

**As Passed by the House**

**134th General Assembly**

**Regular Session**

**2021-2022**

**H. B. No. 530**

**Representative Lampton**

**Cosponsors: Representatives Seitz, Hillyer, Carfagna, White, Carruthers, Fraizer,  
Galonski, Ginter, Lanese, LaRe, Miller, J., Ray, Riedel**

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**A BILL**

To amend sections 3956.01, 3956.03, 3956.04, 1  
3956.06, 3956.07, 3956.08, 3956.09, 3956.10, 2  
3956.11, 3956.12, 3956.13, 3956.16, 3956.18, and 3  
3956.20; to enact new section 3956.19; and to 4  
repeal section 3956.19 of the Revised Code to 5  
amend the law governing the Ohio Life and Health 6  
Insurance Guaranty Association. 7

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 3956.01, 3956.03, 3956.04, 8  
3956.06, 3956.07, 3956.08, 3956.09, 3956.10, 3956.11, 3956.12, 9  
3956.13, 3956.16, 3956.18, and 3956.20 be amended and new 10  
section 3956.19 of the Revised Code be enacted to read as 11  
follows: 12

**Sec. 3956.01.** As used in this chapter: 13

(A) "Account" means either of the two accounts created 14  
under section 3956.06 of the Revised Code. 15

(B) "Authorized assessment," or "authorized," in the 16  
context of assessments, means a resolution by the board of 17

directors has been passed whereby an assessment will be called 18  
immediately or in the future from member insurers for a 19  
specified amount. An assessment is authorized when the 20  
resolution is passed. 21

(C) "Called assessment," or "called," in the context of 22  
assessments, means that a notice has been issued by the 23  
association to member insurers requiring that an authorized 24  
assessment be paid within the time frame set forth in the 25  
notice. An authorized assessment becomes a called assessment 26  
when notice is mailed, including by electronic means, by the 27  
association to member insurers. 28

(D) "Contractual obligation" means any obligation under a 29  
policy, contract, or certificate under a group policy or 30  
contract, or portion of the policy or contract, for which 31  
coverage is provided under section 3956.04 of the Revised Code. 32

~~(C)~~(E) "Covered policy or contract" means any policy, 33  
contract, or group certificate within the scope of section 34  
3956.04 of the Revised Code. 35

~~(D)~~(F) "Health benefit plan" means any hospital or 36  
medical expense policy or certificate, or health insuring 37  
corporation subscriber policy, contract, certificate, or 38  
agreement, or any other similar health or sickness and accident 39  
insurance policy or contract. "Health benefit plan" does not 40  
include: 41

(1) Accident only insurance; 42

(2) Credit insurance; 43

(3) Dental only insurance; 44

(4) Vision only insurance; 45

<u>(5) Medicare supplement insurance;</u>	46
<u>(6) Benefits for long-term care, home health care, community-based care, or any combination thereof;</u>	47 48
<u>(7) Disability income insurance;</u>	49
<u>(8) Coverage for on-site medical clinics;</u>	50
<u>(9) Specified disease, hospital confinement indemnity, or limited benefit health insurance if the types of coverage do not provide coordination of benefits and are provided under separate policies or certificates.</u>	51 52 53 54
(G) "Impaired insurer" means a member insurer that, after November 20, 1989, is not an insolvent insurer and is placed under an order of rehabilitation or conservation by a court of competent jurisdiction.	55 56 57 58
<del>(E)</del> <u>(H)</u> "Insolvent insurer" means a member insurer that, after November 20, 1989, is placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency.	59 60 61 62
<del>(F) (1)</del> <u>(I) (1)</u> "Member insurer" means any insurer <u>or health insuring corporation</u> that holds a certificate of authority or is licensed to transact in this state any kind of insurance <u>or health insuring corporation business</u> for which coverage is provided under section 3956.04 of the Revised Code, and includes any insurer <u>or health insuring corporation</u> whose certificate of authority or license in this state may have been suspended, revoked, not renewed, or voluntarily withdrawn after November 20, 1989.	63 64 65 66 67 68 69 70 71
(2) "Member insurer" does not include any of the following:	72 73

(a) <del>A health insuring corporation;</del>	74
<del>(b)</del> A fraternal benefit society;	75
<del>(e)</del> <u>(b)</u> A self-insurance or joint self-insurance pool or plan of the state or any political subdivision of the state;	76 77
<del>(d)</del> <u>(c)</u> A mutual protective association;	78
<del>(e)</del> <u>(d)</u> An insurance exchange;	79
<del>(f)</del> <u>(e)</u> Any person who qualifies as a "member insurer" under section 3955.01 of the Revised Code and who does not receive premiums on covered policies or contracts;	80 81 82
<del>(g)</del> <u>(f)</u> Any entity similar to any of those described in divisions <del>(F) (2) (a)</del> <u>(I) (2) (a)</u> to <del>(f)</del> <u>(e)</u> of this section.	83 84
(3) "Member insurer" includes any insurer <u>or health insuring corporation</u> that operates any of the entities described in division <del>(F) (2)</del> <u>(I) (2)</u> of this section as a line of business, and not as a separate, affiliated legal entity, and otherwise qualifies as a member insurer.	85 86 87 88 89
<del>(G)</del> <u>(J)</u> "Owner of a policy or contract," "policyholder," "policy owner," "contract owner," and "contract holder" mean the person who is identified as the legal owner under the terms of the policy or contract or who is otherwise vested with legal title to the policy or contract through a valid assignment completed in accordance with the terms of the policy or contract and properly recorded as the owner on the books of the member insurer. "Owner of a policy or contract," "policyholder," "policy owner," "contract owner," and "contract holder" do not include persons with a mere beneficial interest in a policy or contract.	90 91 92 93 94 95 96 97 98 99 100
<u>(K)</u> "Premiums" means amounts received on covered policies	101

or contracts, less premiums, considerations, and deposits 102  
returned on the policies or contracts, and less dividends and 103  
experience credits on the policies and contracts. "Premiums" 104  
does not include ~~either any~~ of the following: 105

(1) Any amounts in excess of ~~one~~ five million dollars 106  
received on any unallocated annuity contract not issued under a 107  
governmental retirement plan established under Section 401, 108  
403(b), or 457 of the "Internal Revenue Code of 1986," 100 Stat. 109  
2085, 26 U.S.C.A. 1, as amended; 110

(2) Any amounts received for any policies or contracts or 111  
for the portions of any policies or contracts for which coverage 112  
is not provided under section 3956.04 of the Revised Code.— 113  
~~Division (G) (2) of this section shall not be construed to~~ 114  
~~require the exclusion, from assessable premiums, of premiums~~ 115  
~~paid for coverages in excess, except that assessable premium~~ 116  
shall not be reduced on account of the division (C) (2) (c) of 117  
section 3956.04 of the Revised Code relating to interest 118  
~~limitations specified in division (B) (2) (c) of section 3956.04~~ 119  
~~of the Revised Code or of premiums paid for coverages in excess~~ 120  
~~of the limitations with respect to any one individual, any one~~ 121  
~~participant, or any one contract holder specified in division~~ 122  
~~(C) (2) of section 3956.04 of the Revised Code~~ or division (D) (2) 123  
of section 3956.04 of the Revised Code relating to limitations 124  
with respect to one individual, one participant, and one policy 125  
or contract owner; 126

(3) With respect to multiple nongroup policies of life 127  
insurance owned by one owner, whether the policy or contract 128  
owner is an individual, firm, corporation, or other person, and 129  
whether the persons insured are officers, managers, employees, 130  
or other persons, premiums in excess of five million dollars 131

with respect to these policies or contracts, regardless of the 132  
number of policies or contracts held by the owner. 133

~~(H)~~(L) "Resident" means any person who resides in this 134  
state at the time a member insurer is determined to be an 135  
impaired or insolvent insurer and to whom a contractual 136  
obligation is owed. A person may be a resident of only one 137  
state, which, in the case of a person other than a natural 138  
person, shall be its principal place of business. Citizens of 139  
the United States who are either residents of a foreign country 140  
or residents of a United States possession, territory, or 141  
protectorate that does not have an association similar to the 142  
association created by this chapter shall be considered 143  
residents of the state of domicile of the insurer that issued 144  
the policy or contract. 145

~~(I)~~(M) "Structured settlement annuity" means an annuity 146  
purchased in order to fund periodic payments for a plaintiff or 147  
other claimant in payment for or with respect to personal injury 148  
suffered by the plaintiff or other claimant. 149

~~(J)~~(N) "Subaccount" means any of the three subaccounts 150  
created under division (A) of section 3956.06 of the Revised 151  
Code. 152

~~(K)~~(O) "Supplemental contract" means any agreement 153  
entered into for the distribution of policy or contract 154  
proceeds. 155

~~(L)~~(P) "Unallocated annuity contract" means any annuity 156  
contract or group annuity certificate that is not issued to and 157  
owned by an individual, except to the extent of any annuity 158  
benefits guaranteed to an individual by an insurer under that 159  
contract or certificate. 160

**Sec. 3956.03.** The purpose of this chapter is to protect, 161  
subject to certain limitations, the persons specified in 162  
division (A) of section 3956.04 of the Revised Code against 163  
failure in the performance of contractual obligations under life 164  
~~and, health insurance policies, and annuity policies, plans, or~~ 165  
contracts specified in division ~~(B)~~ (C) of section 3956.04 of 166  
the Revised Code, due to the impairment or insolvency of the 167  
member insurer that issued the policies, plans, or contracts. To 168  
provide this protection, the Ohio life and health insurance 169  
guaranty association, an association of member insurers, is 170  
created to pay benefits and to continue coverages, as limited in 171  
this chapter. Members of the association are subject to 172  
assessment to provide funds to carry out the purpose of this 173  
chapter. 174

**Sec. 3956.04.** (A) This chapter provides coverage, by the 175  
Ohio life and health insurance guaranty association, for the 176  
policies and contracts specified in division ~~(B)~~ (C) of this 177  
section to all of the following persons: 178

(1) Persons, regardless of where they reside, except for 179  
nonresident certificate holders or enrollees under group 180  
policies or contracts, who are the beneficiaries, assignees, or 181  
payees, including health care providers rendering services 182  
covered under health insurance policies or certificates, of the 183  
persons covered under division (A) (2) of this section, ~~—~~ 184  
~~regardless of where they reside, except for nonresident~~ 185  
~~certificate holders under group policies or contracts;~~ 186

(2) Persons who are owners of or certificate holders or 187  
enrollees under the policies or contracts other than structured 188  
settlement annuities, ~~or, in the case of and unallocated annuity~~ 189  
contracts, ~~the persons who are the contract holders,~~ if either 190

of the following applies:	191
(a) The persons are residents of this state <del>†</del> .	192
(b) The persons are not residents of this state and all of the following conditions apply:	193 194
(i) The <del>insurers</del> <u>member insurer</u> that issued the policies or contracts <del>are</del> <u>is</u> domiciled in this state <del>†</del> .	195 196
(ii) <del>At the time the policies or contracts were issued,</del> <u>The persons are not eligible for coverage by an association in any other state due to the fact that the <del>insurers</del>insurer or health insuring corporation did not hold a license or certificate of authority in the states in which the persons reside<del>†</del> at the time specified in the state's guaranty association laws.</u>	197 198 199 200 201 202 203
(iii) The states have associations similar to the association created by section 3956.06 of the Revised Code <del>†</del>	204 205
<del>(iv) The persons are not eligible for coverage by those associations.</del>	206 207
(3) <u>Persons who are the owners of unallocated annuity contracts specified in division (C) of this section when those contracts meet either of the following criteria:</u>	208 209 210
(a) <u>The contracts are issued to or in connection with a specific benefit plan whose plan sponsor has its principal place of business in this state.</u>	211 212 213
(b) <u>The contracts are issued to or in connection with government lotteries if the owners are residents of this state.</u>	214 215
(4) <u>Persons who are payees, or the beneficiary of a payee if the payee is deceased, under a structured settlement annuity</u>	216 217



if the payee is a resident of this state, regardless of where	218
the contract owner resides;	219
<del>(4)</del> <u>(5)</u> Persons who are payees, or the beneficiary of a	220
payee if the payee is deceased, under a structured settlement	221
annuity if the payee is not a resident of this state, but both	222
of the following are true:	223
(a) The contract owner of the structured settlement	224
annuity is a resident of this state or, if the contract owner of	225
the structured settlement annuity is not a resident of this	226
state, the insurer that issued the structured settlement annuity	227
is domiciled in this state and the state in which the contract	228
owner resides has an association similar to the association	229
created by this chapter.	230
(b) The payee, the beneficiary, and the contract owner are	231
not eligible for coverage by the association of the state in	232
which the payee or contract owner resides.	233
<del>(5) Persons who are payees or beneficiaries of a contract</del>	234
<del>owner resident of this state to the extent coverage is provided</del>	235
<del>under division (A) (4) of this section, unless the payee or</del>	236
<del>beneficiary is afforded any coverage by the association of</del>	237
<del>another state.</del>	238
This chapter is intended to provide coverage to a person	239
who is a resident of this state and, in special circumstances,	240
to a nonresident. To avoid duplicate coverage, if a person who	241
would otherwise receive coverage under this chapter receives	242
coverage under the laws of another state, the person shall not	243
be provided coverage under this chapter. In determining the	244
application of the provisions of this chapter in situations in	245
which a person could be covered by the association of more than	246

one state, whether as an owner, payee, enrollee, beneficiary, or 247  
assignee, this chapter shall be construed in conjunction with 248  
other state laws to result in coverage by only one association. 249

~~(B)(1)~~ (B) This chapter shall not provide coverage to any 250  
of the following: 251

(1) A person who is a payee, or beneficiary, of a contract 252  
owner resident of this state, if the payee or beneficiary is 253  
afforded any coverage by the association of another state; 254

(2) A person covered under division (A)(3) of this 255  
section, if any coverage is provided by the association of 256  
another state to the person; 257

(3) A person who acquires rights to receive payments 258  
through a structured settlement factoring transaction as defined 259  
in 26 U.S.C. 5891(c)(3)(A), regardless of whether the 260  
transaction occurred before or after such section became 261  
effective. 262

(C)(1) This chapter provides coverage to the persons 263  
specified in division (A) of this section for direct, nongroup 264  
life insurance, health insurance, which for the purposes of this 265  
chapter includes sickness and accident insurance policies and 266  
contracts, and health insuring corporation subscriber policies, 267  
contracts, certificates, and agreements, or ~~annuity policies or~~ 268  
~~contracts~~ annuities, for certificates under direct group policies 269  
and contracts, for supplemental contracts to any of the 270  
preceding, and for unallocated annuity contracts, in each case 271  
issued by member insurers, except as otherwise limited in this 272  
chapter. Annuity contracts and certificates under group annuity 273  
contracts include, but are not limited to, guaranteed investment 274  
contracts, deposit administration contracts, unallocated funding 275

agreements, allocated funding agreements, structured settlement 276  
annuities, annuities issued to or in connection with government 277  
lotteries, and any immediate or deferred annuity contracts. 278

(2) ~~This~~ Except as provided in division (C)(3) of this 279  
section, this chapter does not provide coverage for any of the 280  
following: 281

(a) Any portion of a policy or contract not guaranteed by 282  
the member insurer, or under which the risk is borne by the 283  
policy or contract holder; 284

(b) Any policy or contract of reinsurance, unless 285  
assumption certificates have been issued pursuant to the 286  
reinsurance policy or contract; 287

(c) Any portion of a policy or contract to the extent that 288  
the rate of interest on which it is based, or the interest rate, 289  
crediting rate, or similar factor determined by use of an index 290  
or other external reference stated in the policy or contract 291  
employed in calculating returns or changes in value: 292

(i) Averaged over the period of four years prior to the 293  
date on which the association becomes obligated with respect to 294  
the policy or contract or if the policy or contract has been 295  
issued for a lesser period averaged over that period, exceeds 296  
the rate of interest determined by subtracting two percentage 297  
points from the monthly average-corporates as published by 298  
Moody's investors service, inc., or any successor to that 299  
service, averaged for the same period; 300

(ii) On and after the date on which the association 301  
becomes obligated with respect to the policy or contract, 302  
exceeds the rate of interest determined by subtracting three 303  
percentage points from the monthly average-corporates as 304

published by Moody's investors service, inc., or any successor 305  
to that service, as most recently available. 306

If the monthly average-corporates is no longer published, 307  
the superintendent, by rule, shall establish a substantially 308  
similar average. 309

(d) Any plan or program of an employer, association, or 310  
similar entity to provide life, health, or annuity benefits to 311  
its employees or members to the extent that the plan or program 312  
is self-funded or uninsured, including but not limited to 313  
benefits payable by an employer, association, or similar entity 314  
under any of the following: 315

(i) A multiple employer welfare arrangement as defined in 316  
section 3(40) of the "Employee Retirement Income Security Act of 317  
1974," 88 Stat. 833, 29 U.S.C.A. 1002(40), as amended; 318

(ii) A minimum premium group insurance plan; 319

(iii) A stop-loss group insurance plan; 320

(iv) An administrative services only contract. 321

(e) Any portion of a policy or contract to the extent that 322  
it provides dividends, voting rights, or experience rating 323  
credits, or provides that any fees or allowances be paid to any 324  
person, including the policy or contract holder, in connection 325  
with the service to or administration of the policy or contract; 326

(f) Any policy or contract issued in this state by a 327  
member insurer at a time when it was not licensed or did not 328  
have a certificate of authority to issue the policy or contract 329  
in this state; 330

(g) Any unallocated annuity contract issued to an employee 331  
benefit plan protected under the federal pension benefit 332

guaranty corporation, regardless of whether the federal pension 333  
benefit guaranty corporation has yet become liable to make any 334  
payments with respect to the benefit plan; 335

(h) Any portion of any unallocated annuity contract that 336  
is not issued to or in connection with a governmental lottery or 337  
a benefit plan of a specific employee, union, or association of 338  
natural persons; 339

~~(i) Any policy or contract issued to or for the benefit of~~ 340  
~~a past or present director or officer within one year of the~~ 341  
~~filing of the successful complaint that the insurer was impaired~~ 342  
~~or insolvent.~~  
Any portion of a policy or contract to the extent 343  
that the assessments required by section 3956.09 of the Revised 344  
Code with respect to the policy or contract are preempted by 345  
federal or state law; 346

~~(j) Any policy or contract issued by any entity described~~ 347  
~~in division (F) (2) of section 3956.01 of the Revised Code.~~  
Any 348  
obligation that does not arise under the express written terms 349  
of the policy or contract issued by the member insurer to the 350  
enrollee, certificate holder, contract owner, or policy owner, 351  
including all of the following: 352

(i) Claims based on marketing materials; 353

(ii) Claims based on side letters, riders, or other 354  
documents that were issued by the member insurer without meeting 355  
applicable policy or contract form filing or approval 356  
requirements; 357

(iii) Misrepresentations of or regarding policy or 358  
contract benefits; 359

(iv) Extra-contractual claims; 360

(v) A claim for penalties or consequential or incidental 361  
damages. 362

~~(k) Any policy or contract issued by a member insurer if~~ 363  
~~the member insurer is carrying on as a line of business, and not~~ 364  
~~as a separate legal entity, the activities of any entity~~ 365  
~~described in division (F) (2) of section 3956.01 of the Revised~~ 366  
~~Code, and the policy or contract is issued as a product of those~~ 367  
~~activities~~ A contractual agreement that establishes the member 368  
insurer's obligations to provide a book value accounting 369  
guaranty for defined contribution benefit plan participants by 370  
reference to a portfolio of assets that is owned by the benefit 371  
plan or its trustee, which in each case is not an affiliate of 372  
the member insurer; 373

(l) Any policy or contract providing hospital, medical, 374  
prescription drug, or other health care benefits pursuant to 42 375  
U.S.C. Chapter 7, Title XVIII, Parts C and D or 42 U.S.C. 376  
Chapter 7, Title XIX and any corresponding regulations; 377

(m) Structured settlement annuity benefits to which a 378  
payee or the beneficiary of a payee, if the payee is deceased, 379  
has transferred his or her rights in a structured settlement 380  
factoring transaction as defined in 26 U.S.C. 5891(c) (3) (A), 381  
regardless of whether the transaction occurred before or after 382  
such section became effective; 383

(n) (i) A portion of a policy or contract to the extent it 384  
provides for interest or other changes in value to be determined 385  
by the use of an index or other external reference stated in the 386  
policy or contract, but which have not been credited to the 387  
policy or contract, or as to which the policy or contract 388  
owner's rights are subject to forfeiture, as of the date the 389  
member insurer becomes an impaired or insolvent insurer under 390

this chapter, whichever is earlier. 391

(ii) If a policy's or contract's interest or changes in value are credited less frequently than annually, then for purposes of determining the values that have been credited and are not subject to forfeiture under division (C) (2) (n) of this section, the interest or change in value determined by using the procedures defined in the policy or contract will be credited as if the contractual date of crediting interest or changing values was the date of impairment or insolvency, whichever is earlier, and will not be subject to forfeiture. 392  
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(3) The exclusion from coverage referenced in division (C) (2) (c) of this section shall not apply to any portion of a policy or contract, including a rider, that provides long-term care or any other health insurance benefits. 401  
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~~(C)~~ (D) The benefits for which the association may become liable shall not exceed the lesser of either of the following: 405  
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(1) The contractual obligations for which the member insurer is liable or would have been liable if it were not an impaired or insolvent insurer; 407  
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(2) (a) With respect to any one life, regardless of the number of policies or contracts: 410  
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(i) Three hundred thousand dollars ~~in~~ for life insurance death benefits, but not more than one hundred thousand dollars in net cash surrender and net cash withdrawal values for life insurance; 412  
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(ii) One hundred thousand dollars ~~in~~ for health insurance benefits other than ~~basic hospital, medical, and surgical insurance, major medical insurance, health benefit plan coverage, disability income insurance, or long-term care~~ 416  
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insurance, including any net cash surrender and net cash withdrawal values; 420  
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(iii) Three hundred thousand dollars ~~in for~~ disability income insurance; 422  
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(iv) Three hundred thousand dollars ~~in for~~ long-term care insurance; 424  
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(v) Five hundred thousand dollars ~~in basic hospital, medical, and surgical insurance or major medical insurance for~~ health benefit plan coverage; 426  
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(vi) Two hundred fifty thousand dollars ~~in for~~ the present value of annuity benefits, including net cash surrender and net cash withdrawal values. 429  
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(b) With respect to each individual participating in a governmental retirement plan established under section 401, 403(b), or 457 of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended, and covered by an unallocated annuity contract, or the beneficiaries of each such individual if deceased, in the aggregate, two hundred fifty thousand dollars in present value annuity benefits, including net cash surrender and net cash withdrawal values. 432  
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The association is not liable to expend more than three hundred thousand dollars in the aggregate with respect to any one individual under divisions ~~(C) (2) (a) (D) (2) (a)~~, (b), and (d) of this section combined, except with respect to benefits for ~~basic hospital, medical, and surgical insurance and major medical insurance~~ health benefit plan coverage under division ~~(C) (2) (a) (v) (D) (2) (a) (v)~~ of this section, in which case the aggregate liability of the association shall not exceed five hundred thousand dollars with respect to any one individual. 440  
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(c) With respect to any one contract holder, covered by 449  
any unallocated annuity contract not included in division ~~(C)(2)~~ 450  
~~(b)~~ (D)(2)(b) of this section, ~~one~~ five million dollars in 451  
benefits, irrespective of the number of ~~these~~ contracts held by 452  
that contract holder. 453

(d) With respect to each payee of a structured settlement 454  
annuity, or the beneficiary or beneficiaries of the payee if the 455  
payee is deceased, two hundred fifty thousand dollars in present 456  
value of annuity benefits, in the aggregate, including net cash 457  
surrender and net cash withdrawal values, if any; 458

(e)(i) The limitations set forth in this division are 459  
limitations on the benefits for which the association is 460  
obligated before taking into account either its subrogation and 461  
assignment rights or the extent to which those benefits could be 462  
provided out of the assets of the impaired or insolvent insurer 463  
attributable to covered policies. 464

(ii) The costs of the association's obligations under this 465  
chapter may be met by the use of assets attributable to covered 466  
policies or reimbursed to the association pursuant to its 467  
subrogation and assignment rights. 468

~~(D)~~ (E) The liability of the association is limited 469  
strictly by the express terms of the policies or contracts and 470  
by this chapter, and is not affected by the contents of any 471  
brochures, illustrations, advertisements in the print or 472  
electronic media, or other advertising material used in 473  
connection with the sale of the policies or contracts, or by 474  
oral statements made by agents or other sales representatives in 475  
connection with the sale of the policies or contracts. The 476  
association is not liable for extra-contractual damages, 477  
punitive damages, attorney's fees, or interest other than as 478

provided for by the terms of the policies or contracts as 479  
limited by this chapter, that might be awarded by any court or 480  
governmental agency in connection with the policies or 481  
contracts. 482

~~(E)~~ (F) The protection provided by this chapter does not 483  
apply where any guaranty protection is provided to residents of 484  
this state by the laws of the domiciliary state or jurisdiction 485  
of the impaired or insolvent insurer other than this state. 486

(G) For purposes of this chapter, benefits provided by a 487  
long-term care rider to a life insurance policy or annuity 488  
contract shall be considered the same type of benefits as the 489  
base life insurance policy or annuity contract to which it 490  
relates. 491

(H) In performing its obligations to provide coverage 492  
under section 3956.08 of the Revised Code, the association shall 493  
not be required to guarantee, assume, reinsure, reissue, or 494  
perform, or cause to be guaranteed, assumed, reinsured, 495  
reissued, or performed, the contractual obligations of the 496  
insolvent or impaired insurer under a covered policy that do not 497  
materially affect the economic values or economic benefits of 498  
the covered policy. 499

**Sec. 3956.06.** (A) There is hereby created an 500  
unincorporated nonprofit association to be known as the Ohio 501  
life and health insurance guaranty association. All member 502  
insurers shall be and remain members of the association as a 503  
condition of their license or authority to transact the business 504  
of insurance or health insuring corporation business in this 505  
state. The association shall perform its functions under the 506  
plan of operation established and approved under section 3956.10 507  
of the Revised Code and shall exercise its powers through a 508

board of directors established under section 3956.07 of the Revised Code. For purposes of administration and assessment, the association shall maintain the following two accounts:

(1) The life insurance and annuity account that includes the following subaccounts:

(a) Life insurance subaccount;

(b) Annuity subaccount;

(c) Unallocated annuity subaccount that also includes all annuity contracts meeting the requirements of section 403(b) of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended.

(2) The health ~~insurance~~ account.

(B) The association is subject to the supervision of the superintendent of insurance and to the applicable insurance laws of this state.

**Sec. 3956.07.** (A) The board of directors of the Ohio life and health insurance guaranty association shall consist of not less than nine nor more than eleven member insurers serving terms as established in the plan of operation. A majority of the members of the board shall be representatives of member insurers domiciled in this state. Three of the members of the board shall be representatives of the three member insurers ~~that are consolidated corporations as defined in division (A) (1) of section 3923.39 of the Revised Code and that~~ write the largest premium volumes of health insurance in this state, three of the members of the board shall be representatives of domestic life insurers, and three of the members of the board shall be representatives of foreign member insurers. The members of the board shall be selected by member insurers, subject to the

approval of the superintendent of insurance. Vacancies on the 538  
board shall be filled for the remaining period of the term by a 539  
majority vote of the remaining board members, subject to the 540  
approval of the superintendent. To select the initial board of 541  
directors and initially organize the association, the 542  
superintendent shall give notice to all member insurers of the 543  
time and place of the organizational meeting. In determining 544  
voting rights at the organizational meeting, each member insurer 545  
shall be entitled to one vote in person or by proxy. If the 546  
board of directors is not selected within sixty days after 547  
notice of the organizational meeting, the superintendent may 548  
appoint the initial members. 549

(B) In approving selections or in appointing members to 550  
the board, the superintendent shall consider, among other 551  
things, whether all member insurers are fairly represented. 552

(C) Members of the board may be reimbursed from the assets 553  
of the association for reasonable expenses incurred by them as 554  
members of the board of directors, but members of the board 555  
shall not otherwise be compensated by the association for their 556  
services. 557

**Sec. 3956.08.** (A) (1) Subject to any conditions imposed as 558  
provided in division (A) (2) of this section, the Ohio life and 559  
health insurance guaranty association may do either of the 560  
following with respect to an impaired ~~domestic~~ member insurer: 561

(a) Guarantee, assume, reissue, or reinsure, or cause to 562  
be guaranteed, assumed, reissued, or reinsured, any or all of 563  
the policies or contracts of the impaired insurer; 564

(b) Provide the moneys, pledges, notes, guarantees, or 565  
other means that are proper to effectuate division (A) (1) (a) of 566

this section and assure payment of the contractual obligations 567  
of the impaired insurer pending action under division (A) (1) (a) 568  
of this section. 569

(2) The association may impose conditions upon any action 570  
it takes under division (A) (1) of this section if ~~all~~ both of 571  
the following apply: 572

(a) The condition does not impair the contractual 573  
obligations of the impaired insurer; 574

(b) The superintendent of insurance approves the 575  
condition; 576

~~(c) Except in cases of court-ordered conservation or 577  
rehabilitation, the impaired insurer approves the condition. 578~~

~~(B) (1) If a member insurer is an impaired foreign or alien- 579  
insurer that is not paying claims timely, the association, 580  
subject to the conditions specified in division (B) (2) of this 581  
section, shall do either of the following: 582~~

~~(a) Take any of the actions specified in division (A) (1) 583  
of this section, subject to the conditions specified in division 584  
(A) (2) of this section; 585~~

~~(b) Provide substitute benefits in lieu of the contractual 586  
obligations of the impaired insurer solely for all of the 587  
following: 588~~

~~(i) Death benefits and health claims in accordance with 589  
division (D) of this section; 590~~

~~(ii) Periodic annuity benefit payments; 591~~

~~(iii) Supplemental benefits; 592~~

~~(iv) Cash withdrawals for policy or contract owners who 593~~

~~petition therefor under claims of emergency or hardship in accordance with standards proposed by the association and approved by the superintendent.~~ 594  
595  
596

~~(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:~~ 597  
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599

~~(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:~~ 600  
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~~(i) The delinquency proceeding shall not be dismissed.~~ 609

~~(ii) Neither the impaired insurer nor its assets shall be returned to the control of its shareholders or private management.~~ 610  
611  
612

~~(iii) The impaired insurer shall not be permitted to solicit or accept new business or have any suspended or revoked license restored.~~ 613  
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~~(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.~~ 616  
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~~(C) (B) If a member insurer is an insolvent insurer, the~~ 622

association shall, at its discretion, do either of the 623  
following: 624

(1) Guarantee, assume, reissue, or reinsure, or cause to 625  
be guaranteed, assumed, reissued, or reinsured, the covered 626  
policies or contracts of the insolvent insurer or assure payment 627  
of the contractual obligations of the insolvent insurer, and 628  
provide the moneys, pledges, guarantees, or other means that are 629  
reasonably necessary to discharge such duties; 630

~~(2) With respect only to life and health insurance~~ 631  
~~policies, provide~~ Provide benefits and coverages in accordance 632  
with division ~~(D)~~ (C) of this section. 633

~~(D)~~ (C) When proceeding under division ~~(B) (1) (b) or (C) (2)~~ 634  
(B) (2) of this section, the association, with respect to ~~life~~ 635  
~~and health insurance policies and contracts~~, shall do all of the 636  
following: 637

(1) Assure payment of benefits ~~for premiums identical to~~ 638  
~~the premiums and benefits, except for terms of conversion and~~ 639  
~~renewability~~, that would have been payable under the policies or 640  
contracts of the insolvent insurer, for claims incurred within 641  
the following time limits: 642

(a) With respect to group policies or contracts, not later 643  
than the earlier of the next renewal date under such policies or 644  
contracts or forty-five days, but in no event less than thirty 645  
days, after the date on which the association becomes obligated 646  
with respect to such policies and contracts; 647

(b) With respect to individual policies and contracts, not 648  
later than the earlier of the next renewal date, if any, under 649  
such policies or contracts or one year, but in no event less 650  
than thirty days, from the date on which the association becomes 651

obligated with respect to such policies or contracts; 652

(2) Make diligent efforts to provide all known insureds, enrollees, annuitants, or group policyholders ~~policy or contract~~ owners with respect to group policies and contracts thirty days' notice of the termination of the benefits provided; 653  
654  
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656

(3) With respect to individual policies and contracts, 657  
make available to each known insured, annuitant, enrollee, or 658  
owner if other than the insured or annuitant, and with respect 659  
to an individual formerly ~~insured~~ an insured, annuitant, or 660  
enrollee under a group policy or contract who is not eligible 661  
for replacement group coverage, make available substitute 662  
coverage on an individual basis in accordance with the 663  
provisions of division ~~(D) (4)~~ (C) (4) of this section, if such 664  
insureds, annuitants, or enrollees had a right under law or the 665  
terminated policy or contract to convert coverage to individual 666  
coverage or to continue an individual policy or contract in 667  
force until a specified age or for a specified time, during 668  
which the insurer or health insuring corporation had no right 669  
unilaterally to make changes in any provision of the policy, annuity, or contract or had a right only to make changes in 670  
premium by class. 671  
672

(4) (a) In providing the substitute coverage required under 673  
division ~~(D) (3)~~ (C) (3) of this section, the association may 674  
offer either to reissue the terminated coverage or to issue an 675  
alternative policy or contract at actuarially justified rates. 676

(b) Alternative or reissued policies or contracts shall be 677  
offered without requiring evidence of insurability, and shall 678  
not provide for any waiting period or exclusion that would not 679  
have applied under the terminated policy or contract. 680



(c) The association may reinsure any alternative or 681  
reissued policy or contract. 682

(5) (a) Alternative policies or contracts adopted by the 683  
association shall be subject to the approval of the 684  
superintendent. The association may adopt alternative policies 685  
or contracts of various types for future issuance without regard 686  
to any particular impairment or insolvency. 687

(b) Alternative policies or contracts shall contain at 688  
least the minimum statutory provisions required in this state 689  
and provide benefits that are not unreasonable in relation to 690  
the premium charged. The association shall set the premium in 691  
accordance with the table of rates which it shall adopt. The 692  
premium shall reflect the amount of insurance or coverage to be 693  
provided and the age and class of risk of each insured or 694  
enrollee, but shall not reflect any changes in the health of the 695  
insured or enrollee after the original policy or contract was 696  
last underwritten. 697

(c) Any alternative policy or contract issued by the 698  
association shall provide coverage of a type similar to that of 699  
the policy or contract issued by the impaired or insolvent 700  
insurer, as determined by the association. 701

(6) If the association elects to reissue terminated 702  
coverage at a premium rate different from that charged under the 703  
terminated policy or contract, the premium shall be actuarially 704  
justified and set by the association in accordance with the 705  
amount of insurance or coverage provided and the age and class 706  
of risk, subject to approval of the superintendent ~~or a court of~~ 707  
~~competent jurisdiction~~. 708

(7) The obligations of the association with respect to 709

coverage under any policy or contract of the impaired or 710  
insolvent insurer or under any reissued or alternative policy or 711  
contract shall cease on the date the coverage or policy or 712  
contract is replaced by another similar policy or contract by 713  
the ~~policyholder~~ policy or contract owner, the insured, the 714  
enrollee, or the association. 715

~~(E)~~ (D) When proceeding under ~~divisions (B) (1) (b) or (C)~~ 716  
division (B) of this section with respect to any policy or 717  
contract carrying guaranteed minimum interest rates, the 718  
association shall assure the payment or crediting of a rate of 719  
interest consistent with ~~division (B) (2) (e)~~ (C) (2) (c) of section 720  
3956.04 of the Revised Code. 721

~~(F)~~ (E) Nonpayment of premiums within thirty-one days 722  
after the date required under the terms of any guaranteed, 723  
assumed, alternative, or reissued policy or contract or 724  
substitute coverage shall terminate the obligations of the 725  
association under the policy, contract, or coverage under this 726  
chapter with respect to the policy, contract, or coverage, 727  
except with respect to any claims incurred or any net cash 728  
surrender value that may be due in accordance with this chapter. 729

~~(G)~~ (F) Premiums due for coverage after entry of an order 730  
of liquidation of an insolvent insurer shall belong to, and be 731  
payable at the direction of, the association, and the 732  
association is liable for unearned premiums due to policy or 733  
contract owners arising after the entry of the order. 734

~~(H)~~ (G) In carrying out its duties under ~~divisions~~ 735  
division (B) and ~~(C)~~ of this section, the association, subject 736  
to approval by the court, may do the following: 737

(1) Impose permanent policy or contract liens in 738

connection with any guarantee, assumption, or reinsurance 739  
agreement, if the association finds that the amounts that can be 740  
assessed under this chapter are less than the amounts needed to 741  
assure full and prompt performance of the association's duties 742  
under this chapter, or that the economic or financial conditions 743  
as they affect member insurers are sufficiently adverse to 744  
render the imposition of such permanent policy or contract liens 745  
to be in the public interest; 746

~~(2)~~(2)(a) Impose temporary moratoriums or liens on 747  
payments of cash values and policy loans, or any other right to 748  
withdraw funds held in conjunction with policies or contracts, 749  
in addition to any contractual provisions for deferral of cash 750  
or policy loan value; 751

(b) In addition, in the event of a temporary moratorium or 752  
moratorium charge imposed by the receivership court on payment 753  
of cash values or policy loans, or on any other right to 754  
withdraw funds held in conjunction with policies or contracts, 755  
out of the assets of the impaired or insolvent insurer, the 756  
association may defer the payment of cash values, policy loans, 757  
or other rights by the association for the period of the 758  
moratorium or moratorium charge imposed by the receivership 759  
court, except for claims covered by the association to be paid 760  
in accordance with a hardship procedure established by the 761  
liquidator or rehabilitator and approved by the receivership 762  
court. 763

~~(I)~~(H) If the association fails to act as provided in 764  
divisions ~~(B) (1) (b), (C), and (D)~~(B) and (C) of this section 765  
within a reasonable time, the superintendent shall have the 766  
powers and duties of the association under this chapter with 767  
respect to impaired or insolvent insurers. 768

~~(J)~~-(I) The association may render assistance and advice 769  
to the superintendent, upon ~~his~~ the superintendent's request, 770  
concerning any member insurer that is insolvent, impaired, or 771  
potentially impaired, or concerning the rehabilitation, payment 772  
of claims, continuance of coverage, or the performance of other 773  
contractual obligations of any impaired or insolvent insurer. 774

~~(K)~~-(J) The association, and any similar associations of 775  
other states, may appear or intervene before any court in this 776  
state with jurisdiction over an impaired or insolvent insurer 777  
for which the association is or may become obligated under this 778  
chapter, or over a third party against whom the association or 779  
associations have or may have rights through subrogation of the 780  
member insurer's policy or contract holders. The right to appear 781  
or intervene extends to all matters germane to the powers and 782  
duties of the association, including, but not limited to, 783  
proposals for reinsuring, reissuing, modifying, or guaranteeing 784  
the covered policies or contracts of the impaired or insolvent 785  
insurer and the determination of the covered policies or 786  
contracts and contractual obligations. The association also has 787  
the right to appear or intervene before a court or agency in 788  
another state with jurisdiction over an impaired or insolvent 789  
insurer for which the association is or may become obligated or 790  
with jurisdiction over ~~a third party~~ any person or property 791  
against whom the association may have rights through subrogation 792  
~~of the insurer's policy or contract holders~~ or otherwise. 793

~~(L)(1)~~-(K) (1) Any person receiving benefits under this 794  
chapter is deemed to have assigned the rights under, and any 795  
causes of action relating to, the covered policy or contract to 796  
the association to the extent of the benefits received as a 797  
result of this chapter, whether the benefits are payments of or 798  
on account of contractual obligations, continuation of coverage, 799

or provision of substitute or alternative policies, contracts, 800  
or coverages. The association may require an assignment to it of 801  
such rights and causes of action by any enrollee, payee, policy 802  
or contract holder, beneficiary, insured, or annuitant as a 803  
condition precedent to the receipt of any rights or benefits 804  
conferred by this chapter upon such person. 805

(2) The subrogation rights of the association under this 806  
division have the same priority against the assets of the 807  
impaired or insolvent insurer as that possessed by the person 808  
entitled to receive benefits under this chapter. 809

(3) In addition to divisions ~~(L)(1)~~ (K)(1) and (2) of this 810  
section, the association has all common law rights of 811  
subrogation and any other equitable or legal remedy that would 812  
have been available to the impaired or insolvent insurer or 813  
~~holder of a~~ the policy or contract holder, beneficiary, 814  
enrollee, or payee with respect to the policy or contract, 815  
including, without limitation, in the case of a structured 816  
settlement annuity, any rights of the owner, beneficiary, or 817  
payee of the annuity, to the extent of benefits received 818  
pursuant to this chapter, against a person originally or by 819  
succession responsible for the losses arising from the personal 820  
injury relating to the annuity or payment therefore, excepting 821  
any such person responsible solely by reason of serving as an 822  
assignee in respect of a qualified assignment under section 130 823  
of the Internal Revenue Code. 824

(4) If the preceding provisions of this division are 825  
invalid or ineffective with respect to any person or claim for 826  
any reason, the amount payable by the association with respect 827  
to the related covered obligations shall be reduced by the 828  
amount realized by any other person with respect to the person 829

or claim that is attributable to the policies or contracts, or 830  
portion thereof, covered by the association. 831

(5) If the association has provided benefits with respect 832  
to a covered obligation and a person recovers amounts as to 833  
which the association has rights as described in the preceding 834  
divisions, the person shall pay to the association the portion 835  
of the recovery attributable to the policies or contracts, or 836  
portion thereof, covered by the association. 837

~~(M)~~ (L) If the aggregate liability of the association with 838  
respect to any one life does not exceed one hundred dollars, the 839  
association is not obligated to notify claimants possessing such 840  
claims or make any payment thereto. 841

~~(N)~~ (M) Except with respect to claims filed under policies 842  
and contracts which are continued in force by the association 843  
past the final date set by a court for filing claims in 844  
liquidation proceedings of an insolvent insurer, the association 845  
is not liable to pay any claim filed with the association after 846  
such date. 847

~~(O)~~ (N) The association may do any of the following: 848

(1) Enter into any such contracts and take such actions as 849  
are necessary or proper in the judgment of the board of 850  
directors to protect the interests of the association, or to 851  
carry out the powers and duties of the association or the 852  
provisions and purposes of this chapter; 853

(2) Sue or be sued, including taking any legal actions 854  
necessary or proper to recover any unpaid assessments under 855  
section 3956.09 of the Revised Code and to settle claims or 856  
potential claims against it; 857

(3) Borrow money to effect the purposes of this chapter. 858

Any notes or other evidence of indebtedness of the association 859  
not in default are legal investments for domestic insurers and 860  
may be carried as admitted assets. 861

(4) Employ or retain such persons as are necessary to 862  
handle the financial transactions of the association, and to 863  
perform such other functions as become necessary or proper under 864  
this chapter; 865

(5) Take such legal action as may be necessary to avoid 866  
payment of improper claims; 867

(6) Exercise, for the purposes of this chapter and to the 868  
extent approved by the superintendent, the powers of a domestic 869  
life ~~or insurer, health insurer, or health insuring corporation,~~ 870  
but in no case may the association issue ~~insurance~~ policies or 871  
~~annuity~~ contracts other than those issued to perform its 872  
obligations under this chapter; 873

(7) Join an organization of one or more other state 874  
associations of similar purposes, to further the purposes and 875  
administer the powers and duties of the association; 876

(8) In accordance with the terms and conditions of the 877  
policy or contract, file for actuarially justified rate or 878  
premium increases for any policy or contract for which it 879  
provides coverage under this chapter; 880

(9) Enter into agreements with other state associations of 881  
similar purposes to determine the residence of persons for 882  
purposes of this chapter; 883

(10) Organize itself as a corporation or in other legal 884  
form permitted by the laws of the state; 885

(11) Request information from a person seeking coverage 886

from the association in order to aid the association in 887  
determining its obligations under this chapter with respect to 888  
the person, and the person shall promptly comply with the 889  
request. 890

(O) (1) A deposit in this state, held pursuant to law or 891  
required by the superintendent for the benefit of creditors, 892  
including policy or contract owners, not turned over to the 893  
domiciliary liquidator upon the entry of a final order of 894  
liquidation or order approving a rehabilitation plan of a member 895  
insurer domiciled in this state or in a reciprocal state, shall, 896  
pursuant to Chapter 3903. of the Revised Code, be promptly paid 897  
to the association. 898

(2) The association shall be entitled to retain a portion 899  
of any amount so paid to it equal to the percentage determined 900  
by dividing the aggregate amount of policy or contract owners' 901  
claims related to that insolvency for which the association has 902  
provided statutory benefits by the aggregate amount of all 903  
policy or contract owners' claims in this state related to that 904  
insolvency and shall remit to the domiciliary receiver the 905  
amount so paid to the association less the amount retained 906  
pursuant to this division. 907

(3) Any amount so paid to the association and retained by 908  
it shall be treated as a distribution of estate assets pursuant 909  
to applicable state receivership law dealing with early access 910  
disbursements. 911

(P) (1) (a) At any time within one hundred eighty days of 912  
the date of the order of liquidation, the association may elect 913  
to succeed to the rights and obligations of the ceding member 914  
insurer that relate to policies, contracts, or annuities 915  
covered, in whole or in part, by the association, in each case 916



under any one or more reinsurance contracts entered into by the 917  
insolvent insurer and its reinsurers and selected by the 918  
association. Any such assumption is effective as of the date of 919  
the order of liquidation. The election shall be effected by the 920  
association or the national organization of life and health 921  
insurance guaranty associations on its behalf sending written 922  
notice, return receipt requested, to the affected reinsurers. 923

(b) To facilitate the earliest practicable decision about 924  
whether to assume any of the contracts of reinsurance, and in 925  
order to protect the financial position of the estate, the 926  
receiver and each reinsurer of the ceding member insurer shall 927  
make available upon request to the association or to the 928  
national organization of life and health insurance guaranty 929  
associations on its behalf as soon as possible after 930  
commencement of formal delinquency proceedings both of the 931  
following: 932

(i) Copies of in-force contracts of reinsurance and all 933  
related files and records relevant to the determination of 934  
whether such contracts should be assumed; 935

(ii) Notices of any defaults under the reinsurance 936  
contracts or any known event or condition which with the passage 937  
of time could become a default under the reinsurance contracts. 938

(2) Divisions (P)(2)(a) to (d) of this section apply to 939  
reinsurance contracts so assumed by the association. 940

(a) The association is responsible for all unpaid premiums 941  
due under the reinsurance contracts for periods both before and 942  
after the date of the order of liquidation, and is responsible 943  
for the performance of all other obligations to be performed 944  
after the date of the order of liquidation, in each case which 945

relate to policies, contracts, or annuities covered, in whole or 946  
in part, by the association. The association may charge 947  
policies, contracts, or annuities covered in part by the 948  
association, through reasonable allocation methods, the costs 949  
for reinsurance in excess of the obligations of the association 950  
and shall provide notice and an accounting of these charges to 951  
the liquidator. 952

(b) The association is entitled to any amounts payable by 953  
the reinsurer under the reinsurance contracts with respect to 954  
losses or events that occur in periods after the date of the 955  
order of liquidation and that relate to policies, contracts, or 956  
annuities covered, in whole or in part, by the association, 957  
provided that, upon receipt of any such amounts, the association 958  
is obliged to pay to the beneficiary under the policy, 959  
contracts, or annuity on account of which the amounts were paid 960  
a portion of the amount equal to the lesser of the following: 961

(i) The amount received by the association; 962

(ii) The excess of the amount received by the association 963  
over the amount equal to the benefits paid by the association on 964  
account of the policy, contracts, or annuity less the retention 965  
of the insurer applicable to the loss or event. 966

(c) Within thirty days following the association's 967  
election, the association and each reinsurer under contracts 968  
assumed by the association shall calculate the net balance due 969  
to or from the association under each reinsurance contract as of 970  
the election date with respect to policies, contracts, or 971  
annuities covered, in whole or in part, by the association, 972  
which calculation shall give full credit to all items paid by 973  
either the member insurer or its receiver or the reinsurer prior 974  
to the election date. The reinsurer shall pay the receiver any 975

amounts due for losses or events prior to the date of the order 976  
of liquidation, subject to any set-off for premiums unpaid for 977  
periods prior to the date, and the association or reinsurer 978  
shall pay any remaining balance due the other, in each case 979  
within five days of the completion of the aforementioned 980  
calculation. Any disputes over the amounts due to either the 981  
association or the reinsurer shall be resolved by arbitration 982  
pursuant to the terms of the affected reinsurance contracts or, 983  
if the contract contains no arbitration clause, as otherwise 984  
provided by law. If the receiver has received any amounts due 985  
the association pursuant to division (P) (2) (b) of this section, 986  
the receiver shall remit the same to the association as promptly 987  
as practicable. 988

(d) If the association or receiver, on the association's 989  
behalf, within sixty days of the election date, pays the unpaid 990  
premiums due for periods both before and after the election date 991  
that relate to policies, contracts, or annuities covered, in 992  
whole or in part, by the association, the reinsurer shall not be 993  
entitled to terminate the reinsurance contracts for failure to 994  
pay premium insofar as the reinsurance contracts relate to 995  
policies, contracts, or annuities covered, in whole or in part, 996  
by the association, and shall not be entitled to set off any 997  
unpaid amounts due under other contracts, or unpaid amounts due 998  
from parties other than the association, against amounts due the 999  
association. 1000

(3) During the period from the date of the order of 1001  
liquidation until the election date, or, if the election date 1002  
does not occur, until one hundred eighty days after the date of 1003  
the order of liquidation, both of the following shall apply: 1004

(a) (i) Neither the association nor the reinsurer shall 1005

have any rights or obligations under reinsurance contracts that 1006  
the association has the right to assume under division (P) (1) of 1007  
this section, whether for periods prior to or after the date of 1008  
the order of liquidation. 1009

(ii) The reinsurer, the receiver, and the association 1010  
shall, to the extent practicable, provide each other data and 1011  
records reasonably requested. 1012

(b) Provided that the association has elected to assume a 1013  
reinsurance contract, the parties' rights and obligations shall 1014  
be governed by divisions (P) (1) and (2) of this section. 1015

(4) If the association does not elect to assume a 1016  
reinsurance contract by the election date pursuant to division 1017  
(P) (1) of this section, the association shall have no rights or 1018  
obligations, in each case for periods both before and after the 1019  
date of the order of liquidation, with respect to the 1020  
reinsurance contract. 1021

(5) When policies, contracts, or annuities, or covered 1022  
obligations with respect thereto, are transferred to an assuming 1023  
insurer, reinsurance on the policies, contracts, or annuities 1024  
may also be transferred by the association, in the case of 1025  
contracts assumed under division (P) (1) of this section, subject 1026  
to the following: 1027

(a) Unless the reinsurer and the assuming insurer agree 1028  
otherwise, the reinsurance contracts transferred do not cover 1029  
any new policies of insurance, contracts, or annuities in 1030  
addition to those transferred. 1031

(b) The obligations described in division (P) (1) of this 1032  
section no longer apply with respect to matters arising after 1033  
the effective date of the transfer. 1034

(c) Notice shall be given in writing, return receipt 1035  
requested, by the transferring party to the affected reinsurer 1036  
not less than thirty days prior to the effective date of the 1037  
transfer. 1038

(6) The provisions of this division supersede the 1039  
provisions of any state law or of any affected reinsurance 1040  
contract that provides for or requires any payment of 1041  
reinsurance proceeds, on account of losses or events that occur 1042  
in periods after the date of the order of liquidation, to the 1043  
receiver of the insolvent insurer or any other person. The 1044  
receiver shall remain entitled to any amounts payable by the 1045  
reinsurer under the reinsurance contracts with respect to losses 1046  
or events that occur in periods prior to the date of the order 1047  
of liquidation, subject to applicable setoff provisions. 1048

(7) Except as otherwise provided in this division, nothing 1049  
in this division shall alter or modify the terms and conditions 1050  
of any reinsurance contract. Nothing in this division abrogates 1051  
or limits any rights of any reinsurer to claim that it is 1052  
entitled to rescind a reinsurance contract. Nothing in this 1053  
division gives a policy owner, contract owner, enrollee, 1054  
certificate holder, or beneficiary an independent cause of 1055  
action against a reinsurer that is not otherwise set forth in 1056  
the reinsurance contract. Nothing in this division limits or 1057  
affects the association's rights as a creditor of the estate 1058  
against the assets of the estate. Nothing in this division 1059  
applies to reinsurance agreements covering property or casualty 1060  
risks. 1061

(Q) The board of directors of the association has 1062  
discretion and may exercise reasonable business judgment to 1063  
determine the means by which the association is to provide the 1064

benefits of this chapter in an economical and efficient manner. 1065

(R) Where the association has arranged or offered to 1066  
provide the benefits of this chapter to a covered person under a 1067  
plan or arrangement that fulfills the association's obligations 1068  
under this chapter, the person is not entitled to benefits from 1069  
the association in addition to or other than those provided 1070  
under the plan or arrangement. 1071

(S) Venue in a suit against the association arising under 1072  
the chapter shall be in Franklin county. The association is not 1073  
required to give an appeal bond in an appeal that relates to a 1074  
cause of action arising under this chapter. 1075

(T) In carrying out its duties in connection with 1076  
guaranteeing, assuming, reissuing, or reinsuring policies or 1077  
contracts under division (A) or (B) of this section, the 1078  
association may issue substitute coverage for a policy or 1079  
contract that provides an interest rate, crediting rate, or 1080  
similar factor determined by use of an index or other external 1081  
reference stated in the policy or contract employed in 1082  
calculating returns or changes in value by issuing an 1083  
alternative policy or contract in accordance with the following 1084  
provisions: 1085

(1) In lieu of the index or other external reference 1086  
provided for in the original policy or contract, the alternative 1087  
policy or contract provides for any of the following: 1088

(a) A fixed interest rate; 1089

(b) Payment of dividends with minimum guarantees; 1090

(c) A different method for calculating interest or changes 1091  
in value. 1092

(2) There is no requirement for evidence of insurability, 1093  
waiting period, or other exclusion that would not have applied 1094  
under the replaced policy or contract. 1095

(3) The alternative policy or contract is substantially 1096  
similar to the replaced policy or contract in all other material 1097  
terms. 1098

**Sec. 3956.09.** (A) For the purpose of providing the funds 1099  
necessary to carry out the powers and duties of the Ohio life 1100  
and health insurance guaranty association, the board of 1101  
directors shall assess the member insurers, separately for each 1102  
subaccount or account, at such time and for such amounts as the 1103  
board finds necessary. Assessments shall be due not less than 1104  
thirty days after prior written notice to the member insurers 1105  
and shall accrue interest at ten per cent per year on and after 1106  
the due date. 1107

(B) There shall be two classes of assessments, as follows: 1108

(1) Class A assessments shall be ~~made~~authorized and 1109  
called for the purpose of meeting administrative and legal costs 1110  
and other expenses, and the cost of ~~examinations conducted~~  
detecting and preventing member insurer insolvencies under 1111  
division (E) of section 3956.12 of the Revised Code. Class A 1112  
assessments may be ~~made~~authorized and called whether or not 1113  
related to a particular impaired or insolvent insurer. 1114  
1115

(2) Class B assessments shall be ~~made~~authorized and 1116  
called to the extent necessary to carry out the powers and 1117  
duties of the association under section 3956.08 of the Revised 1118  
Code with regard to an impaired or an insolvent insurer. 1119

(C) (1) The amount of any class A assessment shall be 1120  
determined by the board and may be ~~made~~authorized and called on 1121

a pro rata or non-pro rata basis. If pro rata, the board may 1122  
provide that it be credited against future class B assessments. 1123  
~~A non-pro rata assessment shall not exceed two hundred dollars~~ 1124  
~~per member insurer in any one calendar year.~~ The amount of any 1125  
class B assessment, except for assessments related to long-term 1126  
care insurance, shall be allocated for assessment purposes 1127  
between the accounts and among the subaccounts ~~and accounts of~~ 1128  
the life insurance and annuity account pursuant to an allocation 1129  
formula which may be based on the premiums or reserves of the 1130  
impaired or insolvent insurer or on any other standard 1131  
considered by the board in its sole discretion as being fair and 1132  
reasonable under the circumstances. 1133

~~(2)~~ (2) (a) The amount of the class B assessments for long- 1134  
term care insurance written by the impaired or insolvent insurer 1135  
shall be allocated according to a methodology included in the 1136  
plan of operation and approved by the superintendent of 1137  
insurance. 1138

(b) The methodology shall provide for fifty per cent of 1139  
the assessment to be allocated to sickness and accident and 1140  
health member insurers and fifty per cent to be allocated to 1141  
life and annuity member insurers. 1142

(c) For the purposes of divisions (C) (2) (a) and (b) of 1143  
this section: 1144

(i) "Life and annuity member insurer" means a member 1145  
insurer for which the sum of its assessable life insurance 1146  
premiums and annuity premiums is greater than or equal to its 1147  
assessable health insurance premiums. 1148

(ii) "Assessable health insurance premiums" includes the 1149  
member insurer's assessable sickness and accident premiums and 1150



health insuring corporation premiums, but shall exclude its 1151  
assessable premiums written for disability income insurance and 1152  
long-term care insurance. For purposes of this definition, 1153  
assessable premiums shall be measured within the state. 1154

(iii) "Sickness and accident and health member insurer" 1155  
means any member insurer not defined as a life and annuity 1156  
member insurer. 1157

(d) Class B assessments against member insurers for each 1158  
subaccount or account shall be in the proportion that the 1159  
premiums received on business in this state by each assessed 1160  
member insurer on policies or contracts covered by each 1161  
subaccount or account for the most recent three calendar years 1162  
for which information is available preceding the year in which 1163  
the member insurer became impaired or insolvent, as the case may 1164  
be, bears to such premiums received on business in this state 1165  
for such calendar years by all assessed member insurers. 1166

(3) Assessments for funds to meet the requirements of the 1167  
association with respect to an impaired or insolvent insurer 1168  
shall not be ~~made~~ authorized and called until necessary to 1169  
implement the purposes of this chapter. Classification of 1170  
assessments under division (B) of this section and computation 1171  
of assessments under this division shall be made with a 1172  
reasonable degree of accuracy, recognizing that exact 1173  
determinations may not always be possible. The association shall 1174  
notify each member insurer of its anticipated pro rata share of 1175  
an authorized assessment not yet called within one hundred 1176  
eighty days after the assessment is authorized. 1177

(D) The association may abate or defer, in whole or in 1178  
part, the assessment of a member insurer if, in the opinion of 1179  
the board, payment of the assessment would endanger the ability 1180

of the member insurer to fulfill its contractual obligations. If 1181  
an assessment against a member insurer is abated, or deferred in 1182  
whole or in part, the amount by which the assessment is abated 1183  
or deferred may be assessed against the other member insurers in 1184  
a manner consistent with the basis for assessments set forth in 1185  
this section. Once the conditions that caused a deferral have 1186  
been removed or rectified, the member insurer shall pay all 1187  
assessments that were deferred pursuant to a repayment plan 1188  
approved by the association. In determining whether the payment 1189  
of an assessment would endanger the ability of a member insurer 1190  
to fulfill its contractual obligations, the board shall consider 1191  
the adequacy of the capital and surplus of the member insurer in 1192  
relation to the premiums written, the assets, and the reserve 1193  
liabilities of that member insurer. 1194

(E) (1) The total of all assessments upon a member insurer 1195  
for the life insurance and annuity account, which includes the 1196  
life insurance subaccount, the annuity subaccount, and the 1197  
unallocated annuity subaccount, shall not in any one calendar 1198  
year exceed two per cent of the member insurer's average 1199  
premiums received per year in this state on the policies and 1200  
contracts covered by each such subaccount, and for the health 1201  
~~insurance~~ account, shall not in any one calendar year exceed two 1202  
per cent of the member insurer's average premiums received per 1203  
year in this state on the policies and contracts covered by such 1204  
account, during the three calendar years preceding the year in 1205  
which the impaired or insolvent insurer or insurers became 1206  
impaired or insolvent. If the maximum assessment for a 1207  
subaccount or account, together with the other assets of the 1208  
association in the subaccount or account, does not provide in 1209  
any one year in the subaccount or account an amount sufficient 1210  
to carry out the responsibilities of the association, the 1211

necessary additional funds shall be assessed for the subaccount 1212  
or account as soon thereafter in succeeding years as permitted 1213  
by division (E) of this section. 1214

(2) If the maximum assessment under division (E) (1) of 1215  
this section for any subaccount of the life insurance and 1216  
annuity account in any succeeding year does not provide an 1217  
amount sufficient to carry out the responsibilities of the 1218  
association, then pursuant to division ~~(C) (2)~~ (C) (2) (d) of this 1219  
section, the board shall ~~allocate the necessary additional~~ 1220  
~~amount among~~ assess the other subaccounts of the life and 1221  
annuity account ~~in the manner set forth in division (E) (1) of~~ 1222  
~~this section, but the maximum assessment for a subaccount shall~~ 1223  
~~not exceed one per cent in any one calendar year~~ for the 1224  
necessary additional amount, subject to the maximum stated in 1225  
division (E) (1) of this section. 1226

(3) Where assessments for two or more impaired or 1227  
insolvent insurers have been made within the same calendar year, 1228  
and the sum of those assessments exceeds the two per cent 1229  
calendar year assessment limitation under division (E) (1) of 1230  
this section, the board, with the approval of the superintendent 1231  
of insurance, may allocate among the accounts of such member 1232  
insurers the sums assessed within the two per cent limitation. 1233

(F) The board, by an equitable method as established in 1234  
the plan of operation, may refund to member insurers, in 1235  
proportion to the contribution of each member insurer to that 1236  
subaccount or account, the amount by which the assets of the 1237  
subaccount or account exceed the amount the board finds is 1238  
necessary to carry out during the coming year the obligations of 1239  
the association with regard to that subaccount or account, 1240  
including assets accruing from assignment, subrogation, net 1241

realized gains, and income from investments. A reasonable amount 1242  
may be retained in any subaccount or account to provide funds 1243  
for the continuing expenses of the association and for future 1244  
losses. 1245

(G) A member insurer, in determining its premium rates and 1246  
policyowner dividends as to any kind of insurance or health 1247  
insuring corporation business within the scope of this chapter, 1248  
may consider the amount reasonably necessary to meet its 1249  
assessment obligations under this section. 1250

(H) The association, upon request, shall issue to ~~an~~ a 1251  
member insurer paying an assessment under this section, other 1252  
than a class A assessment, a certificate of contribution, in a 1253  
form approved by the superintendent, for the amount of the 1254  
assessment so paid. All outstanding certificates shall be of 1255  
equal dignity and priority without reference to amounts or dates 1256  
of issue. A certificate of contribution may be shown by the 1257  
member insurer in its financial statement as an asset in the 1258  
form and for the amount, net of any amounts recovered through a 1259  
tax offset, and for the period of time the superintendent may 1260  
approve. 1261

(I) Any member insurer that has contributed funds to pay 1262  
claims of an impaired or insolvent insurer, pursuant to an 1263  
agreement entered into with the superintendent and approved by 1264  
the Franklin county court of common pleas during the five years 1265  
preceding ~~the effective date of this section~~ November 20, 1989, 1266  
or at any time following ~~the effective date of this section~~ 1267  
November 20, 1989, shall receive a credit against any 1268  
assessments levied pursuant to this section, whether the 1269  
assessments are class A assessments or class B assessments, in 1270  
the amount of the contribution. 1271

If the amount of the credit exceeds the amount of 1272  
assessments levied upon a member insurer in any one year, the 1273  
balance of that credit shall be carried forward to subsequent 1274  
years and will reduce the amount of future assessments until the 1275  
total amount of the credit has been applied to the future 1276  
assessments. 1277

For the purposes of this division, an impaired or 1278  
insolvent member insurer is an insurer that meets the 1279  
definitions set forth in section 3956.01 of the Revised Code, 1280  
and any insurer or health insuring corporation that would have 1281  
met these definitions, if it had been in effect at the time of 1282  
such contribution. 1283

(J) Division (I) of this section does not apply if ~~an a~~ 1284  
member insurer has contributed funds pursuant to that division 1285  
and has offset those contributions against its premium or 1286  
franchise tax liability pursuant to any provision of the Revised 1287  
Code authorizing the establishment of a plan for the 1288  
distribution of voluntary contributions to pay the life, 1289  
sickness and accident, or annuity claims of residents of this 1290  
state that are unpaid due to the insolvency of an insolvent 1291  
insurer. 1292

(K) (1) A member insurer that wishes to protest all or part 1293  
of an assessment shall pay when due the full amount of the 1294  
assessment as set forth in the notice provided by the 1295  
association. The payment shall be available to meet association 1296  
obligations during the pendency of the protest or any subsequent 1297  
appeal. Payment shall be accompanied by a statement in writing 1298  
that the payment is made under protest and setting forth a brief 1299  
statement of the grounds for the protest. 1300

(2) Within sixty days following the payment of an 1301

assessment under protest by a member insurer, the association 1302  
shall notify the member insurer in writing of its determination 1303  
with respect to the protest unless the association notifies the 1304  
member insurer that additional time is required to resolve the 1305  
issues raised by the protest. 1306

(3) Within thirty days after a final decision has been 1307  
made, the association shall notify the protesting member insurer 1308  
in writing of that final decision. Within sixty days of receipt 1309  
of notice of the final decision, the protesting member insurer 1310  
may appeal that final action to the superintendent. 1311

(4) In the alternative to rendering a final decision with 1312  
respect to a protest based on a question regarding the 1313  
assessment base, the association may refer protests to the 1314  
superintendent for a final decision, with or without a 1315  
recommendation from the association. 1316

(5) If the protest or appeal on the assessment is upheld, 1317  
the amount paid in error or excess shall be returned to the 1318  
member insurer. Interest on a refund due a protesting member 1319  
insurer shall be paid at the rate actually earned by the 1320  
association. 1321

(L) The association may request information of member 1322  
insurers in order to aid in the exercise of its power under this 1323  
section and member insurers shall promptly comply with such a 1324  
request. 1325

**Sec. 3956.10.** (A) (1) The Ohio life and health insurance 1326  
guaranty association shall submit to the superintendent of 1327  
insurance a plan of operation and any amendments to the plan 1328  
necessary or suitable to ensure the fair, reasonable, and 1329  
equitable administration of the association. The plan of 1330

operation and any amendments shall become effective upon the 1331  
written approval of the superintendent, or unless the 1332  
superintendent has not disapproved it within thirty days. 1333

(2) If the association fails to submit a suitable plan of 1334  
operation within six months following ~~the effective date of this~~ 1335  
~~section November 20, 1989,~~ or if at any time after that date the 1336  
association fails to submit suitable amendments to the plan, the 1337  
superintendent, after notice and hearing, shall adopt reasonable 1338  
rules that are necessary or advisable to effectuate the 1339  
provisions of this chapter. The rules shall continue in force 1340  
until modified by the superintendent or superseded by a plan 1341  
submitted by the association and approved by the superintendent. 1342

(B) All member insurers shall comply with the plan of 1343  
operation. 1344

(C) In addition to requirements enumerated elsewhere in 1345  
this chapter, the plan of operation shall do the following: 1346

(1) Establish procedures for handling the assets of the 1347  
association; 1348

(2) Establish the amount and method of reimbursing members 1349  
of the board of directors under section 3956.07 of the Revised 1350  
Code; 1351

(3) Establish regular places and times for meetings, 1352  
including but not limited to telephone conference calls, of the 1353  
board of directors; 1354

(4) Establish procedures for records to be kept of all 1355  
financial transactions of the association, its agents, and the 1356  
board of directors; 1357

(5) Establish the procedures whereby selections for the 1358

board of directors will be made and submitted to the 1359  
superintendent; 1360

(6) Establish any additional procedures for assessments 1361  
under section 3956.09 of the Revised Code, including, but not 1362  
limited to, allocating sums raised by assessments when two or 1363  
more insolvencies occur in the same calendar year that are 1364  
subject to the two per cent calendar year assessment limitation; 1365

(7) Contain additional provisions necessary or proper for 1366  
the execution of the powers and duties of the association. 1367

(D) The plan of operation may provide that any or all 1368  
powers and duties of the association, except those under 1369  
division ~~(O) (3)~~ (N) (3) of section 3956.08 and section 3956.09 of 1370  
the Revised Code, are delegated to a corporation, association, 1371  
or other organization that performs or will perform functions 1372  
similar to those of the association, or its equivalent, in two 1373  
or more states. The corporation, association, or organization 1374  
shall be reimbursed for any payments made on behalf of the 1375  
association, and shall be paid for its performance of any 1376  
function of the association. A delegation under this division 1377  
shall take effect only with the approval of both the board of 1378  
directors and the superintendent, and may be made only to a 1379  
corporation, association, or organization that extends 1380  
protection not substantially less favorable and effective than 1381  
that provided by this chapter. 1382

**Sec. 3956.11.** (A) The superintendent of insurance shall: 1383

(1) Upon request of the board of directors of the Ohio 1384  
life and health insurance guaranty association, provide the 1385  
association with a statement of the premiums in this and any 1386  
other appropriate states for each member insurer; 1387



(2) When an impairment is declared and the amount of the 1388  
impairment is determined, serve a demand upon the impaired 1389  
insurer to make good the impairment within a reasonable time. 1390  
Notice to the impaired insurer shall constitute notice to its 1391  
shareholders, if any. The failure of the impaired insurer 1392  
promptly to comply with the demand shall not excuse the 1393  
association from the performance of its powers and duties under 1394  
this chapter. 1395

(3) In any liquidation or rehabilitation proceeding 1396  
involving a domestic member insurer, be appointed as the 1397  
liquidator or rehabilitator. 1398

(B) The superintendent, after notice and hearing, may 1399  
suspend or revoke the license or certificate of authority to 1400  
transact ~~insurance~~ business in this state of any member insurer 1401  
that fails to pay an assessment when due or fails to comply with 1402  
the plan of operation of the association. As an alternative, the 1403  
superintendent may levy a forfeiture on any member insurer that 1404  
fails to pay an assessment when due. The forfeiture shall not 1405  
exceed five per cent of the unpaid assessment per month, but 1406  
shall not be less than one hundred dollars per month. 1407

(C) Any action of the board of directors or the 1408  
association may be appealed to the superintendent by any member 1409  
insurer if the appeal is taken within sixty days of the final 1410  
action being appealed. If a member insurer is appealing an 1411  
assessment, the amount assessed shall be paid to the association 1412  
and be available to meet association obligations during the 1413  
pendency of the appeal. If the appeal on the assessment is 1414  
upheld, the amount paid in error or excess shall be returned to 1415  
the member insurer. Any final action or order of the 1416  
superintendent is subject to review under Chapter 119. of the 1417

Revised Code. 1418

(D) The liquidator, rehabilitator, or conservator of any 1419  
impaired or insolvent insurer may notify all interested persons 1420  
of the effect of this chapter. 1421

(E) Notwithstanding section 109.02 of the Revised Code, 1422  
the superintendent has sole authority to select and hire legal 1423  
counsel to represent the superintendent in ~~his~~ the 1424  
superintendent's role as rehabilitator or liquidator of an 1425  
impaired or insolvent insurer. 1426

**Sec. 3956.12.** To aid in the detection and prevention of 1427  
member insurer insolvencies or impairments: 1428

(A) The superintendent of insurance shall do all of the 1429  
following: 1430

(1) Notify the commissioners of insurance of all the other 1431  
states, territories of the United States, and the District of 1432  
Columbia when ~~he~~ the superintendent takes any of the following 1433  
actions against a member insurer: 1434

(a) Revocation of license; 1435

(b) Suspension of license; 1436

(c) Makes any formal order that such ~~company-member~~ 1437  
insurer restrict its premium writing, obtain additional 1438  
contributions to surplus, withdraw from the state, reinsure all 1439  
or any part of its business, or increase capital, surplus, or 1440  
any other account for the security of policyholders, contact 1441  
owners, certificate holders, or creditors. 1442

Notice under division (A) (1) of this section shall be 1443  
mailed or delivered by electronic means to all insurance 1444  
commissioners within thirty days following the action taken or 1445

the date on which the action occurs. 1446

(2) Report to the board of directors of the Ohio life and 1447  
health insurance guaranty association when ~~he~~ the superintendent 1448  
has taken any of the actions set forth in division (A) (1) of 1449  
this section or has received a report from any other insurance 1450  
commissioner indicating that any such action has been taken in 1451  
another state. The report to the board of directors shall 1452  
contain all significant details of the action taken or the 1453  
report received from another commissioner. 1454

(3) Report to the board of directors when ~~he~~ the 1455  
superintendent has reasonable cause to believe, from any 1456  
completed or ongoing examination of any member ~~company~~ insurer, 1457  
that the ~~company~~ member insurer may be an impaired or insolvent 1458  
insurer; 1459

(4) Furnish to the board of directors the national 1460  
association of insurance commissioners' insurance regulatory 1461  
information service (IRIS) ratios and listings of companies not 1462  
included in the ratios developed by the commissioners. The board 1463  
may use the information contained in this report in carrying out 1464  
its duties and responsibilities under this section. The report 1465  
and the information contained in the report shall be kept 1466  
confidential by the members of the board of directors until such 1467  
time as made public by the superintendent or other lawful 1468  
authority. 1469

(B) The superintendent may seek the advice and 1470  
recommendation of the board of directors concerning any matter 1471  
affecting ~~his~~ the superintendent's duties and responsibilities 1472  
regarding the financial condition of member insurers and 1473  
~~companies~~ insurers or health insuring corporations seeking 1474  
admission to transact ~~insurance~~ business in this state. 1475

(C) The board of directors, upon majority vote, may make 1476  
reports and recommendations to the superintendent upon any 1477  
matter germane to the solvency, rehabilitation, or liquidation 1478  
of any member insurer or germane to the solvency of any ~~company-~~ 1479  
insurer or health insuring corporation seeking to do an- 1480  
~~insurance~~ business in this state. The reports and 1481  
recommendations are not public records. 1482

(D) The board of directors, upon majority vote, may notify 1483  
the superintendent of any information the board possesses that 1484  
indicates any member insurer may be an impaired or insolvent 1485  
insurer. 1486

~~(E) The board of directors, upon majority vote, may~~ 1487  
~~request that the superintendent order an examination of any~~ 1488  
~~member insurer that the board in good faith believes may be an~~ 1489  
~~impaired or insolvent insurer. Within thirty days of the receipt~~ 1490  
~~of such request, the superintendent shall begin the examination.~~ 1491  
~~The examination may be conducted as a national association of~~ 1492  
~~insurance commissioners examination or may be conducted by the~~ 1493  
~~persons the superintendent designates. The cost of the~~ 1494  
~~examination shall be paid by the association and the examination~~ 1495  
~~report shall be treated as are other examination reports. The~~ 1496  
~~examination report shall not be released to the board of~~ 1497  
~~directors of the association prior to its release to the public,~~ 1498  
~~but this shall not preclude the superintendent from complying~~ 1499  
~~with division (A) of this section. The superintendent shall~~ 1500  
~~notify the board of directors when the examination is completed.~~ 1501  
~~The request for an examination shall be kept on file by the~~ 1502  
~~superintendent but it shall not be open to public inspection~~ 1503  
~~prior to the release of the examination report to the public.~~ 1504

~~(F)~~ The board of directors, upon majority vote, may make 1505

recommendations to the superintendent for the detection and 1506  
prevention of member insurer insolvencies. 1507

~~(G) The board of directors, at the conclusion of any 1508  
insurer insolvency in which the association was obligated to pay- 1509  
covered claims, may prepare a report to the superintendent- 1510  
containing information it may have in its possession bearing on- 1511  
the history and causes of such insolvency. The board shall- 1512  
cooperate with the boards of directors of guaranty associations- 1513  
in other states in preparing a report on the history and causes- 1514  
of insolvency of a particular insurer, and may adopt by- 1515  
reference any report prepared by the other associations. 1516~~

**Sec. 3956.13.** (A) Nothing in this chapter shall be 1517  
construed to reduce the liability for unpaid assessments of the 1518  
insureds or enrollees of an impaired or insolvent insurer 1519  
operating under a plan with assessment liability. 1520

(B) Records shall be kept of all resolutions adopted by 1521  
the Ohio life and health guaranty association in carrying out 1522  
its powers and duties under section 3956.08 of the Revised Code. 1523  
The records shall be made public only upon the termination of a 1524  
rehabilitation or liquidation proceeding involving the impaired 1525  
or insolvent insurer, upon the termination of the impairment or 1526  
insolvency of the member insurer, or upon the order of a court 1527  
of competent jurisdiction. Nothing in this division shall limit 1528  
the duty of the association to render a report of its activities 1529  
under section 3956.14 of the Revised Code. 1530

(C) For the purpose of carrying out its obligations under 1531  
this chapter, the association shall be deemed to be a creditor 1532  
of the impaired or insolvent insurer to the extent of assets 1533  
attributable to covered policies or contracts, reduced by any 1534  
amounts to which the association is entitled as subrogee 1535

pursuant to division ~~(L)~~ (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 1566  
holders, enrollees, and policyowners of the insolvent insurer, 1567  
and any other party with a bona fide interest, in making an 1568  
equitable distribution of the ownership rights of the insolvent 1569  
insurer. In this determination, consideration shall be given to 1570  
the welfare of the policyholders, contract owners, certificate 1571  
holders, and enrollees of the continuing or successor member 1572  
insurer. 1573

(2) No distribution to stockholders, if any, of an 1574  
impaired or insolvent insurer shall be made until the total 1575  
amount of valid claims of the association with interest on that 1576  
amount at a rate not less than the rate allowed under 96 Stat. 1577  
2478, 28 U.S.C.A. 1961 for funds expended in carrying out its 1578  
powers and duties under section 3956.08 of the Revised Code with 1579  
respect to such member insurer have been fully recovered by the 1580  
association. 1581

~~(E)(1)~~ (F)(1) If an order for rehabilitation or 1582  
liquidation of ~~an~~ a member insurer domiciled in this state has 1583  
been entered, the rehabilitator or liquidator may recover on 1584  
behalf of the member insurer, from any affiliate that controlled 1585  
it, the amount of distributions, other than stock dividends paid 1586  
by the member insurer on its capital stock, made at any time 1587  
during the five years preceding the complaint for liquidation or 1588  
rehabilitation, subject to the limitations of divisions ~~(E)(2)~~ 1589  
(F)(2) and (4) of this section. 1590

(2) No distribution shall be recoverable if the member 1591  
insurer shows that, when paid, the distribution was lawful and 1592  
reasonable and that the member insurer did not know and could 1593  
not reasonably have known that the distribution might adversely 1594  
affect the ability of the member insurer to fulfill its 1595

contractual obligations. 1596

(3) Any person who was an affiliate that controlled the 1597  
member insurer at the time the distributions were paid is liable 1598  
up to the amount of distributions ~~he~~ the person received. Any 1599  
person who was an affiliate that controlled the member insurer 1600  
at the time the distributions were declared is liable up to the 1601  
amount of distributions ~~he~~ the person would have received if 1602  
they had been paid immediately. If two or more persons are 1603  
liable with respect to the same distributions, they are jointly 1604  
and severally liable. 1605

(4) The maximum amount recoverable under this division 1606  
shall be the amount needed in excess of all other available 1607  
assets of the insolvent insurer to pay the contractual 1608  
obligations of the insolvent insurer. 1609

(5) If any person liable under division ~~(E) (3)~~ (F) (3) of 1610  
this section is insolvent, all its affiliates that controlled it 1611  
at the time the distribution was paid are jointly and severally 1612  
liable for any resulting deficiency in the amount recovered from 1613  
the insolvent affiliate. 1614

**Sec. 3956.16.** There shall be no liability on the part of, 1615  
and no cause of action of any nature shall arise against, any 1616  
member insurer or its agents or employees, the Ohio life and 1617  
health guaranty association or its agents or employees, the 1618  
board of directors or any member of the board, or the 1619  
superintendent of insurance or ~~his~~ the superintendent's 1620  
representatives, for any action or omission by them pursuant to 1621  
the purposes and provisions of this chapter or in the 1622  
performance of their powers and duties under this chapter. 1623  
Immunity under this section extends to the participation in any 1624  
organization of one or more other state associations of similar 1625



purposes as provided in division ~~(O) (7)~~ (N) (7) of section 1626  
3956.08 of the Revised Code, and to any such organization and 1627  
its agents and employees. 1628

**Sec. 3956.18.** (A) (1) No person shall make, publish, 1629  
disseminate, circulate, or place before the public, or cause to 1630  
be made, published, disseminated, circulated, or placed before 1631  
the public, in any newspaper, magazine, or other publication, or 1632  
in the form of a notice, circular, pamphlet, letter, or poster, 1633  
or over any radio or television station, or in any other manner, 1634  
any advertisement, announcement, or statement, written or oral, 1635  
that uses the existence of the Ohio life and health insurance 1636  
guaranty association for the purposes of sales, solicitation, or 1637  
inducement to purchase any form of insurance or other coverage 1638  
covered by this chapter. 1639

(2) As used in division (A) (1) of this section, "person" 1640  
includes but is not limited to any member insurer or any agent 1641  
or affiliate of any member insurer. 1642

(3) Division (A) (1) of this section does not apply to the 1643  
association or any other entity that does not sell or solicit 1644  
insurance or coverage by a health insuring corporation. 1645

(B) (1) Within six months after ~~the effective date of this~~ 1646  
~~section~~ November 20, 1989, the association shall prepare a 1647  
summary document, complying with division (C) of this section, 1648  
describing the general purposes and current limitations of this 1649  
chapter. The document shall be submitted to the superintendent 1650  
of insurance for approval. 1651

(2) On or after the sixtieth day after receiving approval 1652  
under division (B) (1) of this section, no member insurer shall 1653  
deliver a policy or contract ~~described in division (B) (1) of~~ 1654

~~section 3956.04 of the Revised Code to a policy owner, contract~~ 1655  
~~owner, certificate holder, or enrollee unless the summary~~ 1656  
document is delivered to the policy owner, contract owner, or 1657  
certificate holder, or the enrollee, prior to or at the time of 1658  
delivery of the policy or contract, ~~except if division (D) of~~ 1659  
~~this section applies.~~ The summary document also shall be 1660  
available upon request by a policy owner, contract owner, or 1661  
certificate holder, or the enrollee. 1662

(3) The distribution or delivery, or contents or 1663  
interpretation of the summary document shall not be construed to 1664  
mean that the policy or contract or the ~~holder of the policy or~~ 1665  
owner, contract owner, or certificate holder, or the enrollee, 1666  
is covered in the event of the impairment or insolvency of a 1667  
member insurer. Failure to receive this summary document does 1668  
not confer upon the ~~policyholder~~policy owner, contract 1669  
~~holder~~owner, certificate holder, enrollee, or insured any 1670  
greater rights than those stated in this chapter. 1671

(4) The association shall revise the summary document as 1672  
amendments to this chapter may require. 1673

(C) The summary document prepared under division (B) (1) of 1674  
this section shall contain a clear and conspicuous disclaimer on 1675  
its face. The superintendent shall adopt a rule establishing the 1676  
form and content of the disclaimer. The disclaimer shall do all 1677  
of the following: 1678

(1) State the name and address of the Ohio life and health 1679  
insurance guaranty association and of the department of 1680  
insurance; 1681

(2) Prominently warn the policy owner, contract owner, 1682  
or certificate holder, or the enrollee, that the association may 1683

not cover the policy or contract or, if coverage is available, 1684  
it will be subject to substantial limitations and exclusions, 1685  
and conditioned on continued residence in this state; 1686

(3) State the types of policies or contracts for which 1687  
guaranty funds will provide coverage; 1688

(4) State that the member insurer and its agents are 1689  
prohibited by law from using the existence of the association 1690  
for the purpose of sales, solicitation, or inducement to 1691  
purchase any form of insurance or health insuring corporation 1692  
coverage; 1693

~~(4)-(5) Emphasize that the policy or owner, contract 1694  
holder owner, certificate holder, or enrollee should not rely on 1695  
coverage under the association when selecting an insurer or 1696  
health insuring corporation; 1697~~

~~(5)-(6) Explain rights available and procedures for filing 1698  
a complaint to allege a violation of any provisions of this 1699  
chapter;~~ 1700

(7) Provide other information as directed by the 1701  
superintendent, including sources for information about the 1702  
financial condition of insurers provided that the information is 1703  
not proprietary and is subject to disclosure under that state's 1704  
public records law. 1705

~~(D) No insurer or agent may deliver a policy or contract 1706  
described in division (B) (1) of section 3956.04 of the Revised 1707  
Code, all or a portion of which is excluded under division (B) 1708  
(2) (a) of section 3956.04 of the Revised Code from coverage 1709  
under this chapter unless the insurer or agent, prior to or at 1710  
the time of delivery, gives the policy or contract holder a 1711  
separate written notice that clearly and conspicuously discloses 1712~~

~~that the policy or contract, or a portion of the policy or~~ 1713  
~~contract, is not covered by the association. The superintendent,~~ 1714  
~~by rule, shall specify the form and content of the notice~~ 1715  
A member insurer shall retain evidence of compliance with division 1716  
(B) of this section for so long as the policy or contract for 1717  
which the notice is given remains in effect. 1718

Sec. 3956.19. (A) The provisions of this chapter in effect 1719  
prior to the effective date of this section shall apply to all 1720  
matters relating to any impaired insurer or insolvent insurer 1721  
for which the association first became obligated under section 1722  
3956.08 of the Revised Code prior to the effective date. 1723

(B) The provisions of this chapter in effect on and after 1724  
the effective date of this section shall apply to all matters 1725  
relating to any impaired insurer or insolvent insurer for which 1726  
the association first becomes obligated under section 3956.08 of 1727  
the Revised Code on or after the effective date. 1728

Sec. 3956.20. (A) (1) A member insurer may offset against 1729  
its premium or franchise tax liability twenty per cent of the 1730  
assessment described in division (H) of section 3956.09 of the 1731  
Revised Code in each of the five calendar years following the 1732  
fiscal biennium in which the assessment was paid. The offsets 1733  
shall be allowed on a year-per-year basis commencing with the 1734  
first tax payment due after the fiscal biennium in which the 1735  
assessment was paid. 1736

(2) If the aggregate total of the assessments described in 1737  
division (A) (1) of this section and eligible for offset in a 1738  
particular year exceeds a member insurer's tax liability to this 1739  
state for such year, the aggregate total of the remaining 1740  
eligible assessments, notwithstanding the five-year limitation 1741  
set forth in division (A) (1) of this section, may be offset 1742

against such tax liability in future years. 1743

(3) If a member insurer ceases doing business, all 1744  
uncredited assessments may be credited against its premium or 1745  
franchise tax liability for the year it ceases doing business. 1746

(4) The Ohio life and health insurance guaranty 1747  
association may require a member insurer to report any offset to 1748  
the association. 1749

(B) A member insurer that is exempt from taxes described 1750  
in division (A) of this section may recoup its assessments by a 1751  
surcharge on its premiums in a sum reasonably calculated to 1752  
recoup the assessments over a reasonable period of time, as 1753  
approved by the superintendent. Amounts recouped shall not be 1754  
considered premiums for any other purpose, including the 1755  
computation of gross premium tax, the medical loss ratio, or 1756  
agent commission. If a member insurer collects excess 1757  
surcharges, the member insurer shall remit the excess amount to 1758  
the association, and the excess amount shall be applied to 1759  
reduce future assessments in the appropriate account. 1760

(C) Any sums that are acquired by member insurers by 1761  
refund from the association pursuant to division (F) of section 1762  
3956.09 of the Revised Code and that have been offset, prior to 1763  
the refund, against premium or franchise tax liability as 1764  
provided in division (A) of this section shall be paid by such 1765  
member insurers to this state in the manner the superintendent 1766  
of insurance requires. The association shall notify the 1767  
superintendent that the refunds have been made. 1768

**Section 2.** That existing sections 3956.01, 3956.03, 1769  
3956.04, 3956.06, 3956.07, 3956.08, 3956.09, 3956.10, 3956.11, 1770  
3956.12, 3956.13, 3956.16, 3956.18, and 3956.20 of the Revised 1771

Code are hereby repealed.

1772

**Section 3.** That section 3956.19 of the Revised Code is  
hereby repealed.

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