



Ohio Revised Code

Section 3956.08 Duties as to impaired or insolvent member insurer.

Effective: November 20, 1989

Legislation: House Bill 89 - 118th General Assembly

(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 domestic member insurer:

(a) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, 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 all 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;

(c) Except in cases of court-ordered conservation or rehabilitation, the impaired insurer approves the condition.

(B)(1) If a member insurer is an impaired foreign or alien insurer that is not paying claims timely, the association, subject to the conditions specified in division (B)(2) of this section, shall do either of the following:

(a) Take any of the actions specified in division (A)(1) of this section, subject to the conditions specified in division (A)(2) of this section;



(b) Provide substitute benefits in lieu of the contractual obligations of the impaired insurer solely for all of the following:

(i) Death benefits and health claims in accordance with division (D) of this section;

(ii) Periodic annuity benefit payments;

(iii) Supplemental benefits;

(iv) Cash withdrawals for policy or contract owners who petition therefor under claims of emergency or hardship in accordance with standards proposed by the association and approved by the superintendent.

(2) The association is subject to the requirements of division (B)(1) of this section only if all of the following apply to a foreign or alien insurer:

(a) The laws of its state of domicile provide that, until all payments of or on account of the impaired insurer's contractual obligations by all guaranty associations, along with all expenses and interest, at a rate not less than that allowed under 96 Stat. 2478, 28 U.S.C.A. 1961, on all such payments and expenses, shall have been repaid to the guaranty associations or a plan of repayment by the impaired insurer shall have been approved by the guaranty associations, all of the following apply:

(i) The delinquency proceeding shall not be dismissed.

(ii) Neither the impaired insurer nor its assets shall be returned to the control of its shareholders or private management.

(iii) The impaired insurer shall not be permitted to solicit or accept new business or have any suspended or revoked license restored.

(b) The impaired insurer has been prohibited from soliciting or accepting new business in this state, its license or certificate of authority has been suspended or revoked in this state, and a petition for rehabilitation or liquidation has been filed in a court of competent jurisdiction in its state of domicile



by the commissioner of insurance of that state.

(C) If a member insurer is an insolvent insurer, the association shall do either of the following:

(1) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, 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) With respect only to life and health insurance policies, provide benefits and coverages in accordance with division (D) of this section.

(D) When proceeding under division (B)(1)(b) or (C)(2) of this section, the association, with respect to life and health insurance policies, shall do all of the following:

(1) 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 of the insurer, for claims incurred within the following time limits:

(a) With respect to group policies, 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;

(b) With respect to individual policies, not later than the earlier of the next renewal date, if any, under such policies 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;

(2) Make diligent efforts to provide all known insureds or group policyholders with respect to group policies thirty days' notice of the termination of the benefits provided;

(3) With respect to individual policies, make available to each known insured, or owner if other than the insured, and with respect to an individual formerly insured 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 division (D)(4) of this section, if such insureds had a right under law or the terminated policy to convert coverage to individual coverage or to continue an individual policy 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 had a right only to make changes in premium by class.

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

(b) 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.

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

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

(b) Alternative policies 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 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.

(c) 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.

(6) 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 superintendent or a court of competent jurisdiction.



(7) The obligations of the association 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 policyholder, the insured, or the association.

(E) When proceeding under divisions (B)(1)(b) or (C) 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 (B)(2)(c) of section 3956.04 of the Revised Code.

(F) 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 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 that may be due in accordance with this chapter.

(G) 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.

(H) In carrying out its duties under divisions (B) and (C) 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) 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.



(I) If the association fails to act as provided in divisions (B)(1)(b), (C), and (D) 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.

(J) The association may render assistance and advice to the superintendent, upon his request, concerning any 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.

(K) 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 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, 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 in another state with jurisdiction over an impaired or insolvent insurer for which the association is or may become obligated or with jurisdiction over a third party against whom the association may have rights through subrogation of the insurer's policy or contract holders.

(L)(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 coverages. The association may require an assignment to it of such rights and causes of action by any 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 (L)(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 holder of a policy or contract with respect to the policy or contract.

(M) 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.

(N) 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.

(O) 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 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) 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) Enter into agreements with other state associations of similar purposes to determine the residence of persons for purposes of this chapter.