election date that relate to policies or annuities covered, in whole or in part, by the association, the reinsurer shall not be entitled to terminate the reinsurance contracts for failure to pay premium insofar as the reinsurance contracts relate to policies and annuities covered, in whole or in part, by the association, and shall not be entitled to set off any unpaid amounts due under other contracts, or unpaid amounts due from parties other than the association, against amounts due the association.
(2) During the period from the date of the order of liquidation until the election date or, if the election date does not occur, until 180 days after the date of the order of liquidation:

a.1. Neither the association nor the reinsurer shall have any rights or obligations under reinsurance contracts that the association has the right to assume under subdivision (1), whether for periods prior to or after the date of the order of liquidation.
2. The reinsurer, the receiver, and the association shall, to the extent practicable, provide each other data and records reasonably requested.
b. Provided that once the association has elected to assume a reinsurance contract, the parties' rights and obligations shall be governed by subdivision (1).
(3) If the association does not elect to assume a reinsurance contract by the election date pursuant to subdivision (1), the association shall have no rights or obligations, in each case for periods both before and after the date of the order of liquidation, with respect to the reinsurance contract.
(4) When policies or annuities, or covered obligations with respect thereto, are transferred to an assuming insurer, reinsurance on the policies or annuities may also be transferred by the association, in the case of contracts assumed under subdivision (1), subject to all of the following:
a. Unless the reinsurer and the assuming insurer agree otherwise, the reinsurance contract transferred shall not cover any new policies of insurance or annuities in addition to those transferred.
b. The obligations described in subdivision (1) shall no longer apply with respect to matters arising after the effective date of the transfer.
c. Notice shall be given in writing, return receipt requested, by the transferring party to the affected reinsurer not less than 30 days prior to the effective date of the transfer.
(5) The provisions of this subsection shall supersede the provisions of any state law or of any affected reinsurance contract that provides for or requires any payment of reinsurance proceeds, on account of losses or events that occur in periods after the date of the order of liquidation, to the receiver of the insolvent insurer or any other person. The receiver, shall remain entitled to any amount payable by the reinsurer under the reinsurance contracts with respect to losses or events that occur in periods prior to the date of the order of liquidation, subject to applicable setoff provisions.
(6) Except as otherwise provided in this section, nothing in this subsection shall alter or modify the terms and conditions of any reinsurance contract. Nothing in this section shall abrogate or limit any rights of any reinsurer to claim that it is entitled to rescind a reinsurance contract. Nothing in this section shall give a policyholder or beneficiary an independent cause of action against a reinsurer that is not otherwise set forth in the reinsurance contract. Nothing in this section shall limit or affect the association's rights as a creditor

of the estate against the assets of the estate. Nothing in this section shall apply to reinsurance agreements covering property or casualty risks.
(n) The board of directors of the association shall have discretion and may exercise reasonable business judgment to determine the means by which the association is to provide the benefits of this chapter in an economical and efficient manner.
(o) Where the association has arranged or offered to provide the benefits of this chapter to a covered person under a plan or arrangement that fulfills the association's obligations under this chapter, the person shall not be entitled to benefits from the association in addition to or other than those provided under the plan or arrangement.
(p) Venue in a suit against the association arising under this chapter shall be in Jefferson County, Alabama. The association shall not be required to give an appeal bond in an appeal that relates to a cause of action arising under this chapter.
(q) In carrying out its duties in connection with guaranteeing, assuming, or reinsuring policies or contracts under subsection (a) or (b), the association may, subject to approval of the receivership court, issue substitute coverage for a policy or contract that provides an interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value by issuing an alternative policy or contract in accordance with all of the following provisions:
(1) In lieu of the index or other external reference provided for in the original policy or contract, the alternative policy or contract provides for (i) a fixed interest rate, (ii) payment of dividends with minimum guarantees, or (iii) a different method for calculating interest or changes in value.
(2) There is no requirement for evidence of insurability, waiting period, or other exclusion that would not have applied under the replaced policy or contract.
(3) The alternative policy or contract is substantially similar to the replaced policy or contract in all other material terms.
(Acts 1982, No. 82-561, p. 922, §8; Act 2012-319, p. 724, §1.)

SECTION 27-44-9 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 30 days

after prior written notice to the member insurers and shall accrue interest at six percent per annum on and after the due date.
(b) There shall be two classes of assessments, as follows:
(1) Class A assessments shall be authorized and called for the purpose of meeting administrative and legal costs and other expenses. Class A assessment may be authorized and called whether or not related to a particular impaired or insolvent insurer.
(2) Class B assessments shall be authorized and called to the extent necessary to carry out the powers and duties of the association under Section 27-44-8 with regard to an impaired or insolvent insurer.
(c)(1) The amount of a Class A assessment shall be determined by the board and may be authorized and called on a non-pro rata basis. The total of all Class A assessments shall not exceed three hundred dollars ($300) per member insurer in any one calendar year. The amount of a 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 on policies or contracts covered by each account for the three most recent calendar years for which information is available preceding the year in which the insurer became insolvent or, in the case of an assessment with respect to an impaired insurer, the three most recent calendar years for which information is available preceding the year in which the insurer became impaired, bears to premiums received on business in this state for those 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 authorized or called until necessary to implement the purposes of this chapter. 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. The association shall notify each member insurer of its anticipated pro rata share of an authorized assessment not yet called within 180 days after the assessment is authorized.
(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 the 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. Once the conditions that caused a deferral have been removed or rectified, the member insurer shall pay all assessments that were deferred pursuant to a repayment plan approved by the association.

(e)(1)a. Subject to the provisions of paragraph b., the total of all assessments authorized by the association with respect to a member insurer for each account shall not in one calendar year exceed one percent of that member insurer's average annual premiums received in this state on the policies and contracts covered by the account during the three calendar years preceding the year in which the insurer became an impaired or insolvent insurer.

b. If two or more assessments are authorized in one calendar year with respect to insurers that become impaired or insolvent in different calendar years, the average annual premiums for purposes of the aggregate assessment percentage limitation referenced in paragraph a. shall be equal and limited to the higher of the three-year average annual premiums for the applicable account as calculated pursuant to this section.

c. If the maximum assessment, together with the other assets of the association in an account, does not provide in one year in the 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 chapter.

(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.

(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 or claims.

(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 chapter, to consider the amount reasonably necessary to meet its assessment obligations under this chapter.

(h) The association shall issue to each insurer paying an assessment under this chapter, other than a 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.
(i)(1) A member insurer that wishes to protest all or part of an assessment shall pay when due the full amount of the assessment as set forth in the notice provided by the association. The payment shall be available to meet association obligations during the pendency of the protest or any subsequent appeal. Payment shall be accompanied by a statement in writing that the payment is made under protest and setting forth a brief statement of the grounds for the protest.
(2) Within 60 days following the payment of an assessment under protest by a member insurer, the association shall notify the member insurer in writing of its determination with respect to the protest unless the association notifies the member insurer that additional time is required to resolve the issues raised by the protest.
(3) Within 30 days after a final decision has been made, the association shall notify the protesting member insurer in writing of that final decision. Within 60 days of receipt of notice of the final decision, the protesting member insurer may appeal that final action to the commissioner.
(4) In the alternative to rendering a final decision with respect to a protest based on a question regarding the assessment base, the association may refer protests to the commissioner for a final decision, with or without a recommendation from the association.
(5) If the protest or appeal on the assessment is upheld, the amount paid in error or excess shall be returned to the member company. Interest on a refund due a protesting member shall be paid at the rate actually earned by the association.
(j) The association may request information of member insurers in order to aid in the exercise of its power under this section and member insurers shall promptly comply with a request.
(Acts 1982, No. 82-561, p. 922, §9; Act 2012-319, p. 724, §1.)

SECTION 27-44-10 SUBMISSION OF PLAN OF OPERATION AND AMENDMENTS; PROMULGATION OF RULES IN ABSENCE OF PLAN.

(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 approval in writing by the commissioner.
(2) If the association fails to submit a suitable plan of operation within 180 days following January 1, 1983, 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 chapter. 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 chapter:
(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 27-44-7.
(3) Establish regular places and times for meetings 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 27-44-9.
(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 Sections 27-44-8 (10) c and 27-44-9, 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 functions 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 chapter.
(Acts 1982, No. 82-561, p. 922, §10.)

SECTION 27-44-11 DUTIES AND POWERS OF COMMISSIONER; APPEAL AND REVIEW; NOTIFICATION.

In addition to the duties and powers enumerated elsewhere in this chapter:
(1) The commissioner shall:
a. Upon request of the board of directors, provide the association with a statement of the premiums in the appropriate states for each member insurer.
b. 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 chapter.
c. In any liquidation or rehabilitation proceeding involving a domestic insurer, petition the court of competent jurisdiction to have the chief of the receivership division appointed as the liquidator or rehabilitator. If a foreign or alien member insurer is subject to a liquidation proceeding in its domiciliary jurisdiction or state of entry, the chief of the receivership division shall be appointed conservator.
(2) 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 an 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 of the unpaid assessment per month but no forfeiture shall be less than $100.00 per month.
(3) 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 60 days of the action being appealed. Any final action or order of the commissioner shall be subject to judicial review in a court of competent jurisdiction.
(4) The liquidator, rehabilitator, or conservator of any impaired insurer may notify all interested persons of the effect of this chapter.
(Acts 1982, No. 82-561, p. 922, §11; Act 2012-319, p. 724, §1.)

SECTION 27-44-12 DUTIES OF COMMISSIONER AND BOARD WITH REGARD TO DETECTION AND PREVENTION OF INSOLVENCIES OR IMPAIRMENT.

To aid in the detection and prevention of insurer insolvencies or impairment:
(1) It shall be the duty of the commissioner:

a. To notify the commissioners of those states, territories of the United States and the District of Columbia where such member company is licensed when he takes any of the following actions against a member insurer:
1. Revocation of license;
2. Suspension of license;
3. Makes any formal order that such company restrict its premium writing or obtain additional contributions to capital or surplus.
Such notice shall be mailed to all commissioners within 30 days following the action taken or the date on which such action occurs.
b. To report to the board of directors when he has taken any of the actions set forth in paragraph a. of this subdivision 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 on the report received from another commissioner.
c. 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.
d. To furnish to the board of directors upon its request the insurance regulatory information system 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.
(2) 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 companies and companies seeking admission to transact insurance business in this state.
(3) 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 insurance business in this state. Such reports and recommendations shall not be considered public documents.
(4) 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.
(5) 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 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 subdivision (1). 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.

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

(7) 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 for insolvency of a particular insurer, and may adopt by reference any report prepared by such other associations.

(Acts 1982, No. 82-561, p. 922, §12.)

SECTION 27-44-13 CREDITS FOR ASSESSMENTS PAID.

(a) A member insurer may offset against its premium tax liability to this state an assessment described in Section 27-44-9(h) to the extent of 20 percent of the amount of such assessment for each of the five calendar years following the year in which such assessment was paid.

(b) Any sums acquired by refund, pursuant to Section 27-44-9(f), from the association which have theretofore been written off by contributing insurers and offset against premium taxes as provided in subsection (a) above, and are not then needed for purposes of this chapter, shall be paid by the association to the commissioner and by him deposited with the State Treasurer for credit to the General Fund of this state.

(Acts 1982, No. 82-561, p. 922, §13; Act 2014-346, p. 1289, §1(b)(6).)

SECTION 27-44-14 LIABILITY OF UNPAID ASSESSMENTS; RECORDS OF NEGOTIATIONS AND MEETINGS; ASSOCIATION DEEMED CREDITOR OF IMPAIRED OR INSOLVENT INSURER; JUDICIAL DISTRIBUTION OF OWNERSHIP RIGHTS OF INSOLVENT INSURER; RECOVERY BY RECEIVER OF CERTAIN DISTRIBUTIONS FROM CONTROLLING AFFILIATES.

(a) Nothing in this chapter shall be construed to reduce the liability for unpaid assessments of the insureds on 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 27-44-8. 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 27-44-15.

(c) For the purpose of carrying out its obligations under this chapter, 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 27-44-8(8). 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 chapter. 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 a 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 for funds expended in carrying out its powers and duties under Section 27-44-8 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 years preceding the petition for liquidation or rehabilitation subject to the limitations of subdivisions (2) to (4) of this subsection.
(2) No such dividend 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 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 subdivision (3) of this subsection is insolvent, all its affiliates that controlled it at the time the dividend was paid, shall be jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate.
(Acts 1982, No. 82-561, p. 922, §14.)

SECTION 27-44-15 EXAMINATION AND REGULATION OF ASSOCIATION; ANNUAL REPORT.

The association shall be subject to examination and regulation by the commissioner. The board of directors shall submit to the commissioner, not later than May 1 of each year, a financial report for the preceding calendar year in a form approved by the commissioner and a report of its activities during the preceding calendar year.
(Acts 1982, No. 82-561, p. 922, §15.)

SECTION 27-44-16 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 or personal property.
(Acts 1982, No. 82-561, p. 922, §16.)

SECTION 27-44-17 IMMUNITY UNDER CHAPTER.

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 taken by them in the performance of their powers and duties under this chapter.
(Acts 1982, No. 82-561, p. 922, §17.)

SECTION 27-44-18 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 180 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.
(Acts 1982, No. 82-561, p. 922, §18; Act 2012-319, p. 724, §1.)

SECTION 27-44-20 ASSOCIATION, POLICYHOLDERS, BENEFICIARIES, AND INSUREDS TO HAVE PREFERRED CREDITOR STATUS.

Upon the issuance of a proper court order placing a domestic insurer in receivership or placing a foreign insurer in ancillary receivership for rehabilitation or liquidation, all policyholders, beneficiaries, and insureds of such insolvent insurer, with respect to claims arising from and within the coverage of and not in excess of the applicable limits of insurance policies and contracts issued by the insolvent insurer and the Alabama Life and Disability Insurance Guaranty Fund shall be preferred creditors of said insolvent insurer.
(Acts 1982, No. 82-561, p. 922, §20.)

SECTION 27-44-21 IMMEDIATE ACCESS OF ASSOCIATIONS IN THIS AND OTHER STATES TO ASSETS OF INSOLVENT INSURER; APPLICATION TO COURT; CONTENTS OF PROPOSAL; NOTICE.

(a) Within 120 days of a final determination of insolvency of an insurance company by a court of competent jurisdiction the receiver shall make application to the said court for approval of a proposal to disburse assets out of such company's marshalled assets, from time to time as such assets become available, to the Alabama Life and Disability Insurance Guaranty Association and to any entity or person performing a similar function in another state. (The Alabama Life and Disability Insurance Guaranty Association and any entity or person performing a similar function in other states shall hereinafter be referred to collectively as associations.)

(b) Such proposal shall at least include provisions for:

(1) Reserving amounts for the payment of expenses of administration and claims falling within the priorities established in the Alabama Uniform Insurers Liquidation Act (subdivisions (2) through (13) of Section 27-32-1 and Sections 27-32-4, 27-32-5, 27-32-15 through 27-32-22) but only with respect to such priorities higher than that of the associations;

(2) Disbursement of the assets marshalled to date and subsequent disbursements of assets as they become available;

(3) Equitable allocation of disbursements to each of the associations entitled thereto;

(4) The securing by the receiver from each of the associations entitled to disbursements pursuant to this section of an agreement to return to the receiver such assets previously disbursed as may be required to pay claims of secured creditors and claims with a higher priority than those of the associations. No bond shall be required of any such association; and

(c) The receiver's proposal shall provide for disbursements to the associations in amounts at least equal to the payments made or to be made thereby for which such associations could assert claims against the receiver, and shall further provide that if the assets available for disbursement from time to time do not equal or exceed the amount of such payments made or to be made by the associations then disbursements shall be in the amount of available assets.

(d) Notice of such application shall be given to the associations in and to the commissioners of insurance of each of the states. Any such notice shall be deemed to have been given when deposited in the United States certified mails, first class postage prepaid, at least 30 days prior to submission of such application to the said court. Action on the application may be taken by the

said court provided that above required notice has been given and provided further that the receiver's proposal complies with subdivisions (1) and (4) of subsection (b) hereof.
(Acts 1982, No. 82-561, p. 922, §21.)