



## Ohio Revised Code

### Section 3956.09 Member assessments.

Effective: September 13, 2022

Legislation: Senate Bill 273 - 134th General Assembly

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(A) For the purpose of providing the funds necessary to carry out the powers and duties of the Ohio life and health insurance guaranty association, the board of directors shall assess the member insurers, separately for each subaccount or account, at such time and for such amounts as the board finds necessary. Assessments shall be due not less than thirty days after prior written notice to the member insurers and shall accrue interest at ten per cent per year 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, and the cost of detecting and preventing member insurer insolvencies under division (E) of section 3956.12 of the Revised Code. Class A assessments 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 3956.08 of the Revised Code with regard to an impaired or an insolvent insurer.

(C)(1) The amount of any class A assessment shall be determined by the board and may be authorized and called on a pro rata or non-pro rata basis. If pro rata, the board may provide that it be credited against future class B assessments. The amount of any class B assessment, except for assessments related to long-term care insurance, shall be allocated for assessment purposes between the accounts and among the subaccounts of the life insurance and annuity account pursuant to an allocation formula which may be based on the premiums or reserves of the impaired or insolvent insurer or on any other standard considered by the board in its sole discretion as being fair and reasonable under the circumstances.

(2)(a) The amount of the class B assessments for long-term care insurance written by the impaired or insolvent insurer shall be allocated according to a methodology included in the plan of operation and



approved by the superintendent of insurance.

(b) The methodology shall provide for fifty per cent of the assessment to be allocated to sickness and accident and health member insurers and fifty per cent to be allocated to life and annuity member insurers.

(c) For the purposes of divisions (C)(2)(a) and (b) of this section:

(i) "Life and annuity member insurer" means a member insurer for which the sum of its assessable life insurance premiums and annuity premiums is greater than or equal to its assessable health insurance premiums.

(ii) "Assessable health insurance premiums" includes the member insurer's assessable sickness and accident premiums and health insuring corporation premiums, but shall exclude its assessable premiums written for disability income insurance and long-term care insurance. For purposes of this definition, assessable premiums shall be measured within the state.

(iii) "Sickness and accident and health member insurer" means any member insurer not defined as a life and annuity member insurer.

(d) Class B assessments against member insurers for each subaccount or 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 subaccount or account for the most recent three calendar years for which information is available preceding the year in which the member insurer became impaired or insolvent, as the case may be, bears to such premiums received on business in this state for such calendar years by all assessed member insurers.

(3) Assessments for funds to meet the requirements of the association with respect to an impaired or insolvent insurer shall not be authorized and called until necessary to implement the purposes of this chapter. Classification of assessments under division (B) of this section and computation of assessments under this division 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 one hundred eighty



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. If 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. In determining whether the payment of an assessment would endanger the ability of a member insurer to fulfill its contractual obligations, the board shall consider the adequacy of the capital and surplus of the member insurer in relation to the premiums written, the assets, and the reserve liabilities of that member insurer.

(E)(1) The total of all assessments upon a member insurer for the life insurance and annuity account, which includes the life insurance subaccount, the annuity subaccount, and the unallocated annuity subaccount, shall not in any one calendar year exceed two per cent of the member insurer's average premiums received per year in this state on the policies and contracts covered by each such subaccount, and for the health account, shall not in any one calendar year exceed two per cent of the member insurer's average premiums received per year in this state on the policies and contracts covered by such account, during the three calendar years preceding the year in which the impaired or insolvent insurer or insurers became impaired or insolvent. If the maximum assessment for a subaccount or account, together with the other assets of the association in the subaccount or account, does not provide in any one year in the subaccount or account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed for the subaccount or account as soon thereafter in succeeding years as permitted by division (E) of this section.

(2) If the maximum assessment under division (E)(1) of this section for any subaccount of the life insurance and annuity account in any succeeding year does not provide an amount sufficient to carry out the responsibilities of the association, then pursuant to division (C)(2)(d) of this section, the board shall assess the other subaccounts of the life and annuity account for the necessary additional amount, subject to the maximum stated in division (E)(1) of this section.



(3) Where assessments for two or more impaired or insolvent insurers have been made within the same calendar year, and the sum of those assessments exceeds the two per cent calendar year assessment limitation under division (E)(1) of this section, the board, with the approval of the superintendent of insurance, may allocate among the accounts of such member insurers the sums assessed within the two per cent limitation.

(F) The board, by an equitable method as established in the plan of operation, may refund to member insurers, in proportion to the contribution of each member insurer to that subaccount or account, the amount by which the assets of the subaccount or 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 subaccount or account, including assets accruing from assignment, subrogation, net realized gains, and income from investments. A reasonable amount may be retained in any subaccount or account to provide funds for the continuing expenses of the association and for future losses.

(G) A member insurer, in determining its premium rates and policyowner dividends as to any kind of insurance or health insuring corporation business within the scope of this chapter, may consider the amount reasonably necessary to meet its assessment obligations under this section.

(H) The association, upon request, shall issue to a member insurer paying an assessment under this section, other than a class A assessment, a certificate of contribution, in a form approved by the superintendent, 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 member insurer in its financial statement as an asset in the form and for the amount, net of any amounts recovered through a tax offset, and for the period of time the superintendent may approve.

(I) Any member insurer that has contributed funds to pay claims of an impaired or insolvent insurer, pursuant to an agreement entered into with the superintendent and approved by the Franklin county court of common pleas during the five years preceding November 20, 1989, or at any time following November 20, 1989, shall receive a credit against any assessments levied pursuant to this section, whether the assessments are class A assessments or class B assessments, in the amount of the contribution.



If the amount of the credit exceeds the amount of assessments levied upon a member insurer in any one year, the balance of that credit shall be carried forward to subsequent years and will reduce the amount of future assessments until the total amount of the credit has been applied to the future assessments.

For the purposes of this division, an impaired or insolvent member insurer is an insurer that meets the definitions set forth in section 3956.01 of the Revised Code, and any insurer or health insuring corporation that would have met these definitions, if it had been in effect at the time of such contribution.

(J) Division (I) of this section does not apply if a member insurer has contributed funds pursuant to that division and has offset those contributions against its premium or franchise tax liability pursuant to any provision of the Revised Code authorizing the establishment of a plan for the distribution of voluntary contributions to pay the life, sickness and accident, or annuity claims of residents of this state that are unpaid due to the insolvency of an insolvent insurer.

(K)(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 sixty 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 thirty days after a final decision has been made, the association shall notify the protesting member insurer in writing of that final decision. Within sixty days of receipt of notice of the final decision, the protesting member insurer may appeal that final action to the superintendent.

(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 superintendent 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 insurer. Interest on a refund due a protesting member insurer shall be paid at the rate actually earned by the association.

(L) 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 such a request.