



## Ohio Revised Code

### Section 3956.13 Liability for unpaid assessments - records - association deemed creditor of insurer - rehabilitation or liquidation proceedings..

Effective: September 13, 2022

Legislation: Senate Bill 273 - 134th General Assembly

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(A) Nothing in this chapter shall be construed to reduce the liability for unpaid assessments of the insureds or enrollees of an impaired or insolvent insurer operating under a plan with assessment liability.

(B) Records shall be kept of all resolutions adopted by the Ohio life and health guaranty association in carrying out its powers and duties under section 3956.08 of the Revised Code. The records shall be made public only upon the termination of a rehabilitation or liquidation proceeding involving the impaired or insolvent insurer, upon the termination of the impairment or insolvency of the member insurer, or upon the order of a court of competent jurisdiction. Nothing in this division shall limit the duty of the association to render a report of its activities under section 3956.14 of the Revised Code.

(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 or contracts, reduced by any amounts to which the association is entitled as subrogee pursuant to division (K) of section 3956.08 of the Revised Code. Assets of the impaired or insolvent insurer attributable to covered policies or contracts shall be used to continue all covered policies or contracts and pay all contractual obligations of the impaired or insolvent insurer as required by this chapter. As used in this division, "assets attributable to covered policies or contracts" means that proportion of the assets that the reserves that should have been established for covered policies or contracts bear to the reserves that should have been established for all policies or contracts of insurance or health benefit plans written by the impaired or insolvent insurer.

(D)(1) As a creditor of the impaired or insolvent insurer as established in division (C) of this section and consistent with section 3903.34 of the Revised Code, the association and other similar associations shall be entitled to receive a disbursement of assets out of the marshaled assets, from time to time as the assets become available to reimburse it, as a credit against contractual obligations under this chapter.



(2) If the liquidator has not, within one hundred twenty days of a final determination of insolvency of a member insurer by the receivership court, made an application to the court for the approval of a proposal to disburse assets out of marshaled assets to guaranty associations having obligations because of the insolvency, then the association shall be entitled to make application to the receivership court for approval of its own proposal to disburse these assets.

(E)(1) Prior to the termination of any rehabilitation or liquidation proceeding, the court may take into consideration the contributions of the respective parties, including the association, the shareholders, contract owners, certificate holders, enrollees, 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 the insolvent insurer. In this determination, consideration shall be given to the welfare of the policyholders, contract owners, certificate holders, and enrollees of the continuing or successor member insurer.

(2) No distribution to stockholders, if any, of an impaired or insolvent insurer shall be made until the total amount of valid claims of the association with interest on that amount at a rate not less than the rate allowed under 96 Stat. 2478, 28 U.S.C.A. 1961 for funds expended in carrying out its powers and duties under section 3956.08 of the Revised Code with respect to such member insurer have been fully recovered by the association.

(F)(1) If an order for rehabilitation or liquidation of a member insurer domiciled in this state has been entered, the rehabilitator or liquidator may recover on behalf of the member insurer, from any affiliate that controlled it, the amount of distributions, other than stock dividends paid by the member insurer on its capital stock, made at any time during the five years preceding the complaint for liquidation or rehabilitation, subject to the limitations of divisions (F)(2) and (4) of this section.

(2) No distribution shall be recoverable if the member insurer shows that, when paid, the distribution was lawful and reasonable and that the member insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the member insurer to fulfill its contractual obligations.

(3) Any person who was an affiliate that controlled the member insurer at the time the distributions



were paid is liable up to the amount of distributions the person received. Any person who was an affiliate that controlled the member insurer at the time the distributions were declared is liable up to the amount of distributions the person would have received if they had been paid immediately. If two or more persons are liable with respect to the same distributions, they are jointly and severally liable.

(4) The maximum amount recoverable under this division 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 division (F)(3) of this section is insolvent, all its affiliates that controlled it at the time the distribution was paid are jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate.