

Ohio Revised Code
Chapter 3955
Ohio Insurance Guaranty Association Act

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§ 3955.01. Property and casualty insurance guaranty association definitions.

Effective Date: 06-29-1994 ; 03-30-2007

As used in sections 3955.01 to 3955.19 of the Revised Code:

(A) "Account" means either of the two accounts created by division (B) of section 3955.06 of the Revised Code.

(B) "Affiliate" means a person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, an insolvent insurer on the thirty-first day of December of the year next preceding the date the insurer becomes an insolvent insurer.

(C) "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with, or corporate office held by, the person.

"Control" shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten per cent or more of the voting securities of any other person. This presumption may be rebutted by a showing that control does not exist in fact.

(D)(1) "Covered claim" means an unpaid claim, including one for unearned premiums, which arises out of and is within the coverage of an insurance policy or policies to which sections 3955.01 to 3955.19 of the Revised Code apply, when issued by an insurer which becomes an insolvent insurer on or after September 4, 1970, and either of the following applies:

(a) The claimant or insured is a resident of this state at the time of the insured event, provided that for the purpose of determining the place of residence of a claimant or insured that is an entity other than a natural person, the state in which its principal place of business is located at the time of the insured event shall be considered the residence of such claimant or insured.

(b) The claim is a first-party claim for property damage to an insured's property that is permanently located in this state.

(2) "Covered claim" does not include any amount:

(a) In excess of ten thousand dollars on any unearned premium claim;

(b) In excess of three hundred thousand dollars on any claim. For purposes of this division, all claims arising out of bodily injury or death to any one person shall constitute a single claim regardless of the number of insurance policies issued or the number of derivative claims made, including, but not limited to, claims for loss of consortium, for injury to the relationship, for survivorship, or arising out of wrongful death.

(c) Due any reinsurer, insurer, insurance pool, or underwriting association through subrogation or otherwise; provided, that when such reinsurer, insurer, insurance pool, or underwriting association has paid a claim and thereby becomes subrogated to the amount of that claim, such subrogated claim may be asserted only against the receiver of the insolvent insurer and in no event against the insured of the insolvent insurer;

(d) Awarded as punitive or exemplary damages;

(e) Sought as a return of premium under any retrospective rating plan;

(g) Due on any one claim that does not exceed one hundred dollars;

(h) Due under any policy of insurance issued to an insured whose net worth exceeds fifty million dollars on the last day of the insured's fiscal year next preceding the date the insurer becomes an insolvent insurer. An insured's net worth described in this division shall equal the aggregate of the net worth of the insured and all of the insured's subsidiaries. The exclusion under this division shall not apply in any of the following situations:

(i) The insured has applied for or consented to the appointment of a receiver, trustee, or liquidator for all or a substantial part of the insured's assets.

(ii) The insured has filed a voluntary petition in bankruptcy.

(iii) The insured has filed a petition or answer seeking a reorganization or arrangement with creditors or seeking to take advantage of any insolvency law.

(iv) A court of competent jurisdiction has entered an order, judgment, or decree concerning the insured's bankruptcy, insolvency, or reorganization petition.

(E) "Insolvent insurer" means an insurer licensed to transact insurance in this state either at the time the policy was issued or when the insured event occurred, decreed by a court of competent jurisdiction of the state of such insurer's domicile to be insolvent, and ordered by or pursuant to the authority of such court to be liquidated.

(F) "Member insurer" means any person that writes any kind of insurance to which this chapter applies, as prescribed in section 3955.05 of the Revised Code, including the exchange of reciprocal or interinsurance contracts, and is licensed to transact any insurance in this state.

(G) "Net direct written premiums" means direct gross premiums written in this state on insurance policies to which sections 3955.01 to 3955.19 of the Revised Code apply, less return premiums thereon and dividends paid or credited to policyholders on such direct business, but does not include premiums on contracts between insurers or reinsurers.

(H) "Net worth" means the amount by which the value of all assets exceeds all liabilities and includes, but is not limited to, such accounting terms as owners equity, partnership equity, shareholders equity, net assets, and fund balances.

(I) "Person" has the same meaning as in section 1.59 of the Revised Code.

Effective Date: 06-29-1994 ; 03-30-2007

§ 3955.02. Citing act.

Sections 3955.01 to 3955.19 of the Revised Code may be cited as the Ohio insurance guaranty association act.

Effective Date: 10-26-1989

§ 3955.03. Purposes of chapter.

The purposes of sections 3955.01 to 3955.19 of the Revised Code are to provide a mechanism for the payment of covered claims under certain insurance policies, avoid excessive delay in payment and reduce financial loss to claimants or policyholders because of the insolvency of an insurer, assist in the detection and prevention of insurer insolvencies, and provide an association to assess the cost of such protection among insurers.

Effective Date: 06-29-1994

§ 3955.04. Liberal construction of chapter.

Sections 3955.01 to 3955.19 of the Revised Code shall be liberally construed to effect the purpose stated under section 3955.03 of the Revised Code, which shall constitute an aid and guide to interpretation.

Effective Date: 10-26-1989

§ 3955.05. Nonapplicability to certain kinds of insurance.

Sections 3955.01 to 3955.19 of the Revised Code apply to all kinds of direct insurance, except:

- (A) Title insurance;
- (B) Fidelity or surety bonds, or any other bonding obligations;
- (C) Credit insurance, vendors' single interest insurance, collateral protection insurance, or any similar insurance protecting the interests of a creditor arising out of a creditor-debtor transaction;
- (D) Mortgage guaranty, financial guaranty, residual value, or other forms of insurance offering protection against investment risks;
- (E) Ocean marine insurance;
- (F) Any insurance provided by or guaranteed by government, including, but not limited to, any department, board, office, commission, agency, institution, or other instrumentality or entity of any branch of state government, any political subdivision of this state, the United States or any agency of the United States, or any separate or joint governmental self-insurance or risk-pooling program, plan, or pool;
- (G) Contracts of any corporation by which health services are to be provided to its subscribers;
- (H) Life, annuity, health, or disability insurance, including sickness and accident insurance written pursuant to Chapter 3923. of the Revised Code;
- (I) Fraternal benefit insurance;
- (J) Mutual protective insurance of persons or property;
- (K) Reciprocal or interinsurance contracts written pursuant to Chapter 3931. of the Revised Code for medical malpractice insurance if the reciprocal exchange or interinsurance exchange is not subject to the risk-based capital requirements in effect in the state of domicile of the reciprocal exchange or interinsurance exchange. As used in this division, "medical malpractice insurance" means insurance coverage against the legal liability of the insured and against loss, damage, or expense incident to a claim arising out of the death, disease, or injury of any person as the result of negligence or malpractice in rendering professional service by any licensed physician, podiatrist, or hospital, as those terms are defined in section 2305.113 of the Revised Code.
- (L) Any political subdivision self-insurance program or joint political subdivision self-insurance pool established under Chapter 2744. of the Revised Code;
- (M) Warranty or service contracts, or the insurance of those contracts;

(N) Any state university or college self-insurance program established under section 3345.202 of the Revised Code;

(O) Any transaction, or combination of transactions, between a person, including affiliates of such person, and an insurer, including affiliates of such insurer, that involves the transfer of investment or credit risk unaccompanied by a transfer of insurance risk;

(P) Credit union share guaranty insurance issued pursuant to Chapter 1761. of the Revised Code;

(Q) Insurance issued by risk retention groups as defined in Chapter 3960. of the Revised Code;

(R) Workers' compensation insurance, including any contract indemnifying an employer who pays compensation directly to employees.

Effective Date: 06-29-1994; 12-30-2004; 06-27-2005; 03-30-2007

§ 3955.06. Ohio insurance guaranty association.

(A) There is hereby created a nonprofit unincorporated association to be known as the Ohio insurance guaranty association. All member insurers shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under a plan of operation established and approved under section 3955.09 of the Revised Code and shall exercise its powers through a board of directors established under section 3955.07 of the Revised Code.

(B) For purposes of administration and assessment, the association shall be divided into two accounts:

(1) The automobile insurance account;

(2) The account for all other insurance to which sections 3955.01 to 3955.19 of the Revised Code apply.

Effective Date: 06-29-1994

§ 3955.07. Board of directors.

(A) The board of directors of the Ohio insurance guaranty association shall consist of not less than five nor more than nine persons serving terms as established in the plan of operation. The members of the board shall be selected by member insurers, subject to the approval of the superintendent. Vacancies on the board shall be filled for the remaining period of the term by the unanimous vote of the remaining directors with the approval of the superintendent of insurance. A majority of the members shall be representatives of domestic insurers.

(B) In approving selections to the board, the superintendent shall consider among other things whether all member insurers are fairly represented.

(C) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors.

Effective Date: 05-21-1976

§ 3955.08. Association power and duties.

(A) The Ohio insurance guaranty association shall:

(1) Be obligated to the extent of the covered claims existing prior to the determination that an insolvent insurer exists and arising within thirty days after such determination, or before the policy expiration date if less than thirty days after the determination, or before the insured replaces the policy or on request effects cancellation, if he does so within thirty days after the determination. In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the face amount of the policy from which the claim arises. Claims of assessable members or subscribers of an insolvent insurer shall not be paid until all assessable subscribers or members have been assessed in accordance with section 3903.31 of the Revised Code and such assessments have been paid. Notwithstanding any other provision of the Revised Code, the association shall not be liable to pay any claim filed with the association after the earlier of the final date set by a court for filing claims in the liquidation proceedings of the insolvent insurer or eighteen months after the order of liquidation.

(2) Be deemed the insurer to the extent of its obligation on the covered claims and to such extent shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent;

(3) Allocate claims paid and expenses incurred among the accounts separately, and assess member insurers separately for each account amounts necessary to pay the obligations of the association under division (A)(1) of this section subsequent to an insolvency, the expenses of handling covered claims subsequent to insolvency, and other expenses authorized by sections 3955.01 to 3955.19 of the Revised Code. The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the preceding calendar year on the kinds of insurance in the account bears to the net direct written premiums of all member insurers for the preceding calendar year on such kinds of insurance.

Each member insurer shall be notified of the assessment not later than thirty days before it is due. Each member insurer may be assessed in any year on any account any amount not greater than one and one-half per cent of its net direct written premiums for the preceding calendar year on the kinds of insurance in that account. After an initial assessment has been made for an insolvency, any subsequent assessments for that insolvency may be calculated in the same manner as the initial assessment and may use the same calendar year's net direct written premiums as were used in determining the original assessment. If the maximum assessment, together with the other assets of the association in any account, does not provide in any one year in any account an amount sufficient to make all necessary payments from that account, the funds available shall be prorated and the unpaid portion shall be paid as soon as funds become available, or claims shall be paid in any other manner the association may consider reasonable, including the payment of claims as they are received from claimants or the payment of claims in groups or categories.

The association may exempt or defer, in whole or in part, the assessment of any member insurer, if it would cause the insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which such insurer is authorized to transact insurance. The association may waive an assessment of any insurer if such assessment does not exceed ten dollars. If the balance of funds in any account, established pursuant to this section and section 3955.06 of the Revised Code, is in excess of amounts needed to pay all obligations chargeable to that account, the board of directors may authorize the transfer of such excess funds to any other account established pursuant to such sections in lieu of making an additional assessment for such other account or to reduce the total amount of an additional assessment for such other account.

(4) Investigate claims brought against the association and adjust, compromise, settle, or pay covered claims to the extent of the association's obligation and deny all other claims;

(5) Notify such persons as the superintendent directs under section 3955.10 of the Revised Code;

(6) Handle claims through its employees or through one or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the superintendent, but may be declined by a member insurer.

(7) Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association, and pay all other expenses of the association authorized by sections 3955.01 to 3955.19 of the Revised Code.

(B) The association may:

(1) Appear in, defend, and appeal any action on a claim brought against the association;

(2) Employ or retain such persons as are necessary to handle claims and perform other duties of the association;

(3) Borrow funds necessary to effect the purposes of sections 3955.01 to 3955.19 of the Revised Code, in accord with the plan of operation;

(4) Sue or be sued;

(5) Negotiate and become a party to such contracts as are necessary to carry out the purposes of sections 3955.01 to 3955.20 of the Revised Code;

(6) Perform such other acts as are necessary or proper to effectuate the purposes of sections 3955.01 to 3955.19 of the Revised Code;

(7) Refund to the member insurers in proportion to the contribution of each member insurer to that account that amount by which the assets of the account exceed the liabilities, if, at the end of any calendar year, the board of directors finds that the assets of the association in any account exceed the liabilities of that account as estimated by the board of directors for the coming year, provided that the association shall not be required to make a refund to any member insurer where the amount does not exceed ten dollars;

(8) Act, with the approval of the superintendent, as a servicing facility for other insurance guaranty associations.

Effective Date: 06-29-1994

§ 3955.09. Plan of operation and amendments.

(A) The Ohio insurance guaranty association shall submit to the superintendent of insurance a plan of operation and any amendments to the plan necessary or suitable to assure the fair, reasonable, and equitable administration of the association. If the association fails to submit a suitable plan of operation by December 3, 1970, or if at any time the association fails to submit suitable amendments to the plan, the superintendent shall promulgate a plan of operation or any amendments to it. The plan of operation and any amendments to it shall become effective upon approval by the superintendent.

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

(C) The plan of operation shall:

(1) Establish the procedures whereby all the powers and duties of the association shall be performed;

(2) Establish procedures for handling assets of the association;

(3) Establish the amount and method of reimbursing members of the board of directors under section 3955.07 of the Revised Code;

(4) Establish procedures whereby claims may be filed with the association, hearings and appeals may be had, and acceptable forms of proof of claims may be prescribed. Notice of claims to the receiver or liquidator appointed in this state of an insolvent insurer shall be deemed notice to the association or its agent. A list of such claims shall be periodically submitted to an association or similar organization in another state by any receiver or liquidator appointed in this state. Any notice of claim filed with a receiver or liquidator appointed in another state, if such receiver or liquidator forwards a certified copy of the notice of claim to the association within such time as is designated for filing claims with the association, shall be deemed notice to the association.

(5) Establish regular places and times for meetings of the board of directors;

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

(7) Provide that any member insurer aggrieved by any final action or decision of the association may appeal to the superintendent within thirty days after the action or decision;

(8) Establish the procedures whereby selections for the board of directors shall be submitted to the superintendent;

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

(D) The plan of operation may provide that any or all powers and duties of the association, except those under divisions (A)(3) and (B)(3) of section 3955.08 of the Revised Code, may be delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association, or its equivalent, in two or more states. Such a corporation, association, or organization shall be reimbursed as a servicing facility and paid for its performance of any other functions of the association. A delegation under this division shall take effect only with the approval of both the board of directors and the superintendent, and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than those provided by sections 3955.01 to 3955.19 of the Revised Code.

Effective Date: 06-29-1994

§ 3955.10. Superintendent of insurance - powers and duties.

(A) The superintendent of insurance shall:

(1) Immediately furnish to the association a copy of any complaint filed by the superintendent in any court which seeks an order to rehabilitate or liquidate the company;

(2) Notify the Ohio insurance guaranty association of the existence of an insolvent insurer not later than three days after he receives notice of its existence;

(3) Upon request of the board of directors, provide the association with a statement of the net direct written premiums of each member insurer related to either account.

(B) The superintendent may:

(1) Require that the association notify any or all of the insureds of an insolvent insurer and any other interested parties of the determination of insolvency and of their rights under sections 3955.01 to 3955.19 of the Revised Code. Such notification shall be by mail at their last known address, but if sufficient information for notification by mail is not available, notice by publication in a newspaper of general

circulation in an area reasonably selected to assure that interested parties will become acquainted with the facts shall be sufficient.

(2) Suspend or revoke, after notice and hearing under Chapter 119. of the Revised Code, the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or to comply with the plan of operation. The superintendent, in lieu of such suspension or revocation, may levy a penalty on any member insurer which fails to pay an assessment when due. Such penalty shall not exceed five per cent of the unpaid assessment per month, except that no penalty shall be less than one hundred dollars per month.

(3) Revoke the designation of any servicing facility when he finds claims are being handled unsatisfactorily.

(C) Any final action or order of the superintendent under sections 3955.01 to 3955.19 of the Revised Code is subject to judicial review under Chapter 119. of the Revised Code.

Effective Date: 06-29-1994

§ 3955.11. Repealed.

Effective Date: 05-21-1976

§ 3955.12. Subrogation of association - recovery against insolvent insurers.

(A) The Ohio insurance guaranty association shall be subrogated to the rights of any person recovering under sections 3955.01 to 3955.19 of the Revised Code to the extent of the person's recovery from the association. Every insured or claimant seeking the protection of sections 3955.01 to 3955.19 of the Revised Code shall cooperate with the association to the same extent as such person would have been required to cooperate with the insolvent insurer. Except as provided in division (B) of this section, the association shall have no cause of action against the insured of the insolvent insurer for any sums the association has paid out.

B)(1) The association has the right to recover from the following insureds or persons the amount of any covered claim paid to or on behalf of those insureds or persons:

(a) Any insured who is not a resident of this state at the time of the insured event, except for first-party claims for property damage to an insured's property that is permanently located in this state;

(b) Any person that is an affiliate of the insolvent insurer.

(2) The association has the right to recover from any insured of an insolvent insurer for any sums the association has paid out as the result of an error.

(C) The receiver, liquidator, or statutory successor of an insolvent insurer shall be bound by settlements of covered claims by the association or a similar organization in another state. The court having jurisdiction shall grant such claim priority equal to that which the claimant would have been entitled in the absence of sections 3955.01 to 3955.19 of the Revised Code against the assets of the insolvent insurer. The expenses of the association or similar organization in handling claims shall be accorded the same priority as the liquidator's expenses.

(D) The association periodically shall file with the receiver or liquidator of an insolvent insurer reports of the covered claims paid by the association and estimates of anticipated claims on the association, which shall preserve the right to the association against the assets of the insolvent insurer.

Effective Date: 06-29-1994; 03-30-2007

§ 3955.13. Exhausting rights under other policy.

(A) Any person having a covered claim upon which recovery is also presently possible under an insurance policy written by another insurer shall be required first to exhaust his rights under such other policy. Any amount payable on a covered claim under sections 3955.01 to 3955.19 of the Revised Code shall be reduced by the amount of such recovery.

(B) Any person having a claim which may be recovered against more than one insurance guaranty association or its equivalent shall first seek recovery from the association of the place of residence of the insured, except that a first-party claim for damage to the insured's property with a permanent location shall first be presented to the association of the state of the location of the property. Any recovery under sections 3955.01 to 3955.19 of the Revised Code shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent.

Effective Date: 06-29-1994

§ 3955.14. Aiding detection and prevention of insurer insolvencies.

To aid in the detection and prevention of insurer insolvencies:

(A) The board of directors of the Ohio insurance guaranty association, upon a majority vote, may do the following:

(1) Make recommendations to the superintendent of insurance for the detection and prevention of insurer insolvencies;

(2) Respond to requests by the superintendent to discuss and make recommendations regarding the status of any member insurer whose financial condition may be hazardous to policyholders or the public. These recommendations are not public records.

(B) At the conclusion of any domestic insurer insolvency in which the association was obligated to pay covered claims, the board may prepare a report, based on the information available to the association, on the history and causes of the insolvency. The board shall submit to the superintendent any report prepared pursuant to this division.

Effective Date: 06-29-1994

§ 3955.15. Examination and regulation by superintendent - annual financial report.

The Ohio insurance guaranty association is subject to examination and regulation by the superintendent of insurance. The association shall submit in a form approved by the superintendent, not later than the thirtieth day of March of each year, a financial report for the preceding calendar year.

Effective Date: 09-04-1970

§ 3955.16. Exemption from fees and taxation.

The Ohio insurance guaranty association is exempt from payment of all fees and taxes levied by this state or any of its subdivisions.

Effective Date: 09-04-1970

§ 3955.17. Rates - factors and calculation.

(A) A rate shall not be found excessive under section 3935.03 or 3937.02 of the Revised Code solely because it contains a factor designed to recover any amounts paid to the Ohio insurance guaranty association by a member insurer as an assessment under division (A)(3) of section 3955.08 of the Revised Code from sources other than such fund.

(B) The rates subject to section 3935.03 or 3937.02 of the Revised Code may include an amount necessary to recoup assessments paid or payable to the Ohio insurance guaranty association made pursuant to division (A)(3) of section 3955.08 of the Revised Code and reasonable expenses and costs attributable to payment and recoupment of the assessment. The association may establish a plan whereby assessments or projected assessments due from member insurers may be payable periodically. Such plan may also provide for the calculation and use of rates or rating factors necessary to recoup such assessments, subject to the approval of the superintendent. Member insurers of the association implementing a change in rates pursuant to the plan shall file such changes with the superintendent, provided such changes shall not increase rates more than the amount authorized by the association and approved by the superintendent pursuant to the plan. The association may consult with member insurers or licensed rating bureaus in connection with the establishment and operation of any such plan.

Effective Date: 05-21-1976

§ 3955.18. Immunity.

There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer, the Ohio Insurance Guaranty Association or its agents or employees, the board of directors, or the superintendent of insurance or his representatives, including the office of the deputy liquidator and its employees, for any act or omission in the performance of their powers and duties under sections 3955.01 to 3955.19 of the Revised Code.

Effective Date: 06-29-1994 There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer, the Ohio Insurance Guaranty Association or its agents or employees, the board of directors, or the superintendent of insurance or his representatives, including the office of the deputy liquidator and its employees, for any act or omission in the performance of their powers and duties under sections 3955.01 to 3955.19 of the Revised Code.

Effective Date: 06-29-1994

§ 3955.19. Staying pending proceedings involving insolvent insurers.

To permit a proper defense by the Ohio insurance guaranty association of all pending causes of action, all proceedings in which an insolvent insurer is a party or is obligated to defend a party in any court in this state shall be stayed for six months, and such additional time thereafter as may be determined by the court in which the proceedings are pending or with jurisdiction over the proceedings, from the date the insolvency is determined or an ancillary proceeding is instituted in this state, whichever is later.

As to any covered claims arising from any judgment, order, decision, verdict, or finding based on a default or stipulation of the insolvent insurer or its insured, the association, either on its own behalf or on behalf of the insured, may apply to the court to have its judgment, order, decision, verdict, or finding vacated. The court shall grant the application, and the association shall be permitted to defend the claim on the merits.

Effective Date: 06-29-1994

§ 3955.20. Repealed.

Effective Date: 10-26-1989

§ 3955.21. Repealed.

Effective Date: 08-08-1991