

HOUSE INSURANCE COMMITTEE

SENATE BILL 273

Interested party testimony on behalf of the Ohio Life and Health Insurance Guaranty Association

June 1, 2022

Chairman Brinkman, Vice-Chair Lampton, Ranking Member Miranda and members of the House Insurance Committee, thank you for the opportunity to provide interested party written testimony on behalf of the Ohio Life and Health Insurance Guaranty Association regarding Senate Bill 273.

My name is Alan Berliner. I am a partner in the Columbus office of the Thompson Hine law firm and I act as outside legal counsel for the Association. I have been practicing law in the area of insolvent insurance companies and insurance guaranty associations for over 40 years. In my testimony below, I will briefly address what the Association is, its purpose, what it does and how it works, what this legislation does and why it is important that this legislation be adopted in the very near term.

The Association and its purpose. The Ohio Life and Health Insurance Guaranty Association is an unincorporated, nonprofit association of insurance companies created by statute in 1989. Chapter 3956 of the Revised Code governs the creation, obligations and operation of the Association. Ohio Revised Code Section 3956.03 states that the purpose of Chapter 3956 is “to protect, subject to certain limitations,” {policyholders and their beneficiaries etc.} “against failure in the performance of contractual obligations under life and health insurance policies and annuity contracts due to the impairment or insolvency of the member insurer that issued the policies or contracts”.

In other words, the Association is intended to be a backstop to protect consumers, that is policyholders and third-party claimants against policyholders when an insurance company runs out of money and is ordered into liquidation by a court.

Other state insurance guaranty associations. Each state and several US territories have established at least one insurance guaranty association to protect the residents of its state. Ohio has two associations, this Association which pays life and health insurance and annuity claims and the Ohio Insurance Guaranty Association which was established in 1970 to pay property and casualty claims of policyholders and third-party claimants.

Many people say that insurance guaranty associations, although on a state-by-state level, operate similar to the federal FDIC which protects consumers who deposit funds with banks that become insolvent and unable to pay all their depositors timely and or in full. There are many differences between guaranty associations and the FDIC, but like the FDIC, in the event an insolvent insurance company has been ordered into liquidation, insurance guaranty associations pay specified insurance covered claims up to certain limits and subject to various exceptions.

Funding. The Association is funded by assessments on the members of the Association which are the insurance companies writing business in Ohio. Assessments were initially made to fund operating expenses of the Association when it was first created in 1989 and then additional assessments have been made as needed over the years after insurance companies have become insolvent and ordered liquidated. The proceeds of the assessments provide the Association the funds to pay the covered claims of Ohio residents. Those assessments since 1990 total approximately \$230 million, all paid by insurance companies writing insurance policies in the state of Ohio. Most recently, the insurance industry in Ohio was assessed and paid over \$ 52 million to pay claims in the Penn Treaty Insurance Company insolvency.

Operation of the Association. The obligations of the Association are triggered when an insurance company becomes insolvent and is ordered into liquidation by a state court where the insurance company is domiciled. The insurance commissioner of the state where the insurance company is domiciled is appointed by the state court to be the receiver of the insurance company. The commissioner as receiver is obligated to gather claims against the insurance company and liquidate its assets. The Association then takes over the role of the insolvent insurance company in handling claims and determines whether the claims being made by residents of Ohio are covered claims under the statute. If the claim is covered, the Association, subject to various exceptions and limits, pays the legitimate claims of the policyholders and third-party claimants. Thereafter, the Association seeks reimbursement from the receiver of the insolvent insurance company for its expenses and the payments made, although often only a fraction of those payments are recovered from the receiver.

Importance of this legislation. As indicated in sponsor testimony, Senate Bill 273 makes three key changes to current Ohio law, strengthening the backstop. First, it adds health maintenance organizations (HMOs) to the entities that are members of the insurance guaranty association. This expands the assessment capacity, resulting in a stronger backstop and thus, more protection for policyholders. This also means that members of HMOs will be entitled to the protections of the Association, just like policyholders of traditional health insurance companies. This change in the law eliminates for practical purposes, at least in the Ohio guaranty association context, the differences between policyholders of health insurance companies and members of HMOs.

Second, in the past, traditional health insurance companies have paid the large majority of assessments for insurance companies writing long-term care insurance, even though those type of insurance policies are almost exclusively written by life insurance companies. This legislation will change that anomaly and provides that future assessments to pay long-term care insurance claims will be split equally between health insurers and life insurance companies. The result is that future assessments will be spread out more equitably.

Third, this legislation makes several technical changes to the applicable statutes in order to have the Ohio statutes conform with the National Association of Insurance Commissioner's Life and Health Insurance Guaranty Association Model Act. This aspect of the legislation is important to the Association itself, as it will allow the Association to operate more efficiently, including in cooperation with the other 34 states that have already passed the latest version of the NAIC Model Act.

Timing. It is important that this legislation be adopted very soon as there is another insurance company domiciled in Pennsylvania which wrote long-term care insurance and which is insolvent. That company is in state court rehabilitation proceedings at this time, but it could be ordered into liquidation at any time, thus triggering the obligations of the Association to pay covered claims.

Thank you for the opportunity to provide interested party testimony on Senate Bill 273. I will be happy to answer any questions from members of the Committee either at the hearing or at any other time.

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