

**As Reported by the House Insurance Committee**

**134th General Assembly**

**Regular Session**

**2021-2022**

**Sub. S. B. No. 273**

**Senators Hottinger, Hackett**

**Cosponsors: Senators Schaffer, Wilson, Brenner, Blessing, Cirino, Craig, Hoagland, Johnson, Lang, Reineke, Thomas, Yuko Representative Lampton**

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**A BILL**

To amend sections 3305.07, 3305.10, 3956.01, 1  
3956.03, 3956.04, 3956.06, 3956.07, 3956.08, 2  
3956.09, 3956.10, 3956.11, 3956.12, 3956.13, 3  
3956.16, 3956.18, and 3956.20; to enact new 4  
section 3956.19; and to repeal section 3956.19 5  
of the Revised Code to amend the law governing 6  
the Ohio Life and Health Insurance Guaranty 7  
Association and to make changes regarding 8  
required distributions under an alternative 9  
retirement plan. 10

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

**Section 1.** That sections 3305.07, 3305.10, 3956.01, 11  
3956.03, 3956.04, 3956.06, 3956.07, 3956.08, 3956.09, 3956.10, 12  
3956.11, 3956.12, 3956.13, 3956.16, 3956.18, and 3956.20 be 13  
amended and new section 3956.19 of the Revised Code be enacted 14  
to read as follows: 15

**Sec. 3305.07.** (A) Neither the state nor a public 16  
institution of higher education shall be a party to any contract 17  
purchased in whole or in part with contributions to an 18

alternative retirement plan made under section 3305.06 of the Revised Code. No retirement, death, or other benefits shall be payable by the state or by any public institution of higher education under any alternative retirement plan elected pursuant to this chapter.

~~(B)(1)~~ (B) Except as provided under division ~~(B)(2)~~ (C) of this section and sections 3305.08, 3305.09, 3305.11, and 3305.12 of the Revised Code, benefits shall be paid to an electing employee or the employee's beneficiaries in accordance with the alternative retirement plan adopted by the public institution of higher education at which the employee is employed.

~~(2)~~ (C) A benefit or payment shall not be paid to an electing employee or the employee's beneficiaries under an investment option ~~prior to the time an~~ before one of the following events occur:

(1) The electing employee dies, terminates.

(2) The electing employee terminates employment with the public institution of higher education, or, if at which the employee is employed.

(3) If provided under the alternative retirement plan or investment option, either of the following:

(a) The electing employee becomes disabled, except that the.

(b) The electing employee is required to begin receiving distributions under division (a)(9) of section 401 of the Internal Revenue Code, 26 U.S.C. 401(a)(9).

(D) The provider of the an investment option shall transfer the employee's account balance to another provider as

provided under section 3305.053 of the Revised Code if the 47  
employee changes providers under that section. 48

**Sec. 3305.10.** ~~If~~ (A) (1) Except as provided in division (C) 49  
of this section, if an electing employee is married at the time 50  
one or more payments are to commence under the retirement plan 51  
established under this chapter, the provider that will make the 52  
payment shall obtain the consent of the employee's spouse to the 53  
form of payment selected by the employee before making any 54  
payment. 55

~~If~~ (2) Except as provided in division (C) of this section, 56  
if an electing employee is married at the time the employee 57  
dies, the provider that will make a payment of any amounts that 58  
are payable to the employee shall obtain the consent of the 59  
employee's spouse to the payment of the amounts before making 60  
the payment. 61

(B) Each provider shall establish requirements for consent 62  
under division (A) of this section that are the same as the 63  
requirements specified in division (a) (2) of section 417 of the 64  
"Internal Revenue Code," 26 U.S.C.A. 417(a) (2), as amended. 65

(C) (1) Consent may be waived if the spouse cannot be 66  
located or for any other reason specified in the regulations 67  
adopted under ~~that~~ division (a) (2) of section 417 of the 68  
Internal Revenue Code, 26 U.S.C. 417(a) (2). 69

(2) A provider is not required to obtain the consent of an 70  
electing employee's spouse before making any payment that the 71  
provider is required to make in accordance with division (a) (9) 72  
of section 401 of the Internal Revenue Code, 26 U.S.C. 401(a) 73  
(9). 74

(D) Consent or waiver under this section is effective only 75

with regard to the spouse who is the subject of the consent or 76  
waiver. 77

**Sec. 3956.01.** As used in this chapter: 78

(A) "Account" means either of the two accounts created 79  
under section 3956.06 of the Revised Code. 80

(B) "Authorized assessment," or "authorized," in the 81  
context of assessments, means a resolution by the board of 82  
directors has been passed whereby an assessment will be called 83  
immediately or in the future from member insurers for a 84  
specified amount. An assessment is authorized when the 85  
resolution is passed. 86

(C) "Called assessment," or "called," in the context of 87  
assessments, means that a notice has been issued by the 88  
association to member insurers requiring that an authorized 89  
assessment be paid within the time frame set forth in the 90  
notice. An authorized assessment becomes a called assessment 91  
when notice is mailed, including by electronic means, by the 92  
association to member insurers. 93

(D) "Contractual obligation" means any obligation under a 94  
policy, contract, or certificate under a group policy or 95  
contract, or portion of the policy or contract, for which 96  
coverage is provided under section 3956.04 of the Revised Code. 97

~~(C)~~-(E) "Covered policy or contract" means any policy, 98  
contract, or group certificate within the scope of section 99  
3956.04 of the Revised Code. 100

~~(D)~~-(F) "Health benefit plan" means any hospital or 101  
medical expense policy or certificate, or health insuring 102  
corporation subscriber policy, contract, certificate, or 103  
agreement, or any other similar health or sickness and accident 104

<u>insurance policy or contract. "Health benefit plan" does not</u>	105
<u>include:</u>	106
<u>(1) Accident only insurance;</u>	107
<u>(2) Credit insurance;</u>	108
<u>(3) Dental only insurance;</u>	109
<u>(4) Vision only insurance;</u>	110
<u>(5) Medicare supplement insurance;</u>	111
<u>(6) Benefits for long-term care, home health care,</u>	112
<u>community-based care, or any combination thereof;</u>	113
<u>(7) Disability income insurance;</u>	114
<u>(8) Coverage for on-site medical clinics;</u>	115
<u>(9) Specified disease, hospital confinement indemnity, or</u>	116
<u>limited benefit health insurance if the types of coverage do not</u>	117
<u>provide coordination of benefits and are provided under separate</u>	118
<u>policies or certificates.</u>	119
<u>(G) "Impaired insurer" means a member insurer that, after</u>	120
November 20, 1989, is not an insolvent insurer and is placed	121
under an order of rehabilitation or conservation by a court of	122
competent jurisdiction.	123
<del>(E)</del> <del>(H)</del> <u>"Insolvent insurer" means a member insurer that,</u>	124
after November 20, 1989, is placed under an order of liquidation	125
by a court of competent jurisdiction with a finding of	126
insolvency.	127
<del>(F)</del> <del>(1)</del> <del>(I)</del> <u>(1) "Member insurer" means any insurer or health</u>	128
<u>insuring corporation that holds a certificate of authority or is</u>	129
licensed to transact in this state any kind of insurance <u>or</u>	130
<u>health insuring corporation business for which coverage is</u>	131

provided under section 3956.04 of the Revised Code, and includes 132  
any insurer or health insuring corporation whose certificate of 133  
authority or license in this state may have been suspended, 134  
revoked, not renewed, or voluntarily withdrawn after November 135  
20, 1989. 136

(2) "Member insurer" does not include any of the 137  
following: 138

(a) ~~A health insuring corporation;~~ 139

~~(b)~~ A fraternal benefit society; 140

~~(c)~~ ~~(b)~~ A self-insurance or joint self-insurance pool or 141  
plan of the state or any political subdivision of the state; 142

~~(d)~~ ~~(c)~~ A mutual protective association; 143

~~(e)~~ ~~(d)~~ An insurance exchange; 144

~~(f)~~ ~~(e)~~ Any person who qualifies as a "member insurer" 145  
under section 3955.01 of the Revised Code and who does not 146  
receive premiums on covered policies or contracts; 147

~~(g)~~ ~~(f)~~ Any entity similar to any of those described in 148  
divisions ~~(F) (2) (a)~~ (I) (2) (a) to ~~(f)~~ ~~(e)~~ of this section. 149

(3) "Member insurer" includes any insurer or health 150  
insuring corporation that operates any of the entities described 151  
in division ~~(F) (2)~~ (I) (2) of this section as a line of business, 152  
and not as a separate, affiliated legal entity, and otherwise 153  
qualifies as a member insurer. 154

~~(G)~~ ~~(J)~~ "Owner of a policy or contract," "policyholder," 155  
"policy owner," "contract owner," and "contract holder" mean the 156  
person who is identified as the legal owner under the terms of 157  
the policy or contract or who is otherwise vested with legal 158

title to the policy or contract through a valid assignment 159  
completed in accordance with the terms of the policy or contract 160  
and properly recorded as the owner on the books of the member 161  
insurer. "Owner of a policy or contract," "policyholder," 162  
"policy owner," "contract owner," and "contract holder" do not 163  
include persons with a mere beneficial interest in a policy or 164  
contract. 165

(K) "Premiums" means amounts received on covered policies 166  
or contracts, less premiums, considerations, and deposits 167  
returned on the policies or contracts, and less dividends and 168  
experience credits on the policies and contracts. "Premiums" 169  
does not include ~~either any of~~ the following: 170

(1) Any amounts in excess of ~~one five~~ million dollars 171  
received on any unallocated annuity contract not issued under a 172  
governmental retirement plan established under Section 401, 173  
403(b), or 457 of the "Internal Revenue Code of 1986," 100 Stat. 174  
2085, 26 U.S.C.A. 1, as amended; 175

(2) Any amounts received for any policies or contracts or 176  
for the portions of any policies or contracts for which coverage 177  
is not provided under section 3956.04 of the Revised Code.— 178  
~~Division (C) (2) of this section shall not be construed to~~ 179  
~~require the exclusion, from assessable premiums, of premiums~~ 180  
~~paid for coverages in excess, except that assessable premium~~ 181  
shall not be reduced on account of the division (C) (2) (c) of 182  
section 3956.04 of the Revised Code relating to interest 183  
~~limitations specified in division (B) (2) (e) of section 3956.04~~ 184  
~~of the Revised Code or of premiums paid for coverages in excess~~ 185  
~~of the limitations with respect to any one individual, any one~~ 186  
~~participant, or any one contract holder specified in division~~ 187  
~~(C) (2) of section 3956.04 of the Revised Code~~ or division (D) (2) 188

of section 3956.04 of the Revised Code relating to limitations 189  
with respect to one individual, one participant, and one policy 190  
or contract owner; 191

(3) With respect to multiple nongroup policies of life 192  
insurance owned by one owner, whether the policy or contract 193  
owner is an individual, firm, corporation, or other person, and 194  
whether the persons insured are officers, managers, employees, 195  
or other persons, premiums in excess of five million dollars 196  
with respect to these policies or contracts, regardless of the 197  
number of policies or contracts held by the owner. 198

~~(H)~~(L) "Resident" means any person who resides in this 199  
state at the time a member insurer is determined to be an 200  
impaired or insolvent insurer and to whom a contractual 201  
obligation is owed. A person may be a resident of only one 202  
state, which, in the case of a person other than a natural 203  
person, shall be its principal place of business. Citizens of 204  
the United States who are either residents of a foreign country 205  
or residents of a United States possession, territory, or 206  
protectorate that does not have an association similar to the 207  
association created by this chapter shall be considered 208  
residents of the state of domicile of the insurer that issued 209  
the policy or contract. 210

~~(I)~~(M) "Structured settlement annuity" means an annuity 211  
purchased in order to fund periodic payments for a plaintiff or 212  
other claimant in payment for or with respect to personal injury 213  
suffered by the plaintiff or other claimant. 214

~~(J)~~(N) "Subaccount" means any of the three subaccounts 215  
created under division (A) of section 3956.06 of the Revised 216  
Code. 217



~~(K)~~ (O) "Supplemental contract" means any agreement 218  
entered into for the distribution of policy or contract 219  
proceeds. 220

~~(I)~~ (P) "Unallocated annuity contract" means any annuity 221  
contract or group annuity certificate that is not issued to and 222  
owned by an individual, except to the extent of any annuity 223  
benefits guaranteed to an individual by an insurer under that 224  
contract or certificate. 225

**Sec. 3956.03.** The purpose of this chapter is to protect, 226  
subject to certain limitations, the persons specified in 227  
division (A) of section 3956.04 of the Revised Code against 228  
failure in the performance of contractual obligations under life 229  
~~and, health insurance policies, and annuity policies, plans, or~~ 230  
contracts specified in division ~~(B)~~ (C) of section 3956.04 of 231  
the Revised Code, due to the impairment or insolvency of the 232  
member insurer that issued the policies, plans, or contracts. To 233  
provide this protection, the Ohio life and health insurance 234  
guaranty association, an association of member insurers, is 235  
created to pay benefits and to continue coverages, as limited in 236  
this chapter. Members of the association are subject to 237  
assessment to provide funds to carry out the purpose of this 238  
chapter. 239

**Sec. 3956.04.** (A) This chapter provides coverage, by the 240  
Ohio life and health insurance guaranty association, for the 241  
policies and contracts specified in division ~~(B)~~ (C) of this 242  
section to all of the following persons: 243

(1) Persons, regardless of where they reside, except for 244  
nonresident certificate holders or enrollees under group 245  
policies or contracts, who are the beneficiaries, assignees, or 246  
payees, including health care providers rendering services 247

covered under health insurance policies or certificates, of the 248  
persons covered under division (A) (2) of this section,~~—~~ 249  
~~regardless of where they reside, except for nonresident~~ 250  
~~certificate holders under group policies or contracts;~~ 251

(2) Persons who are owners of or certificate holders or 252  
enrollees under the policies or contracts other than structured 253  
settlement annuities,~~— or, in the case of—~~ and unallocated annuity 254  
contracts,~~— the persons who are the contract holders,~~ if either 255  
of the following applies: 256

(a) The persons are residents of this state~~—~~. 257

(b) The persons are not residents of this state and all of 258  
the following conditions apply: 259

(i) The ~~insurers—~~ member insurer that issued the policies 260  
or contracts ~~are—~~ is domiciled in this state~~—~~. 261

(ii) ~~At the time the policies or contracts were issued,~~ 262  
The persons are not eligible for coverage by an association in 263  
any other state due to the fact that the insurers—insurer or 264  
health insuring corporation did not hold a license or 265  
certificate of authority in the states in which the persons 266  
reside~~—~~ at the time specified in the state's guaranty 267  
association laws. 268

(iii) The states have associations similar to the 269  
association created by section 3956.06 of the Revised Code~~—~~ 270

~~(iv) The persons are not eligible for coverage by those~~ 271  
~~associations.~~ 272

(3) Persons who are the owners of unallocated annuity 273  
contracts specified in division (C) of this section when those 274  
contracts meet either of the following criteria: 275

(a) The contracts are issued to or in connection with a 276  
specific benefit plan whose plan sponsor has its principal place 277  
of business in this state. 278

(b) The contracts are issued to or in connection with 279  
government lotteries if the owners are residents of this state. 280

(4) Persons who are payees, or the beneficiary of a payee 281  
if the payee is deceased, under a structured settlement annuity 282  
if the payee is a resident of this state, regardless of where 283  
the contract owner resides; 284

~~(4)-(5)~~ Persons who are payees, or the beneficiary of a 285  
payee if the payee is deceased, under a structured settlement 286  
annuity if the payee is not a resident of this state, but both 287  
of the following are true: 288

(a) The contract owner of the structured settlement 289  
annuity is a resident of this state or, if the contract owner of 290  
the structured settlement annuity is not a resident of this 291  
state, the insurer that issued the structured settlement annuity 292  
is domiciled in this state and the state in which the contract 293  
owner resides has an association similar to the association 294  
created by this chapter. 295

(b) The payee, the beneficiary, and the contract owner are 296  
not eligible for coverage by the association of the state in 297  
which the payee or contract owner resides. 298

~~(5) Persons who are payees or beneficiaries of a contract~~ 299  
~~owner resident of this state to the extent coverage is provided~~ 300  
~~under division (A)(4) of this section, unless the payee or~~ 301  
~~beneficiary is afforded any coverage by the association of~~ 302  
~~another state.~~ 303

This chapter is intended to provide coverage to a person 304

who is a resident of this state and, in special circumstances, 305  
to a nonresident. To avoid duplicate coverage, if a person who 306  
would otherwise receive coverage under this chapter receives 307  
coverage under the laws of another state, the person shall not 308  
be provided coverage under this chapter. In determining the 309  
application of the provisions of this chapter in situations in 310  
which a person could be covered by the association of more than 311  
one state, whether as an owner, payee, enrollee, beneficiary, or 312  
assignee, this chapter shall be construed in conjunction with 313  
other state laws to result in coverage by only one association. 314

~~(B)(1)~~ (B) This chapter shall not provide coverage to any 315  
of the following: 316

(1) A person who is a payee, or beneficiary, of a contract 317  
owner resident of this state, if the payee or beneficiary is 318  
afforded any coverage by the association of another state; 319

(2) A person covered under division (A)(3) of this 320  
section, if any coverage is provided by the association of 321  
another state to the person; 322

(3) A person who acquires rights to receive payments 323  
through a structured settlement factoring transaction as defined 324  
in 26 U.S.C. 5891(c)(3)(A), regardless of whether the 325  
transaction occurred before or after such section became 326  
effective. 327

(C)(1) This chapter provides coverage to the persons 328  
specified in division (A) of this section for direct, nongroup 329  
life insurance, health insurance, which for the purposes of this 330  
chapter includes sickness and accident insurance policies and 331  
contracts, and health insuring corporation subscriber policies, 332  
contracts, certificates, and agreements, or annuity policies or 333

~~contracts~~annuities, for certificates under direct group policies 334  
and contracts, for supplemental contracts to any of the 335  
preceding, and for unallocated annuity contracts, in each case 336  
issued by member insurers, except as otherwise limited in this 337  
chapter. Annuity contracts and certificates under group annuity 338  
contracts include, but are not limited to, guaranteed investment 339  
contracts, deposit administration contracts, unallocated funding 340  
agreements, allocated funding agreements, structured settlement 341  
annuities, annuities issued to or in connection with government 342  
lotteries, and any immediate or deferred annuity contracts. 343

(2) ~~This~~Except as provided in division (C)(3) of this 344  
section, this chapter does not provide coverage for any of the 345  
following: 346

(a) Any portion of a policy or contract not guaranteed by 347  
the member insurer, or under which the risk is borne by the 348  
policy or contract holder; 349

(b) Any policy or contract of reinsurance, unless 350  
assumption certificates have been issued pursuant to the 351  
reinsurance policy or contract; 352

(c) Any portion of a policy or contract to the extent that 353  
the rate of interest on which it is based, or the interest rate, 354  
crediting rate, or similar factor determined by use of an index 355  
or other external reference stated in the policy or contract 356  
employed in calculating returns or changes in value: 357

(i) Averaged over the period of four years prior to the 358  
date on which the association becomes obligated with respect to 359  
the policy or contract or if the policy or contract has been 360  
issued for a lesser period averaged over that period, exceeds 361  
the rate of interest determined by subtracting two percentage 362

points from the monthly average-corporates as published by 363  
Moody's investors service, inc., or any successor to that 364  
service, averaged for the same period; 365

(ii) On and after the date on which the association 366  
becomes obligated with respect to the policy or contract, 367  
exceeds the rate of interest determined by subtracting three 368  
percentage points from the monthly average-corporates as 369  
published by Moody's investors service, inc., or any successor 370  
to that service, as most recently available. 371

If the monthly average-corporates is no longer published, 372  
the superintendent, by rule, shall establish a substantially 373  
similar average. 374

(d) Any plan or program of an employer, association, or 375  
similar entity to provide life, health, or annuity benefits to 376  
its employees or members to the extent that the plan or program 377  
is self-funded or uninsured, including but not limited to 378  
benefits payable by an employer, association, or similar entity 379  
under any of the following: 380

(i) A multiple employer welfare arrangement as defined in 381  
section 3(40) of the "Employee Retirement Income Security Act of 382  
1974," 88 Stat. 833, 29 U.S.C.A. 1002(40), as amended; 383

(ii) A minimum premium group insurance plan; 384

(iii) A stop-loss group insurance plan; 385

(iv) An administrative services only contract. 386

(e) Any portion of a policy or contract to the extent that 387  
it provides dividends, voting rights, or experience rating 388  
credits, or provides that any fees or allowances be paid to any 389  
person, including the policy or contract holder, in connection 390

with the service to or administration of the policy or contract;	391
(f) Any policy or contract issued in this state by a	392
member insurer at a time when it was not licensed or did not	393
have a certificate of authority to issue the policy or contract	394
in this state;	395
(g) Any unallocated annuity contract issued to an employee	396
benefit plan protected under the federal pension benefit	397
guaranty corporation, <u>regardless of whether the federal pension</u>	398
<u>benefit guaranty corporation has yet become liable to make any</u>	399
<u>payments with respect to the benefit plan;</u>	400
(h) Any portion of any unallocated annuity contract that	401
is not issued to or in connection with a governmental lottery or	402
a benefit plan of a specific employee, union, or association of	403
natural persons;	404
<del>(i) Any policy or contract issued to or for the benefit of</del>	405
<del>a past or present director or officer within one year of the</del>	406
<del>filing of the successful complaint that the insurer was impaired</del>	407
<del>or insolvent</del> <u>Any portion of a policy or contract to the extent</u>	408
<u>that the assessments required by section 3956.09 of the Revised</u>	409
<u>Code with respect to the policy or contract are preempted by</u>	410
<u>federal or state law;</u>	411
<del>(j) Any policy or contract issued by any entity described</del>	412
<del>in division (F) (2) of section 3956.01 of the Revised Code</del> <u>Any</u>	413
<u>obligation that does not arise under the express written terms</u>	414
<u>of the policy or contract issued by the member insurer to the</u>	415
<u>enrollee, certificate holder, contract owner, or policy owner,</u>	416
<u>including all of the following:</u>	417
<u>(i) Claims based on marketing materials;</u>	418
<u>(ii) Claims based on side letters, riders, or other</u>	419

documents that were issued by the member insurer without meeting 420  
applicable policy or contract form filing or approval 421  
requirements; 422

(iii) Misrepresentations of or regarding policy or 423  
contract benefits; 424

(iv) Extra-contractual claims; 425

(v) A claim for penalties or consequential or incidental 426  
damages. 427

~~(k) Any policy or contract issued by a member insurer if~~ 428  
~~the member insurer is carrying on as a line of business, and not~~ 429  
~~as a separate legal entity, the activities of any entity~~ 430  
~~described in division (F) (2) of section 3956.01 of the Revised~~ 431  
~~Code, and the policy or contract is issued as a product of those~~ 432  
~~activities~~ A contractual agreement that establishes the member 433  
insurer's obligations to provide a book value accounting 434  
guaranty for defined contribution benefit plan participants by 435  
reference to a portfolio of assets that is owned by the benefit 436  
plan or its trustee, which in each case is not an affiliate of 437  
the member insurer; 438

(l) Any policy or contract providing hospital, medical, 439  
prescription drug, or other health care benefits pursuant to 42 440  
U.S.C. Chapter 7, Title XVIII, Parts C and D or 42 U.S.C. 441  
Chapter 7, Title XIX and any corresponding regulations; 442

(m) Structured settlement annuity benefits to which a 443  
payee or the beneficiary of a payee, if the payee is deceased, 444  
has transferred his or her rights in a structured settlement 445  
factoring transaction as defined in 26 U.S.C. 5891(c) (3) (A), 446  
regardless of whether the transaction occurred before or after 447  
such section became effective; 448



(n) (i) A portion of a policy or contract to the extent it 449  
provides for interest or other changes in value to be determined 450  
by the use of an index or other external reference stated in the 451  
policy or contract, but which have not been credited to the 452  
policy or contract, or as to which the policy or contract 453  
owner's rights are subject to forfeiture, as of the date the 454  
member insurer becomes an impaired or insolvent insurer under 455  
this chapter, whichever is earlier. 456

(ii) If a policy's or contract's interest or changes in 457  
value are credited less frequently than annually, then for 458  
purposes of determining the values that have been credited and 459  
are not subject to forfeiture under division (C) (2) (n) of this 460  
section, the interest or change in value determined by using the 461  
procedures defined in the policy or contract will be credited as 462  
if the contractual date of crediting interest or changing values 463  
was the date of impairment or insolvency, whichever is earlier, 464  
and will not be subject to forfeiture. 465

(3) The exclusion from coverage referenced in division (C) 466  
(2) (c) of this section shall not apply to any portion of a 467  
policy or contract, including a rider, that provides long-term 468  
care or any other health insurance benefits. 469

~~(C)~~ (D) The benefits for which the association may become 470  
liable shall not exceed the lesser of either of the following: 471

(1) The contractual obligations for which the member 472  
insurer is liable or would have been liable if it were not an 473  
impaired or insolvent insurer; 474

(2) (a) With respect to any one life, regardless of the 475  
number of policies or contracts: 476

(i) Three hundred thousand dollars ~~in~~ for life insurance 477

death benefits, but not more than one hundred thousand dollars 478  
in net cash surrender and net cash withdrawal values for life 479  
insurance; 480

(ii) One hundred thousand dollars ~~in for~~ health insurance 481  
benefits other than ~~basic hospital, medical, and surgical~~ 482  
~~insurance, major medical insurance, health benefit plan~~ 483  
coverage, disability income insurance, or long-term care 484  
insurance, including any net cash surrender and net cash 485  
withdrawal values; 486

(iii) Three hundred thousand dollars ~~in for~~ disability 487  
income insurance; 488

(iv) Three hundred thousand dollars ~~in for~~ long-term care 489  
insurance; 490

(v) Five hundred thousand dollars ~~in basic hospital,~~ 491  
~~medical, and surgical insurance or major medical insurance~~ for 492  
health benefit plan coverage; 493

(vi) Two hundred fifty thousand dollars ~~in for~~ the present 494  
value of annuity benefits, including net cash surrender and net 495  
cash withdrawal values. 496

(b) With respect to each individual participating in a 497  
governmental retirement plan established under section 401, 498  
403(b), or 457 of the "Internal Revenue Code of 1986," 100 Stat. 499  
2085, 26 U.S.C.A. 1, as amended, and covered by an unallocated 500  
annuity contract, or the beneficiaries of each such individual 501  
if deceased, in the aggregate, two hundred fifty thousand 502  
dollars in present value annuity benefits, including net cash 503  
surrender and net cash withdrawal values. 504

The association is not liable to expend more than three 505  
hundred thousand dollars in the aggregate with respect to any 506

one individual under divisions ~~(C) (2) (a)~~ (D) (2) (a), (b), and (d) 507  
of this section combined, except with respect to benefits for 508  
~~basic hospital, medical, and surgical insurance and major~~ 509  
~~medical insurance~~ health benefit plan coverage under division 510  
~~(C) (2) (a) (v)~~ (D) (2) (a) (v) of this section, in which case the 511  
aggregate liability of the association shall not exceed five 512  
hundred thousand dollars with respect to any one individual. 513

(c) With respect to any one contract holder, covered by 514  
any unallocated annuity contract not included in division ~~(C) (2)~~ 515  
~~(b)~~ (D) (2) (b) of this section, ~~one~~ five million dollars in 516  
benefits, irrespective of the number of ~~those~~ contracts held by 517  
that contract holder. 518

(d) With respect to each payee of a structured settlement 519  
annuity, or the beneficiary or beneficiaries of the payee if the 520  
payee is deceased, two hundred fifty thousand dollars in present 521  
value of annuity benefits, in the aggregate, including net cash 522  
surrender and net cash withdrawal values, if any; 523

(e) (i) The limitations set forth in this division are 524  
limitations on the benefits for which the association is 525  
obligated before taking into account either its subrogation and 526  
assignment rights or the extent to which those benefits could be 527  
provided out of the assets of the impaired or insolvent insurer 528  
attributable to covered policies. 529

(ii) The costs of the association's obligations under this 530  
chapter may be met by the use of assets attributable to covered 531  
policies or reimbursed to the association pursuant to its 532  
subrogation and assignment rights. 533

~~(D)~~ (E) The liability of the association is limited 534  
strictly by the express terms of the policies or contracts and 535

by this chapter, and is not affected by the contents of any 536  
brochures, illustrations, advertisements in the print or 537  
electronic media, or other advertising material used in 538  
connection with the sale of the policies or contracts, or by 539  
oral statements made by agents or other sales representatives in 540  
connection with the sale of the policies or contracts. The 541  
association is not liable for extra-contractual damages, 542  
punitive damages, attorney's fees, or interest other than as 543  
provided for by the terms of the policies or contracts as 544  
limited by this chapter, that might be awarded by any court or 545  
governmental agency in connection with the policies or 546  
contracts. 547

~~(E)~~ (F) The protection provided by this chapter does not 548  
apply where any guaranty protection is provided to residents of 549  
this state by the laws of the domiciliary state or jurisdiction 550  
of the impaired or insolvent insurer other than this state. 551

(G) For purposes of this chapter, benefits provided by a 552  
long-term care rider to a life insurance policy or annuity 553  
contract shall be considered the same type of benefits as the 554  
base life insurance policy or annuity contract to which it 555  
relates. 556

(H) In performing its obligations to provide coverage 557  
under section 3956.08 of the Revised Code, the association shall 558  
not be required to guarantee, assume, reinsure, reissue, or 559  
perform, or cause to be guaranteed, assumed, reinsured, 560  
reissued, or performed, the contractual obligations of the 561  
insolvent or impaired insurer under a covered policy that do not 562  
materially affect the economic values or economic benefits of 563  
the covered policy. 564

**Sec. 3956.06.** (A) There is hereby created an 565

unincorporated nonprofit association to be known as the Ohio 566  
life and health insurance guaranty association. All member 567  
insurers shall be and remain members of the association as a 568  
condition of their license or authority to transact the business 569  
of insurance or health insuring corporation business in this 570  
state. The association shall perform its functions under the 571  
plan of operation established and approved under section 3956.10 572  
of the Revised Code and shall exercise its powers through a 573  
board of directors established under section 3956.07 of the 574  
Revised Code. For purposes of administration and assessment, the 575  
association shall maintain the following two accounts: 576

(1) The life insurance and annuity account that includes 577  
the following subaccounts: 578

(a) Life insurance subaccount; 579

(b) Annuity subaccount; 580

(c) Unallocated annuity subaccount that also includes all 581  
annuity contracts meeting the requirements of section 403(b) of 582  
the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 583  
1, as amended. 584

(2) The health ~~insurance~~ account. 585

(B) The association is subject to the supervision of the 586  
superintendent of insurance and to the applicable insurance laws 587  
of this state. 588

**Sec. 3956.07.** (A) The board of directors of the Ohio life 589  
and health insurance guaranty association shall consist of not 590  
less than nine nor more than eleven member insurers serving 591  
terms as established in the plan of operation. A majority of the 592  
members of the board shall be representatives of member insurers 593  
domiciled in this state. Three of the members of the board shall 594

be representatives of the three member insurers ~~that are~~ 595  
~~consolidated corporations as defined in division (A) (1) of~~ 596  
~~section 3923.39 of the Revised Code and that write the largest~~ 597  
premium volumes of health insurance in this state, three of the 598  
members of the board shall be representatives of domestic life 599  
insurers, and three of the members of the board shall be 600  
representatives of foreign member insurers. The members of the 601  
board shall be selected by member insurers, subject to the 602  
approval of the superintendent of insurance. Vacancies on the 603  
board shall be filled for the remaining period of the term by a 604  
majority vote of the remaining board members, subject to the 605  
approval of the superintendent. To select the initial board of 606  
directors and initially organize the association, the 607  
superintendent shall give notice to all member insurers of the 608  
time and place of the organizational meeting. In determining 609  
voting rights at the organizational meeting, each member insurer 610  
shall be entitled to one vote in person or by proxy. If the 611  
board of directors is not selected within sixty days after 612  
notice of the organizational meeting, the superintendent may 613  
appoint the initial members. 614

(B) In approving selections or in appointing members to 615  
the board, the superintendent shall consider, among other 616  
things, whether all member insurers are fairly represented. 617

(C) Members of the board may be reimbursed from the assets 618  
of the association for reasonable expenses incurred by them as 619  
members of the board of directors, but members of the board 620  
shall not otherwise be compensated by the association for their 621  
services. 622

**Sec. 3956.08.** (A) (1) Subject to any conditions imposed as 623  
provided in division (A) (2) of this section, the Ohio life and 624

health insurance guaranty association may do either of the 625  
following with respect to an impaired ~~domestic~~ member insurer: 626

(a) Guarantee, assume, reissue, or reinsure, or cause to 627  
be guaranteed, assumed, reissued, or reinsured, any or all of 628  
the policies or contracts of the impaired insurer; 629

(b) Provide the moneys, pledges, notes, guarantees, or 630  
other means that are proper to effectuate division (A) (1) (a) of 631  
this section and assure payment of the contractual obligations 632  
of the impaired insurer pending action under division (A) (1) (a) 633  
of this section. 634

(2) The association may impose conditions upon any action 635  
it takes under division (A) (1) of this section if ~~all both~~ of 636  
the following apply: 637

(a) The condition does not impair the contractual 638  
obligations of the impaired insurer; 639

(b) The superintendent of insurance approves the 640  
condition; 641

~~(c) Except in cases of court ordered conservation or 642  
rehabilitation, the impaired insurer approves the condition. 643~~

~~(B) (1) If a member insurer is an impaired foreign or alien 644  
insurer that is not paying claims timely, the association, 645  
subject to the conditions specified in division (B) (2) of this 646  
section, shall do either of the following: 647~~

~~(a) Take any of the actions specified in division (A) (1) 648  
of this section, subject to the conditions specified in division 649  
(A) (2) of this section; 650~~

~~(b) Provide substitute benefits in lieu of the contractual 651  
obligations of the impaired insurer solely for all of the 652~~

following:	653
<del>(i) Death benefits and health claims in accordance with</del>	654
<del>division (D) of this section;</del>	655
<del>(ii) Periodic annuity benefit payments;</del>	656
<del>(iii) Supplemental benefits;</del>	657
<del>(iv) Cash withdrawals for policy or contract owners who</del>	658
<del>petition therefor under claims of emergency or hardship in</del>	659
<del>accordance with standards proposed by the association and</del>	660
<del>approved by the superintendent.</del>	661
<del>(2) The association is subject to the requirements of</del>	662
<del>division (B) (1) of this section only if all of the following</del>	663
<del>apply to a foreign or alien insurer:</del>	664
<del>(a) The laws of its state of domicile provide that, until</del>	665
<del>all payments of or on account of the impaired insurer's</del>	666
<del>contractual obligations by all guaranty associations, along with</del>	667
<del>all expenses and interest, at a rate not less than that allowed</del>	668
<del>under 96 Stat. 2478, 28 U.S.C.A. 1961, on all such payments and</del>	669
<del>expenses, shall have been repaid to the guaranty associations or</del>	670
<del>a plan of repayment by the impaired insurer shall have been</del>	671
<del>approved by the guaranty associations, all of the following</del>	672
<del>apply:</del>	673
<del>(i) The delinquency proceeding shall not be dismissed.</del>	674
<del>(ii) Neither the impaired insurer nor its assets shall be</del>	675
<del>returned to the control of its shareholders or private</del>	676
<del>management.</del>	677
<del>(iii) The impaired insurer shall not be permitted to</del>	678
<del>solicit or accept new business or have any suspended or revoked</del>	679
<del>license restored.</del>	680



~~(b) The impaired insurer has been prohibited from~~ 681  
~~soliciting or accepting new business in this state, its license~~ 682  
~~or certificate of authority has been suspended or revoked in~~ 683  
~~this state, and a petition for rehabilitation or liquidation has~~ 684  
~~been filed in a court of competent jurisdiction in its state of~~ 685  
~~domicile by the commissioner of insurance of that state.~~ 686

~~(C)~~ (B) If a member insurer is an insolvent insurer, the 687  
association shall, at its discretion, do either of the 688  
following: 689

(1) Guarantee, assume, reissue, or reinsure, or cause to 690  
be guaranteed, assumed, reissued, or reinsured, the covered 691  
policies or contracts of the insolvent insurer or assure payment 692  
of the contractual obligations of the insolvent insurer, and 693  
provide the moneys, pledges, guarantees, or other means that are 694  
reasonably necessary to discharge such duties; 695

~~(2) With respect only to life and health insurance~~ 696  
~~policies, provide~~ Provide benefits and coverages in accordance 697  
with division ~~(D)~~ (C) of this section. 698

~~(D)~~ (C) When proceeding under division ~~(B) (1) (b) or (C) (2)~~ 699  
(B) (2) of this section, the association, with respect to life 700  
and health insurance policies and contracts, shall do all of the 701  
following: 702

(1) Assure payment of benefits ~~for premiums identical to~~ 703  
~~the premiums and benefits, except for terms of conversion and~~ 704  
~~renewability~~, that would have been payable under the policies or 705  
contracts of the insolvent insurer, for claims incurred within 706  
the following time limits: 707

(a) With respect to group policies or contracts, not later 708  
than the earlier of the next renewal date under such policies or 709

contracts or forty-five days, but in no event less than thirty 710  
days, after the date on which the association becomes obligated 711  
with respect to such policies and contracts; 712

(b) With respect to individual policies and contracts, not 713  
later than the earlier of the next renewal date, if any, under 714  
such policies or contracts or one year, but in no event less 715  
than thirty days, from the date on which the association becomes 716  
obligated with respect to such policies or contracts; 717

(2) Make diligent efforts to provide all known insureds,  718  
enrollees, annuitants, or group ~~policyholders~~ policy or contract 719  
owners with respect to group policies and contracts thirty days' 720  
notice of the termination of the benefits provided; 721

(3) With respect to individual policies and contracts, 722  
make available to each known insured, annuitant, enrollee, or 723  
owner if other than the insured or annuitant, and with respect 724  
to an individual formerly insured an insured, annuitant, or 725  
enrollee under a group policy or contract who is not eligible 726  
for replacement group coverage, make available substitute 727  
coverage on an individual basis in accordance with the 728  
provisions of division ~~(D) (4)~~ (C) (4) of this section, if such 729  
insureds, annuitants, or enrollees had a right under law or the 730  
terminated policy or contract to convert coverage to individual 731  
coverage or to continue an individual policy or contract in 732  
force until a specified age or for a specified time, during 733  
which the insurer or health insuring corporation had no right 734  
unilaterally to make changes in any provision of the policy,  735  
annuity, or contract or had a right only to make changes in 736  
premium by class. 737

(4) (a) In providing the substitute coverage required under 738  
division ~~(D) (3)~~ (C) (3) of this section, the association may 739

offer either to reissue the terminated coverage or to issue an alternative policy or contract at actuarially justified rates.

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

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

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

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

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

(6) If the association elects to reissue terminated coverage at a premium rate different from that charged under the

terminated policy or contract, the premium shall be actuarially 769  
justified and set by the association in accordance with the 770  
amount of insurance or coverage provided and the age and class 771  
of risk, subject to approval of the superintendent ~~or a court of~~ 772  
~~competent jurisdiction~~. 773

(7) The obligations of the association with respect to 774  
coverage under any policy or contract of the impaired or 775  
insolvent insurer or under any reissued or alternative policy or 776  
contract shall cease on the date the coverage or policy or 777  
contract is replaced by another similar policy or contract by 778  
~~the policyholder~~ policy or contract owner, the insured, the 779  
enrollee, or the association. 780

~~(E)-(D)~~ When proceeding under ~~divisions (B) (1) (b) or (C)~~ 781  
division (B) of this section with respect to any policy or 782  
contract carrying guaranteed minimum interest rates, the 783  
association shall assure the payment or crediting of a rate of 784  
interest consistent with ~~division (B) (2) (e)~~ (C) (2) (c) of section 785  
3956.04 of the Revised Code. 786

~~(F)-(E)~~ Nonpayment of premiums within thirty-one days 787  
after the date required under the terms of any guaranteed, 788  
assumed, alternative, or reissued policy or contract or 789  
substitute coverage shall terminate the obligations of the 790  
association under the policy, contract, or coverage under this 791  
chapter with respect to the policy, contract, or coverage, 792  
except with respect to any claims incurred or any net cash 793  
surrender value that may be due in accordance with this chapter. 794

~~(G)-(F)~~ Premiums due for coverage after entry of an order 795  
of liquidation of an insolvent insurer shall belong to, and be 796  
payable at the direction of, the association, and the 797  
association is liable for unearned premiums due to policy or 798

contract owners arising after the entry of the order. 799

~~(H)~~ (G) In carrying out its duties under ~~divisions~~ 800  
division (B) and ~~(C)~~ of this section, the association, subject 801  
to approval by the court, may do the following: 802

(1) Impose permanent policy or contract liens in 803  
connection with any guarantee, assumption, or reinsurance 804  
agreement, if the association finds that the amounts that can be 805  
assessed under this chapter are less than the amounts needed to 806  
assure full and prompt performance of the association's duties 807  
under this chapter, or that the economic or financial conditions 808  
as they affect member insurers are sufficiently adverse to 809  
render the imposition of such permanent policy or contract liens 810  
to be in the public interest; 811

~~(2)~~ (2) (a) Impose temporary moratoriums or liens on 812  
payments of cash values and policy loans, or any other right to 813  
withdraw funds held in conjunction with policies or contracts, 814  
in addition to any contractual provisions for deferral of cash 815  
or policy loan value; 816

(b) In addition, in the event of a temporary moratorium or 817  
moratorium charge imposed by the receivership court on payment 818  
of cash values or policy loans, or on any other right to 819  
withdraw funds held in conjunction with policies or contracts, 820  
out of the assets of the impaired or insolvent insurer, the 821  
association may defer the payment of cash values, policy loans, 822  
or other rights by the association for the period of the 823  
moratorium or moratorium charge imposed by the receivership 824  
court, except for claims covered by the association to be paid 825  
in accordance with a hardship procedure established by the 826  
liquidator or rehabilitator and approved by the receivership 827  
court. 828

~~(I)~~ (H) If the association fails to act as provided in 829  
divisions ~~(B) (1) (b), (C), and (D)~~ (B) and (C) of this section 830  
within a reasonable time, the superintendent shall have the 831  
powers and duties of the association under this chapter with 832  
respect to impaired or insolvent insurers. 833

~~(J)~~ (I) The association may render assistance and advice 834  
to the superintendent, upon ~~his~~ the superintendent's request, 835  
concerning any member insurer that is insolvent, impaired, or 836  
potentially impaired, or concerning the rehabilitation, payment 837  
of claims, continuance of coverage, or the performance of other 838  
contractual obligations of any impaired or insolvent insurer. 839

~~(K)~~ (J) The association, and any similar associations of 840  
other states, may appear or intervene before any court in this 841  
state with jurisdiction over an impaired or insolvent insurer 842  
for which the association is or may become obligated under this 843  
chapter, or over a third party against whom the association or 844  
associations have or may have rights through subrogation of the 845  
member insurer's policy or contract holders. The right to appear 846  
or intervene extends to all matters germane to the powers and 847  
duties of the association, including, but not limited to, 848  
proposals for reinsuring, reissuing, modifying, or guaranteeing 849  
the covered policies or contracts of the impaired or insolvent 850  
insurer and the determination of the covered policies or 851  
contracts and contractual obligations. The association also has 852  
the right to appear or intervene before a court or agency in 853  
another state with jurisdiction over an impaired or insolvent 854  
insurer for which the association is or may become obligated or 855  
with jurisdiction over ~~a third party~~ any person or property 856  
against whom the association may have rights through subrogation 857  
~~of the insurer's policy or contract holders~~ or otherwise. 858

~~(L)(1)~~ (K)(1) Any person receiving benefits under this 859  
chapter is deemed to have assigned the rights under, and any 860  
causes of action relating to, the covered policy or contract to 861  
the association to the extent of the benefits received as a 862  
result of this chapter, whether the benefits are payments of or 863  
on account of contractual obligations, continuation of coverage, 864  
or provision of substitute or alternative policies, contracts, 865  
or coverages. The association may require an assignment to it of 866  
such rights and causes of action by any enrollee, payee, policy 867  
or contract holder, beneficiary, insured, or annuitant as a 868  
condition precedent to the receipt of any rights or benefits 869  
conferred by this chapter upon such person. 870

(2) The subrogation rights of the association under this 871  
division have the same priority against the assets of the 872  
impaired or insolvent insurer as that possessed by the person 873  
entitled to receive benefits under this chapter. 874

(3) In addition to divisions ~~(L)(1)~~ (K)(1) and (2) of this 875  
section, the association has all common law rights of 876  
subrogation and any other equitable or legal remedy that would 877  
have been available to the impaired or insolvent insurer or 878  
~~holder of a the policy or contract~~ holder, beneficiary, 879  
enrollee, or payee with respect to the policy or contract, 880  
including, without limitation, in the case of a structured 881  
settlement annuity, any rights of the owner, beneficiary, or 882  
payee of the annuity, to the extent of benefits received 883  
pursuant to this chapter, against a person originally or by 884  
succession responsible for the losses arising from the personal 885  
injury relating to the annuity or payment therefore, excepting 886  
any such person responsible solely by reason of serving as an 887  
assignee in respect of a qualified assignment under section 130 888  
of the Internal Revenue Code. 889

(4) If the preceding provisions of this division are 890  
invalid or ineffective with respect to any person or claim for 891  
any reason, the amount payable by the association with respect 892  
to the related covered obligations shall be reduced by the 893  
amount realized by any other person with respect to the person 894  
or claim that is attributable to the policies or contracts, or 895  
portion thereof, covered by the association. 896

(5) If the association has provided benefits with respect 897  
to a covered obligation and a person recovers amounts as to 898  
which the association has rights as described in the preceding 899  
divisions, the person shall pay to the association the portion 900  
of the recovery attributable to the policies or contracts, or 901  
portion thereof, covered by the association. 902

~~(M)~~ (L) If the aggregate liability of the association with 903  
respect to any one life does not exceed one hundred dollars, the 904  
association is not obligated to notify claimants possessing such 905  
claims or make any payment thereto. 906

~~(N)~~ (M) Except with respect to claims filed under policies 907  
and contracts which are continued in force by the association 908  
past the final date set by a court for filing claims in 909  
liquidation proceedings of an insolvent insurer, the association 910  
is not liable to pay any claim filed with the association after 911  
such date. 912

~~(O)~~ (N) The association may do any of the following: 913

(1) Enter into any such contracts and take such actions as 914  
are necessary or proper in the judgment of the board of 915  
directors to protect the interests of the association, or to 916  
carry out the powers and duties of the association or the 917  
provisions and purposes of this chapter; 918



(2) Sue or be sued, including taking any legal actions necessary or proper to recover any unpaid assessments under section 3956.09 of the Revised Code and to settle claims or potential claims against it;	919 920 921 922
(3) Borrow money to effect the purposes of this chapter. Any notes or other evidence of indebtedness of the association not in default are legal investments for domestic insurers and may be carried as admitted assets.	923 924 925 926
(4) Employ or retain such persons as are necessary to handle the financial transactions of the association, and to perform such other functions as become necessary or proper under this chapter;	927 928 929 930
(5) Take such legal action as may be necessary to avoid payment of improper claims;	931 932
(6) Exercise, for the purposes of this chapter and to the extent approved by the superintendent, the powers of a domestic life <del>or insurer, health insurer, or health insuring corporation,</del> but in no case may the association issue <del>insurance</del> policies or <del>annuity</del> contracts other than those issued to perform its obligations under this chapter;	933 934 935 936 937 938
(7) Join an organization of one or more other state associations of similar purposes, to further the purposes and administer the powers and duties of the association;	939 940 941
(8) <u>In accordance with the terms and conditions of the policy or contract, file for actuarially justified rate or premium increases for any policy or contract for which it provides coverage under this chapter;</u>	942 943 944 945
(9) <u>Enter into agreements with other state associations of similar purposes to determine the residence of persons for</u>	946 947

purposes of this chapter;	948
<u>(10) Organize itself as a corporation or in other legal</u>	949
<u>form permitted by the laws of the state;</u>	950
<u>(11) Request information from a person seeking coverage</u>	951
<u>from the association in order to aid the association in</u>	952
<u>determining its obligations under this chapter with respect to</u>	953
<u>the person, and the person shall promptly comply with the</u>	954
<u>request.</u>	955
<u>(O) (1) A deposit in this state, held pursuant to law or</u>	956
<u>required by the superintendent for the benefit of creditors,</u>	957
<u>including policy or contract owners, not turned over to the</u>	958
<u>domiciliary liquidator upon the entry of a final order of</u>	959
<u>liquidation or order approving a rehabilitation plan of a member</u>	960
<u>insurer domiciled in this state or in a reciprocal state, shall,</u>	961
<u>pursuant to Chapter 3903. of the Revised Code, be promptly paid</u>	962
<u>to the association.</u>	963
<u>(2) The association shall be entitled to retain a portion</u>	964
<u>of any amount so paid to it equal to the percentage determined</u>	965
<u>by dividing the aggregate amount of policy or contract owners'</u>	966
<u>claims related to that insolvency for which the association has</u>	967
<u>provided statutory benefits by the aggregate amount of all</u>	968
<u>policy or contract owners' claims in this state related to that</u>	969
<u>insolvency and shall remit to the domiciliary receiver the</u>	970
<u>amount so paid to the association less the amount retained</u>	971
<u>pursuant to this division.</u>	972
<u>(3) Any amount so paid to the association and retained by</u>	973
<u>it shall be treated as a distribution of estate assets pursuant</u>	974
<u>to applicable state receivership law dealing with early access</u>	975
<u>disbursements.</u>	976

(P) (1) (a) At any time within one hundred eighty days of 977  
the date of the order of liquidation, the association may elect 978  
to succeed to the rights and obligations of the ceding member 979  
insurer that relate to policies, contracts, or annuities 980  
covered, in whole or in part, by the association, in each case 981  
under any one or more reinsurance contracts entered into by the 982  
insolvent insurer and its reinsurers and selected by the 983  
association. Any such assumption is effective as of the date of 984  
the order of liquidation. The election shall be effected by the 985  
association or the national organization of life and health 986  
insurance guaranty associations on its behalf sending written 987  
notice, return receipt requested, to the affected reinsurers. 988

(b) To facilitate the earliest practicable decision about 989  
whether to assume any of the contracts of reinsurance, and in 990  
order to protect the financial position of the estate, the 991  
receiver and each reinsurer of the ceding member insurer shall 992  
make available upon request to the association or to the 993  
national organization of life and health insurance guaranty 994  
associations on its behalf as soon as possible after 995  
commencement of formal delinquency proceedings both of the 996  
following: 997

(i) Copies of in-force contracts of reinsurance and all 998  
related files and records relevant to the determination of 999  
whether such contracts should be assumed; 1000

(ii) Notices of any defaults under the reinsurance 1001  
contracts or any known event or condition which with the passage 1002  
of time could become a default under the reinsurance contracts. 1003

(2) Divisions (P) (2) (a) to (d) of this section apply to 1004  
reinsurance contracts so assumed by the association. 1005

(a) The association is responsible for all unpaid premiums 1006  
due under the reinsurance contracts for periods both before and 1007  
after the date of the order of liquidation, and is responsible 1008  
for the performance of all other obligations to be performed 1009  
after the date of the order of liquidation, in each case which 1010  
relate to policies, contracts, or annuities covered, in whole or 1011  
in part, by the association. The association may charge 1012  
policies, contracts, or annuities covered in part by the 1013  
association, through reasonable allocation methods, the costs 1014  
for reinsurance in excess of the obligations of the association 1015  
and shall provide notice and an accounting of these charges to 1016  
the liquidator. 1017

(b) The association is entitled to any amounts payable by 1018  
the reinsurer under the reinsurance contracts with respect to 1019  
losses or events that occur in periods after the date of the 1020  
order of liquidation and that relate to policies, contracts, or 1021  
annuities covered, in whole or in part, by the association, 1022  
provided that, upon receipt of any such amounts, the association 1023  
is obliged to pay to the beneficiary under the policy, 1024  
contracts, or annuity on account of which the amounts were paid 1025  
a portion of the amount equal to the lesser of the following: 1026

(i) The amount received by the association; 1027

(ii) The excess of the amount received by the association 1028  
over the amount equal to the benefits paid by the association on 1029  
account of the policy, contracts, or annuity less the retention 1030  
of the insurer applicable to the loss or event. 1031

(c) Within thirty days following the association's 1032  
election, the association and each reinsurer under contracts 1033  
assumed by the association shall calculate the net balance due 1034  
to or from the association under each reinsurance contract as of 1035

the election date with respect to policies, contracts, or 1036  
annuities covered, in whole or in part, by the association, 1037  
which calculation shall give full credit to all items paid by 1038  
either the member insurer or its receiver or the reinsurer prior 1039  
to the election date. The reinsurer shall pay the receiver any 1040  
amounts due for losses or events prior to the date of the order 1041  
of liquidation, subject to any set-off for premiums unpaid for 1042  
periods prior to the date, and the association or reinsurer 1043  
shall pay any remaining balance due the other, in each case 1044  
within five days of the completion of the aforementioned 1045  
calculation. Any disputes over the amounts due to either the 1046  
association or the reinsurer shall be resolved by arbitration 1047  
pursuant to the terms of the affected reinsurance contracts or, 1048  
if the contract contains no arbitration clause, as otherwise 1049  
provided by law. If the receiver has received any amounts due 1050  
the association pursuant to division (P)(2)(b) of this section, 1051  
the receiver shall remit the same to the association as promptly 1052  
as practicable. 1053

(d) If the association or receiver, on the association's 1054  
behalf, within sixty days of the election date, pays the unpaid 1055  
premiums due for periods both before and after the election date 1056  
that relate to policies, contracts, or annuities covered, in 1057  
whole or in part, by the association, the reinsurer shall not be 1058  
entitled to terminate the reinsurance contracts for failure to 1059  
pay premium insofar as the reinsurance contracts relate to 1060  
policies, contracts, or annuities covered, in whole or in part, 1061  
by the association, and shall not be entitled to set off any 1062  
unpaid amounts due under other contracts, or unpaid amounts due 1063  
from parties other than the association, against amounts due the 1064  
association. 1065

(3) During the period from the date of the order of 1066

liquidation until the election date, or, if the election date 1067  
does not occur, until one hundred eighty days after the date of 1068  
the order of liquidation, both of the following shall apply: 1069

(a)(i) Neither the association nor the reinsurer shall 1070  
have any rights or obligations under reinsurance contracts that 1071  
the association has the right to assume under division (P)(1) of 1072  
this section, whether for periods prior to or after the date of 1073  
the order of liquidation. 1074

(ii) The reinsurer, the receiver, and the association 1075  
shall, to the extent practicable, provide each other data and 1076  
records reasonably requested. 1077

(b) Provided that the association has elected to assume a 1078  
reinsurance contract, the parties' rights and obligations shall 1079  
be governed by divisions (P)(1) and (2) of this section. 1080

(4) If the association does not elect to assume a 1081  
reinsurance contract by the election date pursuant to division 1082  
(P)(1) of this section, the association shall have no rights or 1083  
obligations, in each case for periods both before and after the 1084  
date of the order of liquidation, with respect to the 1085  
reinsurance contract. 1086

(5) When policies, contracts, or annuities, or covered 1087  
obligations with respect thereto, are transferred to an assuming 1088  
insurer, reinsurance on the policies, contracts, or annuities 1089  
may also be transferred by the association, in the case of 1090  
contracts assumed under division (P)(1) of this section, subject 1091  
to the following: 1092

(a) Unless the reinsurer and the assuming insurer agree 1093  
otherwise, the reinsurance contracts transferred do not cover 1094  
any new policies of insurance, contracts, or annuities in 1095

addition to those transferred. 1096

(b) The obligations described in division (P)(1) of this section no longer apply with respect to matters arising after the effective date of the transfer. 1097  
1098  
1099

(c) Notice shall be given in writing, return receipt requested, by the transferring party to the affected reinsurer not less than thirty days prior to the effective date of the transfer. 1100  
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(6) The provisions of this division supersede the provisions of any state law or of any affected reinsurance contract that provides for or requires any payment of reinsurance proceeds, on account of losses or events that occur in periods after the date of the order of liquidation, to the receiver of the insolvent insurer or any other person. The receiver shall remain entitled to any amounts payable by the reinsurer under the reinsurance contracts with respect to losses or events that occur in periods prior to the date of the order of liquidation, subject to applicable setoff provisions. 1104  
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(7) Except as otherwise provided in this division, nothing in this division shall alter or modify the terms and conditions of any reinsurance contract. Nothing in this division abrogates or limits any rights of any reinsurer to claim that it is entitled to rescind a reinsurance contract. Nothing in this division gives a policy owner, contract owner, enrollee, certificate holder, or beneficiary an independent cause of action against a reinsurer that is not otherwise set forth in the reinsurance contract. Nothing in this division limits or affects the association's rights as a creditor of the estate against the assets of the estate. Nothing in this division applies to reinsurance agreements covering property or casualty 1114  
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risks. 1126

(Q) The board of directors of the association has 1127  
discretion and may exercise reasonable business judgment to 1128  
determine the means by which the association is to provide the 1129  
benefits of this chapter in an economical and efficient manner. 1130

(R) Where the association has arranged or offered to 1131  
provide the benefits of this chapter to a covered person under a 1132  
plan or arrangement that fulfills the association's obligations 1133  
under this chapter, the person is not entitled to benefits from 1134  
the association in addition to or other than those provided 1135  
under the plan or arrangement. 1136

(S) Venue in a suit against the association arising under 1137  
the chapter shall be in Franklin county. The association is not 1138  
required to give an appeal bond in an appeal that relates to a 1139  
cause of action arising under this chapter. 1140

(T) In carrying out its duties in connection with 1141  
guaranteeing, assuming, reissuing, or reinsuring policies or 1142  
contracts under division (A) or (B) of this section, the 1143  
association may issue substitute coverage for a policy or 1144  
contract that provides an interest rate, crediting rate, or 1145  
similar factor determined by use of an index or other external 1146  
reference stated in the policy or contract employed in 1147  
calculating returns or changes in value by issuing an 1148  
alternative policy or contract in accordance with the following 1149  
provisions: 1150

(1) In lieu of the index or other external reference 1151  
provided for in the original policy or contract, the alternative 1152  
policy or contract provides for any of the following: 1153

(a) A fixed interest rate; 1154



<u>(b) Payment of dividends with minimum guarantees;</u>	1155
<u>(c) A different method for calculating interest or changes in value.</u>	1156 1157
<u>(2) There is no requirement for evidence of insurability, waiting period, or other exclusion that would not have applied under the replaced policy or contract.</u>	1158 1159 1160
<u>(3) The alternative policy or contract is substantially similar to the replaced policy or contract in all other material terms.</u>	1161 1162 1163
<b>Sec. 3956.09.</b> (A) For the purpose of providing the funds necessary to carry out the powers and duties of the Ohio life and health insurance guaranty association, the board of directors shall assess the member insurers, separately for each subaccount or account, at such time and for such amounts as the board finds necessary. Assessments shall be due not less than thirty days after prior written notice to the member insurers and shall accrue interest at ten per cent per year on and after the due date.	1164 1165 1166 1167 1168 1169 1170 1171 1172
(B) There shall be two classes of assessments, as follows:	1173
(1) Class A assessments shall be <del>made</del> <u>authorized and called</u> for the purpose of meeting administrative and legal costs and other expenses, and the cost of <del>examinations conducted detecting and preventing member insurer insolvencies</del> under division (E) of section 3956.12 of the Revised Code. Class A assessments may be <del>made</del> <u>authorized and called</u> whether or not related to a particular impaired or insolvent insurer.	1174 1175 1176 1177 1178 1179 1180
(2) Class B assessments shall be <del>made</del> <u>authorized and called</u> to the extent necessary to carry out the powers and duties of the association under section 3956.08 of the Revised	1181 1182 1183

Code with regard to an impaired or an insolvent insurer. 1184

(C) (1) The amount of any class A assessment shall be 1185  
determined by the board and may be ~~made~~ authorized and called on 1186  
a pro rata or non-pro rata basis. If pro rata, the board may 1187  
provide that it be credited against future class B assessments. 1188  
~~A non-pro rata assessment shall not exceed two hundred dollars~~ 1189  
~~per member insurer in any one calendar year.~~ The amount of any 1190  
class B assessment, except for assessments related to long-term 1191  
care insurance, shall be allocated for assessment purposes 1192  
between the accounts and among the subaccounts and accounts of 1193  
the life insurance and annuity account pursuant to an allocation 1194  
formula which may be based on the premiums or reserves of the 1195  
impaired or insolvent insurer or on any other standard 1196  
considered by the board in its sole discretion as being fair and 1197  
reasonable under the circumstances. 1198

~~(2)~~ (2) (a) The amount of the class B assessments for long- 1199  
term care insurance written by the impaired or insolvent insurer 1200  
shall be allocated according to a methodology included in the 1201  
plan of operation and approved by the superintendent of 1202  
insurance. 1203

(b) The methodology shall provide for fifty per cent of 1204  
the assessment to be allocated to sickness and accident and 1205  
health member insurers and fifty per cent to be allocated to 1206  
life and annuity member insurers. 1207

(c) For the purposes of divisions (C) (2) (a) and (b) of 1208  
this section: 1209

(i) "Life and annuity member insurer" means a member 1210  
insurer for which the sum of its assessable life insurance 1211  
premiums and annuity premiums is greater than or equal to its 1212

assessable health insurance premiums. 1213

(ii) "Assessable health insurance premiums" includes the 1214  
member insurer's assessable sickness and accident premiums and 1215  
health insuring corporation premiums, but shall exclude its 1216  
assessable premiums written for disability income insurance and 1217  
long-term care insurance. For purposes of this definition, 1218  
assessable premiums shall be measured within the state. 1219

(iii) "Sickness and accident and health member insurer" 1220  
means any member insurer not defined as a life and annuity 1221  
member insurer. 1222

(d) Class B assessments against member insurers for each 1223  
subaccount or account shall be in the proportion that the 1224  
premiums received on business in this state by each assessed 1225  
member insurer on policies or contracts covered by each 1226  
subaccount or account for the most recent three calendar years 1227  
for which information is available preceding the year in which 1228  
the member insurer became impaired or insolvent, as the case may 1229  
be, bears to such premiums received on business in this state 1230  
for such calendar years by all assessed member insurers. 1231

(3) Assessments for funds to meet the requirements of the 1232  
association with respect to an impaired or insolvent insurer 1233  
shall not be ~~made~~ authorized and called until necessary to 1234  
implement the purposes of this chapter. Classification of 1235  
assessments under division (B) of this section and computation 1236  
of assessments under this division shall be made with a 1237  
reasonable degree of accuracy, recognizing that exact 1238  
determinations may not always be possible. The association shall 1239  
notify each member insurer of its anticipated pro rata share of 1240  
an authorized assessment not yet called within one hundred 1241  
eighty days after the assessment is authorized. 1242

(D) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. If an assessment against a member insurer is abated, or deferred in whole or in part, the amount by which the assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. Once the conditions that caused a deferral have been removed or rectified, the member insurer shall pay all assessments that were deferred pursuant to a repayment plan approved by the association. In determining whether the payment of an assessment would endanger the ability of a member insurer to fulfill its contractual obligations, the board shall consider the adequacy of the capital and surplus of the member insurer in relation to the premiums written, the assets, and the reserve liabilities of that member insurer.

(E) (1) The total of all assessments upon a member insurer for the life insurance and annuity account, which includes the life insurance subaccount, the annuity subaccount, and the unallocated annuity subaccount, shall not in any one calendar year exceed two per cent of the member insurer's average premiums received per year in this state on the policies and contracts covered by each such subaccount, and for the health ~~insurance~~ account, shall not in any one calendar year exceed two per cent of the member insurer's average premiums received per year in this state on the policies and contracts covered by such account, during the three calendar years preceding the year in which the impaired or insolvent insurer or insurers became impaired or insolvent. If the maximum assessment for a subaccount or account, together with the other assets of the

association in the subaccount or account, does not provide in 1274  
any one year in the subaccount or account an amount sufficient 1275  
to carry out the responsibilities of the association, the 1276  
necessary additional funds shall be assessed for the subaccount 1277  
or account as soon thereafter in succeeding years as permitted 1278  
by division (E) of this section. 1279

(2) If the maximum assessment under division (E) (1) of 1280  
this section for any subaccount of the life insurance and 1281  
annuity account in any succeeding year does not provide an 1282  
amount sufficient to carry out the responsibilities of the 1283  
association, then pursuant to division ~~(C) (2)~~ (C) (2) (d) of this 1284  
section, the board shall ~~allocate the necessary additional~~ 1285  
~~amount among~~ assess the other subaccounts of the life and 1286  
annuity account ~~in the manner set forth in division (E) (1) of~~ 1287  
~~this section, but the maximum assessment for a subaccount shall~~ 1288  
~~not exceed one per cent in any one calendar year~~ for the 1289  
necessary additional amount, subject to the maximum stated in 1290  
division (E) (1) of this section. 1291

(3) Where assessments for two or more impaired or 1292  
insolvent insurers have been made within the same calendar year, 1293  
and the sum of those assessments exceeds the two per cent 1294  
calendar year assessment limitation under division (E) (1) of 1295  
this section, the board, with the approval of the superintendent 1296  
of insurance, may allocate among the accounts of such member 1297  
insurers the sums assessed within the two per cent limitation. 1298

(F) The board, by an equitable method as established in 1299  
the plan of operation, may refund to member insurers, in 1300  
proportion to the contribution of each member insurer to that 1301  
subaccount or account, the amount by which the assets of the 1302  
subaccount or account exceed the amount the board finds is 1303

necessary to carry out during the coming year the obligations of 1304  
the association with regard to that subaccount or account, 1305  
including assets accruing from assignment, subrogation, net 1306  
realized gains, and income from investments. A reasonable amount 1307  
may be retained in any subaccount or account to provide funds 1308  
for the continuing expenses of the association and for future 1309  
losses. 1310

(G) A member insurer, in determining its premium rates and 1311  
policyowner dividends as to any kind of insurance or health 1312  
insuring corporation business within the scope of this chapter, 1313  
may consider the amount reasonably necessary to meet its 1314  
assessment obligations under this section. 1315

(H) The association, upon request, shall issue to ~~an~~ a 1316  
member insurer paying an assessment under this section, other 1317  
than a class A assessment, a certificate of contribution, in a 1318  
form approved by the superintendent, for the amount of the 1319  
assessment so paid. All outstanding certificates shall be of 1320  
equal dignity and priority without reference to amounts or dates 1321  
of issue. A certificate of contribution may be shown by the 1322  
member insurer in its financial statement as an asset in the 1323  
form and for the amount, net of any amounts recovered through a 1324  
tax offset, and for the period of time the superintendent may 1325  
approve. 1326

(I) Any member insurer that has contributed funds to pay 1327  
claims of an impaired or insolvent insurer, pursuant to an 1328  
agreement entered into with the superintendent and approved by 1329  
the Franklin county court of common pleas during the five years 1330  
preceding ~~the effective date of this section~~ November 20, 1989, 1331  
or at any time following ~~the effective date of this section~~ 1332  
November 20, 1989, shall receive a credit against any 1333

assessments levied pursuant to this section, whether the 1334  
assessments are class A assessments or class B assessments, in 1335  
the amount of the contribution. 1336

If the amount of the credit exceeds the amount of 1337  
assessments levied upon a member insurer in any one year, the 1338  
balance of that credit shall be carried forward to subsequent 1339  
years and will reduce the amount of future assessments until the 1340  
total amount of the credit has been applied to the future 1341  
assessments. 1342

For the purposes of this division, an impaired or 1343  
insolvent member insurer is an insurer that meets the 1344  
definitions set forth in section 3956.01 of the Revised Code, 1345  
and any insurer or health insuring corporation that would have 1346  
met these definitions, if it had been in effect at the time of 1347  
such contribution. 1348

(J) Division (I) of this section does not apply if ~~an~~ a 1349  
member insurer has contributed funds pursuant to that division 1350  
and has offset those contributions against its premium or 1351  
franchise tax liability pursuant to any provision of the Revised 1352  
Code authorizing the establishment of a plan for the 1353  
distribution of voluntary contributions to pay the life, 1354  
sickness and accident, or annuity claims of residents of this 1355  
state that are unpaid due to the insolvency of an insolvent 1356  
insurer. 1357

(K) (1) A member insurer that wishes to protest all or part 1358  
of an assessment shall pay when due the full amount of the 1359  
assessment as set forth in the notice provided by the 1360  
association. The payment shall be available to meet association 1361  
obligations during the pendency of the protest or any subsequent 1362  
appeal. Payment shall be accompanied by a statement in writing 1363

that the payment is made under protest and setting forth a brief 1364  
statement of the grounds for the protest. 1365

(2) Within sixty days following the payment of an 1366  
assessment under protest by a member insurer, the association 1367  
shall notify the member insurer in writing of its determination 1368  
with respect to the protest unless the association notifies the 1369  
member insurer that additional time is required to resolve the 1370  
issues raised by the protest. 1371

(3) Within thirty days after a final decision has been 1372  
made, the association shall notify the protesting member insurer 1373  
in writing of that final decision. Within sixty days of receipt 1374  
of notice of the final decision, the protesting member insurer 1375  
may appeal that final action to the superintendent. 1376

(4) In the alternative to rendering a final decision with 1377  
respect to a protest based on a question regarding the 1378  
assessment base, the association may refer protests to the 1379  
superintendent for a final decision, with or without a 1380  
recommendation from the association. 1381

(5) If the protest or appeal on the assessment is upheld, 1382  
the amount paid in error or excess shall be returned to the 1383  
member insurer. Interest on a refund due a protesting member 1384  
insurer shall be paid at the rate actually earned by the 1385  
association. 1386

(L) The association may request information of member 1387  
insurers in order to aid in the exercise of its power under this 1388  
section and member insurers shall promptly comply with such a 1389  
request. 1390

**Sec. 3956.10.** (A) (1) The Ohio life and health insurance 1391  
guaranty association shall submit to the superintendent of 1392



insurance a plan of operation and any amendments to the plan 1393  
necessary or suitable to ensure the fair, reasonable, and 1394  
equitable administration of the association. The plan of 1395  
operation and any amendments shall become effective upon the 1396  
written approval of the superintendent, or unless the 1397  
superintendent has not disapproved it within thirty days. 1398

(2) If the association fails to submit a suitable plan of 1399  
operation within six months following ~~the effective date of this~~ 1400  
~~section November 20, 1989,~~ or if at any time after that date the 1401  
association fails to submit suitable amendments to the plan, the 1402  
superintendent, after notice and hearing, shall adopt reasonable 1403  
rules that are necessary or advisable to effectuate the 1404  
provisions of this chapter. The rules shall continue in force 1405  
until modified by the superintendent or superseded by a plan 1406  
submitted by the association and approved by the superintendent. 1407

(B) All member insurers shall comply with the plan of 1408  
operation. 1409

(C) In addition to requirements enumerated elsewhere in 1410  
this chapter, the plan of operation shall do the following: 1411

(1) Establish procedures for handling the assets of the 1412  
association; 1413

(2) Establish the amount and method of reimbursing members 1414  
of the board of directors under section 3956.07 of the Revised 1415  
Code; 1416

(3) Establish regular places and times for meetings, 1417  
including but not limited to telephone conference calls, of the 1418  
board of directors; 1419

(4) Establish procedures for records to be kept of all 1420  
financial transactions of the association, its agents, and the 1421

board of directors;	1422
(5) Establish the procedures whereby selections for the	1423
board of directors will be made and submitted to the	1424
superintendent;	1425
(6) Establish any additional procedures for assessments	1426
under section 3956.09 of the Revised Code, including, but not	1427
limited to, allocating sums raised by assessments when two or	1428
more insolvencies occur in the same calendar year that are	1429
subject to the two per cent calendar year assessment limitation;	1430
(7) Contain additional provisions necessary or proper for	1431
the execution of the powers and duties of the association.	1432
(D) The plan of operation may provide that any or all	1433
powers and duties of the association, except those under	1434
division <del>(O) (3)</del> <u>(N) (3)</u> of section 3956.08 and section 3956.09 of	1435
the Revised Code, are delegated to a corporation, association,	1436
or other organization that performs or will perform functions	1437
similar to those of the association, or its equivalent, in two	1438
or more states. The corporation, association, or organization	1439
shall be reimbursed for any payments made on behalf of the	1440
association, and shall be paid for its performance of any	1441
function of the association. A delegation under this division	1442
shall take effect only with the approval of both the board of	1443
directors and the superintendent, and may be made only to a	1444
corporation, association, or organization that extends	1445
protection not substantially less favorable and effective than	1446
that provided by this chapter.	1447
<b>Sec. 3956.11.</b> (A) The superintendent of insurance shall:	1448
(1) Upon request of the board of directors of the Ohio	1449
life and health insurance guaranty association, provide the	1450

association with a statement of the premiums in this and any 1451  
other appropriate states for each member insurer; 1452

(2) When an impairment is declared and the amount of the 1453  
impairment is determined, serve a demand upon the impaired 1454  
insurer to make good the impairment within a reasonable time. 1455  
Notice to the impaired insurer shall constitute notice to its 1456  
shareholders, if any. The failure of the impaired insurer 1457  
promptly to comply with the demand shall not excuse the 1458  
association from the performance of its powers and duties under 1459  
this chapter. 1460

(3) In any liquidation or rehabilitation proceeding 1461  
involving a domestic member insurer, be appointed as the 1462  
liquidator or rehabilitator. 1463

(B) The superintendent, after notice and hearing, may 1464  
suspend or revoke the license or certificate of authority to 1465  
transact ~~insurance-business~~ in this state of any member insurer 1466  
that fails to pay an assessment when due or fails to comply with 1467  
the plan of operation of the association. As an alternative, the 1468  
superintendent may levy a forfeiture on any member insurer that 1469  
fails to pay an assessment when due. The forfeiture shall not 1470  
exceed five per cent of the unpaid assessment per month, but 1471  
shall not be less than one hundred dollars per month. 1472

(C) Any action of the board of directors or the 1473  
association may be appealed to the superintendent by any member 1474  
insurer if the appeal is taken within sixty days of the final 1475  
action being appealed. If a member insurer is appealing an 1476  
assessment, the amount assessed shall be paid to the association 1477  
and be available to meet association obligations during the 1478  
pendency of the appeal. If the appeal on the assessment is 1479  
upheld, the amount paid in error or excess shall be returned to 1480

the member insurer. Any final action or order of the 1481  
superintendent is subject to review under Chapter 119. of the 1482  
Revised Code. 1483

(D) The liquidator, rehabilitator, or conservator of any 1484  
impaired or insolvent insurer may notify all interested persons 1485  
of the effect of this chapter. 1486

(E) Notwithstanding section 109.02 of the Revised Code, 1487  
the superintendent has sole authority to select and hire legal 1488  
counsel to represent the superintendent in ~~his~~ the 1489  
superintendent's role as rehabilitator or liquidator of an 1490  
impaired or insolvent insurer. 1491

**Sec. 3956.12.** To aid in the detection and prevention of 1492  
member insurer insolvencies or impairments: 1493

(A) The superintendent of insurance shall do all of the 1494  
following: 1495

(1) Notify the commissioners of insurance of all the other 1496  
states, territories of the United States, and the District of 1497  
Columbia when ~~he~~ the superintendent takes any of the following 1498  
actions against a member insurer: 1499

(a) Revocation of license; 1500

(b) Suspension of license; 1501

(c) Makes any formal order that such ~~company-member~~ 1502  
insurer restrict its premium writing, obtain additional 1503  
contributions to surplus, withdraw from the state, reinsure all 1504  
or any part of its business, or increase capital, surplus, or 1505  
any other account for the security of policyholders, contact 1506  
owners, certificate holders, or creditors. 1507

Notice under division (A) (1) of this section shall be 1508

mailed or delivered by electronic means to all insurance 1509  
commissioners within thirty days following the action taken or 1510  
the date on which the action occurs. 1511

(2) Report to the board of directors of the Ohio life and 1512  
health insurance guaranty association when ~~he~~ the superintendent 1513  
has taken any of the actions set forth in division (A)(1) of 1514  
this section or has received a report from any other insurance 1515  
commissioner indicating that any such action has been taken in 1516  
another state. The report to the board of directors shall 1517  
contain all significant details of the action taken or the 1518  
report received from another commissioner. 1519

(3) Report to the board of directors when ~~he~~ the 1520  
superintendent has reasonable cause to believe, from any 1521  
completed or ongoing examination of any member ~~company~~ insurer, 1522  
that the ~~company~~ member insurer may be an impaired or insolvent 1523  
insurer; 1524

(4) Furnish to the board of directors the national 1525  
association of insurance commissioners' insurance regulatory 1526  
information service (IRIS) ratios and listings of companies not 1527  
included in the ratios developed by the commissioners. The board 1528  
may use the information contained in this report in carrying out 1529  
its duties and responsibilities under this section. The report 1530  
and the information contained in the report shall be kept 1531  
confidential by the members of the board of directors until such 1532  
time as made public by the superintendent or other lawful 1533  
authority. 1534

(B) The superintendent may seek the advice and 1535  
recommendation of the board of directors concerning any matter 1536  
affecting ~~his~~ the superintendent's duties and responsibilities 1537  
regarding the financial condition of member insurers and 1538

~~companies insurers or health insuring corporations seeking~~ 1539  
admission to transact ~~insurance~~ business in this state. 1540

(C) The board of directors, upon majority vote, may make 1541  
reports and recommendations to the superintendent upon any 1542  
matter germane to the solvency, rehabilitation, or liquidation 1543  
of any member insurer or germane to the solvency of any ~~company-~~ 1544  
insurer or health insuring corporation seeking to do an- 1545  
~~insurance~~ business in this state. The reports and 1546  
recommendations are not public records. 1547

(D) The board of directors, upon majority vote, may notify 1548  
the superintendent of any information the board possesses that 1549  
indicates any member insurer may be an impaired or insolvent 1550  
insurer. 1551

~~(E) The board of directors, upon majority vote, may~~ 1552  
~~request that the superintendent order an examination of any~~ 1553  
~~member insurer that the board in good faith believes may be an~~ 1554  
~~impaired or insolvent insurer. Within thirty days of the receipt~~ 1555  
~~of such request, the superintendent shall begin the examination.~~ 1556  
~~The examination may be conducted as a national association of~~ 1557  
~~insurance commissioners examination or may be conducted by the~~ 1558  
~~persons the superintendent designates. The cost of the~~ 1559  
~~examination shall be paid by the association and the examination~~ 1560  
~~report shall be treated as are other examination reports. The~~ 1561  
~~examination report shall not be released to the board of~~ 1562  
~~directors of the association prior to its release to the public,~~ 1563  
~~but this shall not preclude the superintendent from complying~~ 1564  
~~with division (A) of this section. The superintendent shall~~ 1565  
~~notify the board of directors when the examination is completed.~~ 1566  
~~The request for an examination shall be kept on file by the~~ 1567  
~~superintendent but it shall not be open to public inspection~~ 1568

~~prior to the release of the examination report to the public.~~ 1569

~~(F) The board of directors, upon majority vote, may make~~ 1570  
~~recommendations to the superintendent for the detection and~~ 1571  
~~prevention of member insurer insolvencies.~~ 1572

~~(G) The board of directors, at the conclusion of any~~ 1573  
~~insurer insolvency in which the association was obligated to pay~~ 1574  
~~covered claims, may prepare a report to the superintendent~~ 1575  
~~containing information it may have in its possession bearing on~~ 1576  
~~the history and causes of such insolvency. The board shall~~ 1577  
~~cooperate with the boards of directors of guaranty associations~~ 1578  
~~in other states in preparing a report on the history and causes~~ 1579  
~~of insolvency of a particular insurer, and may adopt by~~ 1580  
~~reference any report prepared by the other associations.~~ 1581

**Sec. 3956.13.** (A) Nothing in this chapter shall be 1582  
construed to reduce the liability for unpaid assessments of the 1583  
insureds or enrollees of an impaired or insolvent insurer 1584  
operating under a plan with assessment liability. 1585

(B) Records shall be kept of all resolutions adopted by 1586  
the Ohio life and health guaranty association in carrying out 1587  
its powers and duties under section 3956.08 of the Revised Code. 1588  
The records shall be made public only upon the termination of a 1589  
rehabilitation or liquidation proceeding involving the impaired 1590  
or insolvent insurer, upon the termination of the impairment or 1591  
insolvency of the member insurer, or upon the order of a court 1592  
of competent jurisdiction. Nothing in this division shall limit 1593  
the duty of the association to render a report of its activities 1594  
under section 3956.14 of the Revised Code. 1595

(C) For the purpose of carrying out its obligations under 1596  
this chapter, the association shall be deemed to be a creditor 1597

of the impaired or insolvent insurer to the extent of assets 1598  
attributable to covered policies or contracts, reduced by any 1599  
amounts to which the association is entitled as subrogee 1600  
pursuant to division ~~(L)~~ (K) of section 3956.08 of the Revised 1601  
Code. Assets of the impaired or insolvent insurer attributable 1602  
to covered policies or contracts shall be used to continue all 1603  
covered policies or contracts and pay all contractual 1604  
obligations of the impaired or insolvent insurer as required by 1605  
this chapter. As used in this division, "assets attributable to 1606  
covered policies or contracts" means that proportion of the 1607  
assets that the reserves that should have been established for 1608  
covered policies or contracts bear to the reserves that should 1609  
have been established for all policies or contracts of insurance 1610  
or health benefit plans written by the impaired or insolvent 1611  
insurer. 1612

(D) (1) As a creditor of the impaired or insolvent insurer 1613  
as established in division (C) of this section and consistent 1614  
with section 3903.34 of the Revised Code, the association and 1615  
other similar associations shall be entitled to receive a 1616  
disbursement of assets out of the marshaled assets, from time to 1617  
time as the assets become available to reimburse it, as a credit 1618  
against contractual obligations under this chapter. 1619

(2) If the liquidator has not, within one hundred twenty 1620  
days of a final determination of insolvency of a member insurer 1621  
by the receivership court, made an application to the court for 1622  
the approval of a proposal to disburse assets out of marshaled 1623  
assets to guaranty associations having obligations because of 1624  
the insolvency, then the association shall be entitled to make 1625  
application to the receivership court for approval of its own 1626  
proposal to disburse these assets. 1627



(E) (1) Prior to the termination of any rehabilitation or 1628  
liquidation proceeding, the court may take into consideration 1629  
the contributions of the respective parties, including the 1630  
association, the shareholders, contract owners, certificate 1631  
holders, enrollees, and policyowners of the insolvent insurer, 1632  
and any other party with a bona fide interest, in making an 1633  
equitable distribution of the ownership rights of the insolvent 1634  
insurer. In this determination, consideration shall be given to 1635  
the welfare of the policyholders, contract owners, certificate 1636  
holders, and enrollees of the continuing or successor member 1637  
insurer. 1638

(2) No distribution to stockholders, if any, of an 1639  
impaired or insolvent insurer shall be made until the total 1640  
amount of valid claims of the association with interest on that 1641  
amount at a rate not less than the rate allowed under 96 Stat. 1642  
2478, 28 U.S.C.A. 1961 for funds expended in carrying out its 1643  
powers and duties under section 3956.08 of the Revised Code with 1644  
respect to such member insurer have been fully recovered by the 1645  
association. 1646

~~(E) (1)~~ (F) (1) If an order for rehabilitation or 1647  
liquidation of ~~an~~ a member insurer domiciled in this state has 1648  
been entered, the rehabilitator or liquidator may recover on 1649  
behalf of the member insurer, from any affiliate that controlled 1650  
it, the amount of distributions, other than stock dividends paid 1651  
by the member insurer on its capital stock, made at any time 1652  
during the five years preceding the complaint for liquidation or 1653  
rehabilitation, subject to the limitations of divisions ~~(E) (2)~~ 1654  
(F) (2) and (4) of this section. 1655

(2) No distribution shall be recoverable if the member 1656  
insurer shows that, when paid, the distribution was lawful and 1657

reasonable and that the member insurer did not know and could 1658  
not reasonably have known that the distribution might adversely 1659  
affect the ability of the member insurer to fulfill its 1660  
contractual obligations. 1661

(3) Any person who was an affiliate that controlled the 1662  
member insurer at the time the distributions were paid is liable 1663  
up to the amount of distributions ~~he~~ the person received. Any 1664  
person who was an affiliate that controlled the member insurer 1665  
at the time the distributions were declared is liable up to the 1666  
amount of distributions ~~he~~ the person would have received if 1667  
they had been paid immediately. If two or more persons are 1668  
liable with respect to the same distributions, they are jointly 1669  
and severally liable. 1670

(4) The maximum amount recoverable under this division 1671  
shall be the amount needed in excess of all other available 1672  
assets of the insolvent insurer to pay the contractual 1673  
obligations of the insolvent insurer. 1674

(5) If any person liable under division ~~(E) (3)~~ (F) (3) of 1675  
this section is insolvent, all its affiliates that controlled it 1676  
at the time the distribution was paid are jointly and severally 1677  
liable for any resulting deficiency in the amount recovered from 1678  
the insolvent affiliate. 1679

**Sec. 3956.16.** There shall be no liability on the part of, 1680  
and no cause of action of any nature shall arise against, any 1681  
member insurer or its agents or employees, the Ohio life and 1682  
health guaranty association or its agents or employees, the 1683  
board of directors or any member of the board, or the 1684  
superintendent of insurance or ~~his~~ the superintendent's 1685  
representatives, for any action or omission by them pursuant to 1686  
the purposes and provisions of this chapter or in the 1687

performance of their powers and duties under this chapter. 1688  
Immunity under this section extends to the participation in any 1689  
organization of one or more other state associations of similar 1690  
purposes as provided in division ~~(O) (7)~~ (N) (7) of section 1691  
3956.08 of the Revised Code, and to any such organization and 1692  
its agents and employees. 1693

**Sec. 3956.18.** (A) (1) No person shall make, publish, 1694  
disseminate, circulate, or place before the public, or cause to 1695  
be made, published, disseminated, circulated, or placed before 1696  
the public, in any newspaper, magazine, or other publication, or 1697  
in the form of a notice, circular, pamphlet, letter, or poster, 1698  
or over any radio or television station, or in any other manner, 1699  
any advertisement, announcement, or statement, written or oral, 1700  
that uses the existence of the Ohio life and health insurance 1701  
guaranty association for the purposes of sales, solicitation, or 1702  
inducement to purchase any form of insurance or other coverage 1703  
covered by this chapter. 1704

(2) As used in division (A) (1) of this section, "person" 1705  
includes but is not limited to any member insurer or any agent 1706  
or affiliate of any member insurer. 1707

(3) Division (A) (1) of this section does not apply to the 1708  
association or any other entity that does not sell or solicit 1709  
insurance or coverage by a health insuring corporation. 1710

(B) (1) Within six months after ~~the effective date of this~~ 1711  
~~section~~ November 20, 1989, the association shall prepare a 1712  
summary document, complying with division (C) of this section, 1713  
describing the general purposes and current limitations of this 1714  
chapter. The document shall be submitted to the superintendent 1715  
of insurance for approval. 1716

(2) On or after the sixtieth day after receiving approval 1717  
under division (B) (1) of this section, no member insurer shall 1718  
deliver a policy or contract ~~described in division (B) (1) of~~ 1719  
~~section 3956.04 of the Revised Code~~ to a policy owner, contract 1720  
owner, certificate holder, or enrollee unless the summary 1721  
document is delivered to the policy ~~or~~ owner, contract owner, or 1722  
certificate holder, or the enrollee, prior to or at the time of 1723  
delivery of the policy or contract, ~~except if division (D) of~~ 1724  
~~this section applies~~. The summary document also shall be 1725  
available upon request by a policy ~~or~~ owner, contract owner, or 1726  
certificate holder, or the enrollee. 1727

(3) The distribution or delivery, or contents or 1728  
interpretation of the summary document shall not be construed to 1729  
mean that the policy or contract or the ~~holder of the policy or~~ 1730  
owner, contract owner, or certificate holder, or the enrollee, 1731  
is covered in the event of the impairment or insolvency of a 1732  
member insurer. Failure to receive this summary document does 1733  
not confer upon the ~~policyholder~~ policy owner, contract 1734  
~~holder~~ owner, certificate holder, enrollee, or insured any 1735  
greater rights than those stated in this chapter. 1736

(4) The association shall revise the summary document as 1737  
amendments to this chapter may require. 1738

(C) The summary document prepared under division (B) (1) of 1739  
this section shall contain a clear and conspicuous disclaimer on 1740  
its face. The superintendent shall adopt a rule establishing the 1741  
form and content of the disclaimer. The disclaimer shall do all 1742  
of the following: 1743

(1) State the name and address of the Ohio life and health 1744  
insurance guaranty association and of the department of 1745  
insurance; 1746

(2) Prominently warn the policy ~~or~~ owner, contract owner, 1747  
or certificate holder, or the enrollee, that the association may 1748  
not cover the policy or contract or, if coverage is available, 1749  
it will be subject to substantial limitations and exclusions, 1750  
and conditioned on continued residence in this state; 1751

(3) State the types of policies or contracts for which 1752  
guaranty funds will provide coverage; 1753

(4) State that the member insurer and its agents are 1754  
prohibited by law from using the existence of the association 1755  
for the purpose of sales, solicitation, or inducement to 1756  
purchase any form of insurance or health insuring corporation 1757  
coverage; 1758

~~(4)~~ (5) Emphasize that the policy ~~or~~ owner, contract 1759  
holder ~~owner, certificate holder, or enrollee~~ should not rely on 1760  
coverage under the association when selecting an insurer or 1761  
health insuring corporation; 1762

~~(5)~~ (6) Explain rights available and procedures for filing 1763  
a complaint to allege a violation of any provisions of this 1764  
chapter; 1765

(7) Provide other information as directed by the 1766  
superintendent, including sources for information about the 1767  
financial condition of insurers provided that the information is 1768  
not proprietary and is subject to disclosure under that state's 1769  
public records law. 1770

(D) ~~No insurer or agent may deliver a policy or contract~~ 1771  
~~described in division (B) (1) of section 3956.04 of the Revised~~ 1772  
~~Code, all or a portion of which is excluded under division (B)~~ 1773  
~~(2) (a) of section 3956.04 of the Revised Code from coverage~~ 1774  
~~under this chapter unless the insurer or agent, prior to or at~~ 1775

~~the time of delivery, gives the policy or contract holder a~~ 1776  
~~separate written notice that clearly and conspicuously discloses~~ 1777  
~~that the policy or contract, or a portion of the policy or~~ 1778  
~~contract, is not covered by the association. The superintendent,~~ 1779  
~~by rule, shall specify the form and content of the notice~~ 1780  
member insurer shall retain evidence of compliance with division 1781  
(B) of this section for so long as the policy or contract for 1782  
which the notice is given remains in effect. 1783

Sec. 3956.19. (A) The provisions of this chapter in effect 1784  
prior to the effective date of this section shall apply to all 1785  
matters relating to any impaired insurer or insolvent insurer 1786  
for which the association first became obligated under section 1787  
3956.08 of the Revised Code prior to the effective date. 1788

(B) The provisions of this chapter in effect on and after 1789  
the effective date of this section shall apply to all matters 1790  
relating to any impaired insurer or insolvent insurer for which 1791  
the association first becomes obligated under section 3956.08 of 1792  
the Revised Code on or after the effective date. 1793

Sec. 3956.20. (A) (1) A member insurer may offset against 1794  
its premium or franchise tax liability twenty per cent of the 1795  
assessment described in division (H) of section 3956.09 of the 1796  
Revised Code in each of the five calendar years following the 1797  
fiscal biennium in which the assessment was paid. The offsets 1798  
shall be allowed on a year-per-year basis commencing with the 1799  
first tax payment due after the fiscal biennium in which the 1800  
assessment was paid. 1801

(2) If the aggregate total of the assessments described in 1802  
division (A) (1) of this section and eligible for offset in a 1803  
particular year exceeds a member insurer's tax liability to this 1804  
state for such year, the aggregate total of the remaining 1805

eligible assessments, notwithstanding the five-year limitation 1806  
set forth in division (A)(1) of this section, may be offset 1807  
against such tax liability in future years. 1808

(3) If a member insurer ceases doing business, all 1809  
uncredited assessments may be credited against its premium or 1810  
franchise tax liability for the year it ceases doing business. 1811

(4) The Ohio life and health insurance guaranty 1812  
association may require a member insurer to report any offset to 1813  
the association. 1814

(B) A member insurer that is exempt from taxes described 1815  
in division (A) of this section may recoup its assessments by a 1816  
surcharge on its premiums in a sum reasonably calculated to 1817  
recoup the assessments over a reasonable period of time, as 1818  
approved by the superintendent. Amounts recouped shall not be 1819  
considered premiums for any other purpose, including the 1820  
computation of gross premium tax, the medical loss ratio, or 1821  
agent commission. If a member insurer collects excess 1822  
surcharges, the member insurer shall remit the excess amount to 1823  
the association, and the excess amount shall be applied to 1824  
reduce future assessments in the appropriate account. 1825

(C) Any sums that are acquired by member insurers by 1826  
refund from the association pursuant to division (F) of section 1827  
3956.09 of the Revised Code and that have been offset, prior to 1828  
the refund, against premium or franchise tax liability as 1829  
provided in division (A) of this section shall be paid by such 1830  
member insurers to this state in the manner the superintendent 1831  
of insurance requires. The association shall notify the 1832  
superintendent that the refunds have been made. 1833

**Section 2.** That existing sections 3305.07, 3305.10, 1834

3956.01, 3956.03, 3956.04, 3956.06, 3956.07, 3956.08, 3956.09, 1835  
3956.10, 3956.11, 3956.12, 3956.13, 3956.16, 3956.18, and 1836  
3956.20 of the Revised Code are hereby repealed. 1837

**Section 3.** That section 3956.19 of the Revised Code is 1838  
hereby repealed. 1839