

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.7708 Powers and duties of association as to impaired or insolvent insurers; proceeding under subsection (3)(b) or (5)(b); paying or crediting rate of interest; nonpayment of premiums; premiums due and liability for unearned premiums; applicability of protection; additional powers of association; transfer of amount to association; failure of association to act; rendering assistance and advice to commissioner; standing; appearance; intervention; assignment of rights and causes of action; subrogation; reduced amounts; additional powers of association; reinsurance agreement; substitute coverage.

Sec. 7708. (1) In addition to the powers and duties enumerated in other sections of this chapter, the association has the powers and duties provided in this section.

(2) If a member insurer is an impaired insurer, the association, subject to conditions imposed by the association that do not impair the contractual obligations of the impaired insurer, and that are approved by the commissioner, may do any of the following:

(a) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, any or all of the covered policies of the impaired insurer.

(b) Provide money, pledges, notes, guarantees, or other means as are proper to effectuate subdivision (a), and to assure payment of the contractual obligations of the impaired insurer pending action under subdivision (a).

(c) Loan money to the impaired insurer.

(3) Subject to the conditions specified in subsection (4), if a member insurer is an impaired insurer, whether domestic, foreign, or alien, and the insurer is not paying claims timely, the association shall do either of the following:

(a) Take any of the actions specified in subsection (2).

(b) Provide substitute benefits in lieu of the contractual obligations of the impaired insurer solely for health claims, periodic annuity benefit payments, death benefits, supplemental benefits, and cash withdrawals for policy or contract owners who petition for them under claims of emergency or hardship in accordance with standards proposed by the association and approved by the commissioner.

(4) The association is subject to subsection (3) only if the following are met:

(a) The laws of the impaired insurer's state of domicile provide that until all payments of or on account of the impaired insurer's contractual obligations by all guaranty associations, along with all expenses thereof and interest on all such payments and expenses, have been repaid to the guaranty associations or a plan of repayment by the impaired insurer shall have been approved by the guaranty associations:

(i) The delinquency proceeding shall not be dismissed.

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

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

(b) If the impaired insurer is a domestic insurer, it has been placed under an order of rehabilitation by a court of competent jurisdiction in this state.

(c) If the impaired insurer is a foreign or alien insurer, any of the following has occurred:

(i) It has been prohibited from soliciting or accepting new business in this state.

(ii) Its certificate of authority has been suspended or revoked in this state.

(iii) A petition for rehabilitation or liquidation has been filed in a court of competent jurisdiction in its state of domicile by the commissioner of that state.

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

(a) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the covered policies of the insolvent insurer or assure payment of the contractual obligations of the insolvent insurer; and provide money, pledges, notes, guarantees, or other means as are reasonably necessary to effectuate this subdivision.

(b) Provide benefits and coverage pursuant to subsection (6).

(6) If proceeding under subsection (3)(b) or (5)(b), all of the following apply:

(a) The association shall assure payment of benefits for premiums identical to the premiums and benefits, except for terms of conversion and renewability, that would have been payable under the policies or contracts of the insolvent insurer, for claims incurred as follows:

(i) For group policies or contracts, not later than the earlier of the next renewal date under the policy or contract or 45 days, but not less than 30 days, after the date on which the association becomes obligated with

respect to the policies and contracts.

(ii) With respect to nongroup policies, contracts, and annuities, not later than the earlier of the next renewal date, if any, under the policies or contracts or 1 year, but not less than 30 days, from the date on which the association becomes obligated with respect to the policies or contracts.

(b) The association shall make diligent efforts to provide all known insureds or annuitants of nongroup contracts, or group policyholders of group policies and contracts, 30 days' notice of the termination of the benefits provided pursuant to subdivision (a).

(c) The association shall make available substitute coverage on an individual basis in accordance with the provisions of subdivision (d), to each known insured or an annuitant under nongroup life and health insurance policies and annuities covered by the association, or owner if other than the insured or annuitant, and to each individual formerly insured or formerly an annuitant under a group policy who is not eligible for replacement group coverage, if the insured or annuitant had a right under law or the terminated policy or annuity to convert coverage to individual coverage or to continue an individual policy or annuity in force until a specified age or for a specified time, during which the insurer had no right unilaterally to make changes in any provision of the policy or annuity or had a right only to make changes in premium by class.

(d) In providing the substitute coverage required under subdivision (c), all of the following apply:

(i) The association may offer either to reissue the terminated coverage or to issue an alternative policy.

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

(iii) The association may reinsure an alternative or reissued policy.

(e) An alternative policy adopted by the association shall be subject to the approval of the commissioner. The association may adopt an alternative policy for future issuance without regard to any particular impairment or insolvency. An alternative policy shall contain at least the minimum statutory provisions required in this state and provide benefits that shall not be unreasonable in relation to the premium charged. The association shall set the premium in accordance with a table of rates which it shall adopt. The premium shall reflect the amount of insurance to be provided and the age and class of risk of each insured, but shall not reflect any changes in the health of the insured after the original policy was last underwritten. An alternative policy issued by the association shall provide coverage of a type similar to that of the policy issued by the impaired or insolvent insurer, as determined by the association.

(f) If the association elects to reissue terminated coverage at a premium rate different from that charged under the terminated policy, the premium shall be set by the association in accordance with the amount of insurance provided and the age and class of risk, subject to approval of the commissioner or by a court of competent jurisdiction.

(g) The association's obligations with respect to coverage under a policy of the impaired or insolvent insurer or under a reissued or alternative policy shall cease on the date the coverage or policy is replaced by another similar policy by the policyholder, the insured, or the association.

(7) If proceeding under subsection (3)(b) or (5) for a policy or contract carrying guaranteed minimum interest rates, the association shall assure the payment or crediting of a rate of interest consistent with section 7704(5)(c).

(8) Nonpayment of premiums within 31 days after the date required under the terms of a guaranteed, assumed, alternative, or reissued policy or contract or substitute coverage terminates the association's obligations under the policy or coverage under this chapter with respect to the policy or coverage, except for a claim incurred or any net cash surrender value which may be due in accordance with the provisions of this chapter.

(9) Premiums due for coverage after entry of an order of liquidation of an insolvent insurer belong to and are payable at the direction of the association, and the association is liable for unearned premiums due to policy or contract owners arising after the entry of the order.

(10) The protection provided by this chapter does not apply if guaranty protection is also provided to residents of this state by the laws of the domiciliary state of the impaired insurer or insolvent insurer.

(11) In carrying out its duties under this section, the association, subject to approval by a court in this state, may do the following:

(a) Impose permanent policy or contract liens in connection with a guarantee, assumption, or reinsurance agreement, if the association finds that the amounts that can be assessed under this chapter are less than the amounts needed to assure full and prompt performance of the association's duties under this chapter or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of the permanent policy or contract liens to be in the public interest.

(b) Impose temporary moratoriums or liens on payments of cash values and policy loans, or any other right to withdraw funds held in conjunction with policies or contracts, in addition to any contractual provisions for

deferral of cash or policy loan value. In addition, if the receivership court imposes a temporary moratorium or moratorium charge on payment of cash values or policy loans, or on any other right to withdraw funds held in conjunction with policies or contracts, out of the assets of the impaired insurer or insolvent insurer, the association may defer the payment of the cash values, policy loans, or other rights by the association for the period of the moratorium or moratorium charge imposed by the receivership court, but not for claims covered by the association that are to be paid in accordance with a hardship procedure established by the liquidator or rehabilitator and approved by the receivership court.

(12) A deposit in this state, held pursuant to law or required by the commissioner for the benefit of creditors, including policy owners, not turned over to the domiciliary liquidator upon the entry of a final order of liquidation or order approving a rehabilitation plan of an insurer domiciled in this state or in a reciprocal state, pursuant to section 8153, shall be promptly transferred to the association in accordance with section 8141a. The association may apply a portion of any amount so paid to it equal to the percentage determined by dividing the aggregate amount of all policy owners' claims related to that insolvency for which the association has provided or will provide statutory benefits by the aggregate amount of all policy owners' claims in this state related to that insolvency with the remainder used to pay claims pursuant to section 8141a(1)(a) to (e). Any amount remaining after the payment of claims under section 8141a(1)(a) to (e) shall be transferred to the domiciliary receiver.

(13) If the association fails to act as provided in subsections (3) and (5) within a reasonable period of time, the commissioner shall have the powers and duties of the association under this chapter with respect to impaired insurers or insolvent insurers.

(14) The association may render assistance and advice to the commissioner, upon his or her request, concerning rehabilitation, payment of claims, continuance of coverage, or the performance of other contractual obligations of an impaired insurer or insolvent insurer.

(15) The association has standing to appear or intervene before a court or agency in this state with jurisdiction over an impaired insurer or insolvent insurer concerning which the association is or may become obligated under this chapter or with jurisdiction over any person or property that the association may have rights to through subrogation or otherwise. The standing shall extend to all matters germane to the powers and duties of the association, including, but not limited to, proposals for reinsuring, modifying, or guaranteeing the covered policies or contracts of the impaired insurer or insolvent insurer and the determination of the covered policies and contractual obligations. The association may also appear or intervene before a court in another state with jurisdiction over an impaired insurer or insolvent insurer for which the association is or may become obligated or with jurisdiction over a third party against whom the association may have rights through subrogation of the insurer's policyholders.

(16) A person receiving benefits under this chapter shall be considered to have assigned the rights under, and any causes of action against any person for losses arising under, resulting from, or otherwise relating to, the covered policy or contract to the association to the extent of the benefits received because of this chapter whether the benefits are payments of or on account of contractual obligations, continuation of coverage, or provision of substitute or alternative coverages. The association may require an assignment to the association of such rights and causes of action by a payee, policy or contract owner, beneficiary, insured, or annuitant as a condition precedent to the receipt of rights or benefits conferred by this chapter upon that person. The association shall be subrogated to these rights against the assets of an impaired insurer or insolvent insurer. The subrogation rights of the association under this subsection has the same priority against the assets of the impaired insurer or insolvent insurer as that possessed by the person entitled to receive benefits under this chapter. In addition, the association has all common law rights of subrogation and any other equitable or legal remedy that would have been available to the impaired insurer or insolvent insurer or owner, beneficiary, or payee of a policy or contract with respect to the policy or contract, including without limitation for a structured settlement annuity, any right of the owner, beneficiary, or payee of the annuity, to the extent of benefits received pursuant to this chapter, against a person originally or by succession responsible for the losses arising from the personal injury relating to the annuity or payment of the annuity.

(17) If subsection (16) is invalid or ineffective for any person or claim for any reason, the amount payable by the association for the related covered obligations shall be reduced by the amount realized by any other person with respect to the person or claim that is attributable to the policies, or portions thereof, covered by the association.

(18) If the association has provided benefits for a covered obligation and a person recovers an amount that the association has rights to as described in subsection (16), the person shall pay to the association the portion of the recovery attributable to the policies, or portion thereof, covered by the association.

(19) In addition to other rights and powers under this chapter, the association may do the following:

(a) Enter into contracts necessary or proper to carry out the provisions and purposes of this chapter.

(b) Sue or be sued, including taking legal actions necessary or proper for recovery of unpaid assessments levied under section 7709 and to settle claims or potential claims against it.

(c) Borrow money to effect the purposes of this chapter. Notes or other evidence of indebtedness of the association not in default shall be legal investments for domestic insurers and may be carried as admitted assets.

(d) Employ or retain the people necessary to handle the financial transactions of the association and to perform other functions that become necessary or proper under this chapter.

(e) Negotiate and contract with a liquidator, rehabilitator, conservator, or ancillary receiver to carry out the powers and duties of the association.

(f) Take legal action necessary to avoid or recover payment of improper claims.

(g) Exercise, for the purposes of this chapter and to the extent approved by the commissioner, the powers of a domestic life or health insurer, but in no case may the association issue insurance policies or annuity contracts other than those issued to perform its obligations under this chapter.

(h) Join an organization of 1 or more other state associations of similar purposes, to further the purposes and administer the powers and duties of the association.

(i) Request information from a person seeking coverage from the association in order to aid the association in determining its obligations under this chapter to the person, and the person shall promptly comply with the request.

(j) Take other necessary or appropriate action to discharge its duties and obligations and to exercise its powers under this chapter.

(20) At any time within 1 year after the coverage date, the association may elect to succeed to the rights and obligations of the member insurer, that accrue on or after the coverage date and that relate to contracts, in whole or in part, by the association, under any 1 or more indemnity reinsurance agreements entered into by the member insurer as a ceding insurer and selected by the association; provided, however, that the association shall not exercise this election for a reinsurance agreement if the receiver, rehabilitator, or liquidator of the member insurer has previously and expressly disaffirmed the reinsurance agreement on which the association becomes responsible for the obligations of a member insurer. The association shall make an election under this subsection by providing a notice to the receiver, rehabilitator, or liquidator and to the affected reinsurer. If the association makes an election, all of the following apply with respect to the agreements selected by the association:

(a) The association is responsible for all unpaid premiums due under the agreements for periods both before and after the coverage date, and for the performance of all other obligations to be performed after the coverage date, for contracts covered, in whole or in part, by the association. The association may charge contracts covered in part by the association, through reasonable allocation methods, the cost for reinsurance in excess of the obligations of the association.

(b) The association is entitled to any amounts payable by the reinsurer under the agreements for losses or events that occur in periods after the coverage date and that relate to contracts covered by the association, in whole or in part, provided that the association is obligated upon receipt of this amount to pay to the beneficiary under the policy or contract on account of which they were paid the amount received by the association that is in excess of the benefits paid by the association on account of the policy or contract less the retention of the impaired member insurer or insolvent member insurer applicable to the loss or event.

(c) Within 30 days following the association's election, the association and each indemnity reinsurer shall calculate the net balance due to or from the association under each such reinsurance agreement as of the date of the association's election, which calculation shall give full credit to all items paid by either the member insurer or its receiver, rehabilitator, or liquidator or the indemnity reinsurer during the period between the coverage date and the date of the association's election. Either the association or the indemnity reinsurer shall pay the net balance due the other within 5 days of the completion of this calculation. If the receiver, rehabilitator, or liquidator has received any amounts due the association pursuant to subdivision (b), the receiver, rehabilitator, or liquidator shall remit this amount to the association as promptly as practicable.

(d) If, within 60 days of the election, the association pays the premiums due for periods both before and after the coverage date that relate to contracts covered by the association, in whole or in part, the reinsurer shall not terminate the reinsurance agreements insofar as the agreements relate to contracts covered by the association in whole or in part and shall not set off any unpaid premiums due for periods prior to the coverage date against amounts due the association.

(e) As used in this subsection, "coverage date" means the date on which the association becomes responsible for the obligations of the member insurer.

(21) If the association transfers its obligations to another insurer, and if the association and the other insurer agree, the other insurer shall succeed to the rights and obligations of the association under subsection

(20) effective on the date agreed to by the association and the other insurer and regardless of whether the association has made the election referred to in subsection (20). If this occurs, the indemnity reinsurance agreement automatically terminates for new reinsurance unless the indemnity reinsurer and other insurer agree to the contrary and the obligations described in subsection (20)(b) no longer apply on and after the date the indemnity reinsurance agreement is transferred to the third party insurer. This subsection does not apply if the association has previously expressly determined in writing that it will not exercise the election referred to in subsection (20).

(22) Subsections (20) and (21) shall be applied consistently with section 8132 and shall supersede the provisions of any affected reinsurance agreement that provides for or requires any payment of reinsurance proceeds, on account of losses or events that occur in periods after the coverage date, to the receiver, liquidator, or rehabilitator or the insolvent member insurer. The receiver, rehabilitator, or liquidator remain entitled to any amounts payable by the reinsurer under the reinsurance agreement with respect to losses or events that occur in periods prior to the coverage date, subject to applicable setoff provisions.

(23) Except as otherwise expressly provided in subsections (20) to (22), this section does not do any of the following:

(a) Alter or modify the terms and conditions of the indemnity reinsurance agreements of the insolvent member insurer.

(b) Abrogate or limit any rights of any reinsurer to claim that it is entitled to rescind a reinsurance agreement.

(c) Give a policy owner or beneficiary an independent cause of action against an indemnity reinsurer that is not otherwise set forth in the indemnity reinsurance agreement.

(24) The board of directors of the association, in the exercise of reasonable business judgment, may determine the means by which the association is to provide the benefits of this chapter in an economical and efficient manner.

(25) If the association has arranged or offered to provide the benefits of this chapter to a covered person under a plan or arrangement that fulfills the association's obligations under this chapter, the person is not entitled to benefits from the association in addition to, or other than those provided under, the plan or arrangement.

(26) Venue in a suit against the association arising under this chapter shall be in Ingham county. The association shall not be required to give an appeal bond in an appeal that relates to a cause of action arising under this chapter.

(27) In carrying out its duties in connection with guaranteeing, assuming, or reinsuring policies or contracts under subsection (3) or (5), the association may, subject to the commissioner's or the receivership court's approval, issue substitute coverage for a policy or contract that provides an interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value, by issuing an alternative policy or contract in accordance with the following provisions:

(a) Instead of the index or other external reference provided for in the original policy or contract, the alternative policy or contract provides for a fixed interest rate, payment of dividends with minimum guarantees, or a different method for calculating interest or changes in value.

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

(c) The alternative policy or contract is substantially similar to the replaced policy or contract in all other material terms.

History: Add. 1982, Act 194, Imd. Eff. June 28, 1982;—Am. 1989, Act 302, Imd. Eff. Jan. 3, 1990;—Am. 2006, Act 671, Imd. Eff. Jan. 10, 2007.

Compiler's note: Enacting section 1(1) of Act 671 of 2006 provides:

"Enacting section 1. (1) Sections 7702, 7704, 7705, 7706, 7707, 7708, 7709, 7711, 7712, 7714, and 7717 of the insurance code of 1956, 1956 PA 218, MCL 500.7702, 500.7704, 500.7705, 500.7706, 500.7707, 500.7708, 500.7709, 500.7711, 500.7712, 500.7714, and 500.7717, as amended by this amendatory act, apply to an insurer impairment or insurer insolvency proceeding commenced on or after the effective date of this amendatory act for which guaranty association coverage obligations are incurred."

Popular name: Act 218