



Ohio Revised Code

Section 3956.08 Duties as to impaired or insolvent member insurer.

Effective: September 13, 2022

Legislation: Senate Bill 273

(A)(1) Subject to any conditions imposed as provided in division (A)(2) of this section, the Ohio life and health insurance guaranty association may do either of the following with respect to an impaired member insurer:

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

(b) Provide the moneys, pledges, notes, guarantees, or other means that are proper to effectuate division (A)(1)(a) of this section and assure payment of the contractual obligations of the impaired insurer pending action under division (A)(1)(a) of this section.

(2) The association may impose conditions upon any action it takes under division (A)(1) of this section if both of the following apply:

(a) The condition does not impair the contractual obligations of the impaired insurer;

(b) The superintendent of insurance approves the condition.

(B) If a member insurer is an insolvent insurer, the association shall, at its discretion, do either of the following:

(1) Guarantee, assume, reissue, or reinsure, or cause to be guaranteed, assumed, reissued, or reinsured, the covered policies or contracts of the insolvent insurer or assure payment of the contractual obligations of the insolvent insurer, and provide the moneys, pledges, guarantees, or other means that are reasonably necessary to discharge such duties;

(2) Provide benefits and coverages in accordance with division (C) of this section.



(C) When proceeding under division (B)(2) of this section, the association, with respect to policies and contracts, shall do all of the following:

(1) Assure payment of benefits that would have been payable under the policies or contracts of the insolvent insurer, for claims incurred within the following time limits:

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

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

(2) Make diligent efforts to provide all known insureds, enrollees, annuitants, or group policy or contract owners with respect to group policies and contracts thirty days' notice of the termination of the benefits provided;

(3) With respect to individual policies and contracts, make available to each known insured, annuitant, enrollee, or owner if other than the insured or annuitant, and with respect to an individual formerly an insured, annuitant, or enrollee under a group policy or contract who is not eligible for replacement group coverage, make available substitute coverage on an individual basis in accordance with the provisions of division (C)(4) of this section, if such insureds, annuitants, or enrollees had a right under law or the terminated policy or contract to convert coverage to individual coverage or to continue an individual policy or contract in force until a specified age or for a specified time, during which the insurer or health insuring corporation had no right unilaterally to make changes in any provision of the policy, annuity, or contract or had a right only to make changes in premium by class.

(4)(a) In providing the substitute coverage required under division (C)(3) of this section, the association may offer either to reissue the terminated coverage or to issue an alternative policy or contract at actuarially justified rates.



(b) Alternative or reissued policies or contracts 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 or contract.

(c) The association may reinsure any alternative or reissued policy or contract.

(5)(a) Alternative policies or contracts adopted by the association shall be subject to the approval of the superintendent. The association may adopt alternative policies or contracts of various types for future issuance without regard to any particular impairment or insolvency.

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

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

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

(7) The obligations of the association with respect to coverage under any policy or contract of the impaired or insolvent insurer or under any reissued or alternative policy or contract shall cease on the date the coverage or policy or contract is replaced by another similar policy or contract by the policy or contract owner, the insured, the enrollee, or the association.

(D) When proceeding under division (B) of this section with respect to any policy or contract carrying guaranteed minimum interest rates, the association shall assure the payment or crediting of a



rate of interest consistent with division (C)(2)(c) of section 3956.04 of the Revised Code.

(E) Nonpayment of premiums within thirty-one days after the date required under the terms of any guaranteed, assumed, alternative, or reissued policy or contract or substitute coverage shall terminate the obligations of the association under the policy, contract, or coverage under this chapter with respect to the policy, contract, or coverage, except with respect to any claims incurred or any net cash surrender value that may be due in accordance with this chapter.

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

(G) In carrying out its duties under division (B) of this section, the association, subject to approval by the court, may do the following:

(1) Impose permanent policy or contract liens in connection with any guarantee, assumption, or reinsurance agreement, if the association finds that the amounts that 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)(a) Impose temporary moratoriums or liens on payments of cash values and policy loans, or any other right to withdraw funds held in conjunction with policies or contracts, in addition to any contractual provisions for deferral of cash or policy loan value;

(b) 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.



(H) If the association fails to act as provided in divisions (B) and (C) of this section within a reasonable time, the superintendent shall have the powers and duties of the association under this chapter with respect to impaired or insolvent insurers.

(I) The association may render assistance and advice to the superintendent, upon the superintendent's request, concerning any member insurer that is insolvent, impaired, or potentially impaired, or concerning the rehabilitation, payment of claims, continuance of coverage, or the performance of other contractual obligations of any impaired or insolvent insurer.

(J) The association, and any similar associations of other states, may appear or intervene before any court in this state with jurisdiction over an impaired or insolvent insurer for which the association is or may become obligated under this chapter, or over a third party against whom the association or associations have or may have rights through subrogation of the member insurer's policy or contract holders. The right to appear or intervene extends to all matters germane to the powers and duties of the association, including, but not limited to, proposals for reinsuring, reissuing, modifying, or guaranteeing the covered policies or contracts of the impaired or insolvent insurer and the determination of the covered policies or contracts and contractual obligations. The association also has 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.

(K)(1) Any person receiving benefits under this chapter is deemed to have assigned the rights under, and any causes of action relating to, the covered policy or contract to the association to the extent of the benefits received as a result of this chapter, whether the benefits are payments of or on account of contractual obligations, continuation of coverage, or provision of substitute or alternative policies, contracts, or coverages. The association may require an assignment to it of such rights and causes of action by any enrollee, payee, policy or contract holder, 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 division 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 divisions (K)(1) and (2) of this section, the association has 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 the policy or contract holder, beneficiary, enrollee, or payee with respect to the policy or contract, including, without limitation, in the case of a structured settlement annuity, any rights of the owner, beneficiary, or payee of the annuity, to the extent of benefits received pursuant to this chapter, against a person originally or by succession responsible for the losses arising from the personal injury relating to the annuity or payment therefore, excepting any such person responsible solely by reason of serving as an assignee in respect of a qualified assignment under section 130 of the Internal Revenue Code.

(4) If the preceding provisions of this division 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 contracts, 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 divisions, the person shall pay to the association the portion of the recovery attributable to the policies or contracts, or portion thereof, covered by the association.

(L) If the aggregate liability of the association with respect to any one life does not exceed one hundred dollars, the association is not obligated to notify claimants possessing such claims or make any payment thereto.

(M) Except with respect to claims filed under policies and contracts which are continued in force by the association past the final date set by a court for filing claims in liquidation proceedings of an insolvent insurer, the association is not liable to pay any claim filed with the association after such date.

(N) The association may do any of the following:



- (1) Enter into any such contracts and take such actions as are necessary or proper in the judgment of the board of directors to protect the interests of the association, or to carry out the powers and duties of the association or the provisions and purposes of this chapter;
- (2) Sue or be sued, including taking any legal actions necessary or proper to recover any unpaid assessments under section 3956.09 of the Revised Code 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 are 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 superintendent, the powers of a domestic life insurer, health insurer, or health insuring corporation, but in no case may the association issue policies or contracts other than those issued to perform its obligations under this chapter;
- (7) 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;
- (8) In accordance with the terms and conditions of the policy or contract, file for actuarially justified rate or premium increases for any policy or contract for which it provides coverage under this chapter;
- (9) Enter into agreements with other state associations of similar purposes to determine the residence of persons for purposes of this chapter;



(10) Organize itself as a corporation or in other legal form permitted by the laws of the state;

(11) 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.

(O)(1) A deposit in this state, held pursuant to law or required by the superintendent for the benefit of creditors, including policy or contract owners, not turned over to the domiciliary liquidator upon the entry of a final order of liquidation or order approving a rehabilitation plan of a member insurer domiciled in this state or in a reciprocal state, shall, pursuant to Chapter 3903. of the Revised Code, be promptly paid to the association.

(2) The association shall be entitled to retain a portion of any amount so paid to it equal to the percentage determined by dividing the aggregate amount of policy or contract owners' claims related to that insolvency for which the association has provided statutory benefits by the aggregate amount of all policy or contract owners' claims in this state related to that insolvency and shall remit to the domiciliary receiver the amount so paid to the association less the amount retained pursuant to this division.

(3) Any amount so paid to the association and retained by it shall be treated as a distribution of estate assets pursuant to applicable state receivership law dealing with early access disbursements.

(P)(1)(a) At any time within one hundred eighty 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, contracts, 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 is 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 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 the national organization of life and health insurance guaranty associations on its behalf as soon as possible after commencement of formal delinquency proceedings both of the following:

(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;

(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.

(2) Divisions (P)(2)(a) to (d) of this section apply to reinsurance contracts so assumed by the association.

(a) The association is responsible for all unpaid premiums due under the reinsurance contracts for periods both before and after the date of the order of liquidation, and is responsible for the performance of all other obligations to be performed after the date of the order of liquidation, in each case which relate to policies, contracts, or annuities covered, in whole or in part, by the association. The association may charge policies, contracts, 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.

(b) The association is entitled to any amounts payable by the reinsurer under the reinsurance contracts with respect to losses or events that occur in periods after the date of the order of liquidation and that relate to policies, contracts, or annuities covered, in whole or in part, by the association, provided that, upon receipt of any such amounts, the association is obliged to pay to the beneficiary under the policy, contracts, or annuity on account of which the amounts were paid a portion of the amount equal to the lesser of the following:

(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, contracts, or annuity less the retention of the insurer applicable to the loss or event.



(c) Within thirty days following the association's election, 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, contracts, or annuities covered, in whole or in part, by the association, which calculation shall give full credit to all items paid by either the member 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 division (P)(2)(b) of this section, the receiver shall remit the same to the association as promptly as practicable.

(d) If the association or receiver, on the association's behalf, within sixty days of the election date, pays the unpaid premiums due for periods both before and after the election date that relate to policies, contracts, 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, contracts, or 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.

(3) During the period from the date of the order of liquidation until the election date, or, if the election date does not occur, until one hundred eighty days after the date of the order of liquidation, both of the following shall apply:

(a)(i) Neither the association nor the reinsurer shall have any rights or obligations under reinsurance contracts that the association has the right to assume under division (P)(1) of this section, whether for periods prior to or after the date of the order of liquidation.

(ii) The reinsurer, the receiver, and the association shall, to the extent practicable, provide each other data and records reasonably requested.



(b) Provided that the association has elected to assume a reinsurance contract, the parties' rights and obligations shall be governed by divisions (P)(1) and (2) of this section.

(4) If the association does not elect to assume a reinsurance contract by the election date pursuant to division (P)(1) of this section, 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.

(5) When policies, contracts, or annuities, or covered obligations with respect thereto, are transferred to an assuming insurer, reinsurance on the policies, contracts, or annuities may also be transferred by the association, in the case of contracts assumed under division (P)(1) of this section, subject to the following:

(a) Unless the reinsurer and the assuming insurer agree otherwise, the reinsurance contracts transferred do not cover any new policies of insurance, contracts, or annuities in addition to those transferred.

(b) The obligations described in division (P)(1) of this section 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 thirty days prior to the effective date of the transfer.

(6) The provisions of this division 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 amounts 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.

(7) Except as otherwise provided in this division, nothing in this division shall alter or modify the terms and conditions of any reinsurance contract. Nothing in this division abrogates or limits any



rights of any reinsurer to claim that it is entitled to rescind a reinsurance contract. Nothing in this division gives a policy owner, contract owner, enrollee, certificate holder, or beneficiary an independent cause of action against a reinsurer that is not otherwise set forth in the reinsurance contract. Nothing in this division limits or affects the association's rights as a creditor of the estate against the assets of the estate. Nothing in this division applies to reinsurance agreements covering property or casualty risks.

(Q) The board of directors of the association has 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.

(R) 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 is not entitled to benefits from the association in addition to or other than those provided under the plan or arrangement.

(S) Venue in a suit against the association arising under the chapter shall be in Franklin county. The association is not required to give an appeal bond in an appeal that relates to a cause of action arising under this chapter.

(T) In carrying out its duties in connection with guaranteeing, assuming, reissuing, or reinsuring policies or contracts under division (A) or (B) of this section, the association may 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 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 any of the following:

(a) A fixed interest rate;

(b) Payment of dividends with minimum guarantees;



(c) 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.