

508C.8 Powers and duties of the association.

1. If a domestic, foreign, or alien insurer is an impaired insurer, the association, subject to conditions imposed by the association and approved by the impaired insurer and the commissioner, may:

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

b. Provide moneys, pledges, notes, guarantees, or other means as proper to effectuate paragraph "a" and assure payment of the contractual obligations of the impaired insurer pending action under paragraph "a".

c. Loan money to the impaired insurer and guarantee borrowings by the impaired insurer, provided the association has concluded, based on reasonable assumptions, that there is a likelihood of repayment of the loan and a probability that unless a loan is made the association would incur substantial liabilities under subsection 2.

2. If a member insurer is an insolvent insurer, the association may in its discretion do any of the following:

a. The association may do either of the following:

(1) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured the covered policies or contracts of an insolvent insurer.

(2) Assure payment of the contractual obligations of the insolvent insurer.

b. Provide moneys, pledges, notes, guarantees, or other means as reasonably necessary to discharge the duties described in this subsection.

c. Provide benefits and coverages in accordance with all of the following provisions:

(1) With respect to life and health insurance policies or contracts and annuity contracts, assure payment of benefits for premiums identical to the premiums and benefits, except for conversion and renewability, that would have been payable under the policies or contracts of the insolvent insurer for the following claims incurred as follows:

(a) With respect to group policies or contracts, not later than the earlier of the next renewal date under those policies or contracts or forty-five days, but in no event less than thirty days, after the date on which the association becomes obligated with respect to those policies or contracts.

(b) With respect to nongroup policies or contracts not later than the earlier of the next renewal date, if any, under those policies or contracts or one year, but in no event less than thirty days, from the date on which the association becomes obligated with respect to the policies or contracts.

(2) Make diligent efforts to provide all known insureds or annuitants, for nongroup policies or contracts, or group policy owners, with respect to group policies or contracts, thirty days' notice of the termination of the benefits provided pursuant to subparagraph (1).

(3) With respect to nongroup life and health insurance policies or contracts covered by the association, make available to each known insured or annuitant, or owner if other than the insured or annuitant, and with respect to an individual formerly insured or formerly an annuitant under a group policy or contract who is not eligible for replacement group coverage, substitute coverage on an individual basis in accordance with the provisions of subparagraph (4), if the insureds or annuitants had a right under law or under the terminated policy or contract to convert coverage to individual coverage or to continue an individual policy or contract in force until a specified age or for a specified time, during which the insurer had no right to unilaterally make changes in any provision of the policy or contract or had a right only to make changes in premium by class.

(4) In providing the substitute coverage required under subparagraph (3), the association may offer either to reissue the terminated coverage or to issue an alternative policy or contract.

(a) Reissued or alternative 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.

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

(5) Alternative policies or contracts adopted by the association shall be subject to the approval of the domiciliary insurance commissioner and the receivership court. The

association may adopt alternative policies or contracts of various types for future issuance without regard to any particular impairment or insolvency of an insurer.

(a) Alternative policies or contracts shall contain at least the minimum statutory provisions required in this state and shall provide benefits that are not unreasonable in relation to the premium charged. The association shall set the premium in accordance with a table of rates that the association 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 or contract was last underwritten.

(b) 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 set by the association in accordance with the amount of insurance provided and the age and class of risk, subject to approval of the domiciliary insurance commissioner and the receivership court.

(7) The association's obligations with respect to coverage under any policy or contract of an impaired or insolvent insurer or under any reissued or alternative policy or contract, shall cease on the date the coverage, or policy or contract, is replaced by another similar policy or contract by the policy or contract owner, or the association.

(8) When proceeding under this paragraph "c" with respect to 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 508C.3, subsection 3, paragraph "a".

3. a. In carrying out its duties under subsection 2, permanent policy liens or contract liens may be imposed in connection with a guarantee, assumption, or reinsurance agreement, if the court does both of the following:

(1) Finds either that the amounts which can be assessed under this chapter are less than the amounts needed to assure full and prompt performance of the insolvent insurer's contractual obligations, or that the economic or financial conditions as they affect member insurers are sufficiently adverse to the public interest to justify the imposition of policy or contract liens.

(2) Approves the specific policy liens or contract liens to be used.

b. Before being obligated under subsection 2, the association may request the imposition of a temporary moratorium, not exceeding three years, or liens on payments of cash values, termination values, and policy loans in addition to any contractual provisions for deferral of cash values, termination values, or policy loans. The temporary moratoriums and liens may be imposed by the court as a condition of the association's liability with respect to the insolvent insurer.

c. The obligations of the association under subsection 2 regarding a covered policy shall be reduced to the extent that the person entitled to the obligations has received payment of all or any part of the contractual benefits payable under the covered policy from any other source.

d. The association may offer modifications to the owners of policies or contracts or classes of policies or contracts issued by the insolvent insurer, if the association finds that under the policies or contracts the benefits provided, provisions pertaining to renewal, or the premiums charged or which may be charged are not reasonable. If the owner of a policy or contract to be modified fails or refuses to accept the modification as approved by the court, the association may terminate the policy or contract as of a date not less than one hundred eighty days after the modification is sent to the owner. The association shall have no liability under the policy or contract for any claim incurred or continuing beyond the termination date. However, this paragraph does not apply to interest adjustments made pursuant to section 508C.3, subsection 3, paragraph "a".

4. If the association fails to act within a reasonable period of time as provided in subsection 2, the commissioner shall have the powers and duties of the association under this chapter with respect to insolvent insurers.

5. Upon request the association may give assistance and advice to the commissioner

concerning the rehabilitation, payment of claims, continuance of coverage, or the performance of other contractual obligations of an impaired or insolvent insurer.

6. *a.* The association shall have standing to appear or intervene before any court or agency in this state with jurisdiction over an impaired or insolvent insurer concerning which the association is or may become obligated under this chapter or with jurisdiction over any person or property against which the association may have rights through subrogation or otherwise. 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 or insolvent insurer and the determination of the covered policies or contracts, and contractual obligations. The association shall also have the right to appear or intervene before any court or agency in another state with jurisdiction over an impaired or insolvent insurer for which the association is or may become obligated or with jurisdiction over any person or property against whom the association may have rights through subrogation or otherwise.

b. As a creditor of an impaired or insolvent insurer as provided under section 508C.13, subsection 3, and consistent with the provisions of section 507C.34, the association and other similar associations shall be entitled to receive a disbursement of assets out of the marshaled assets, from time to time as the assets become available to reimburse the association or similar associations, as a credit against contractual obligations under this chapter. If the liquidator has not, within one hundred twenty days of a final determination of insolvency of an insurer by the receivership court, made an application to the court for the approval of a proposal to disburse assets out of marshaled assets to guaranty associations having obligations because of the insolvency, the association or similar associations shall be entitled to make application to the receivership court for approval of its own proposal to disburse these assets.

7. *a.* A person receiving benefits under this chapter is deemed to have assigned the rights under 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 under this chapter, whether the benefits are payments of or on account of contractual obligations, a continuation of coverage, or the provision of substitute or alternative coverages. The association may require an assignment to the association of the rights and causes of action by any payee, policyholder or contract owner, beneficiary, insured, or annuitant as a condition precedent to the receipt of any rights or benefits conferred by this chapter upon the person. The association shall be subrogated to these rights against the assets of the impaired or insolvent insurer.

b. The subrogation rights of the association under this subsection have the same priority against the assets of the impaired or insolvent insurer as that possessed by the person entitled to receive benefits under this chapter.

c. In addition to the rights pursuant to subsection 3, paragraphs “*a*” and “*b*”, the association shall have all common law rights of subrogation and any other equitable or legal remedy which would have been available to the impaired or insolvent insurer or owner, beneficiary, or payee of a covered policy or contract with respect to the policy or contract, including without limitation, in the case of a structured settlement annuity, any rights of the owner, beneficiary, or payee of the annuity, to the extent of benefits received pursuant to this chapter, against the person originally or by succession responsible for the losses arising from the personal injury relating to the annuity or payment for the annuity, excepting any such person responsible solely by reason of serving as an assignee in respect of a qualified assignment under section 130 of the Internal Revenue Code.

d. If the provisions of paragraphs “*a*” through “*c*” are invalid or ineffective with respect to any person or claim for any reason, the amount payable by the association with respect to 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 contracts, or portion thereof, covered by the association.

e. If the association has provided benefits with respect to a covered obligation and a person recovers amounts as to which the association has rights as described in paragraphs “*a*” through “*d*”, the person shall pay to the association the portion of the recovery attributable to the policies or contracts, or portion thereof, covered by the association.

8. a. The benefits that the association may become obligated to cover shall in no event exceed the lesser of either of the following:

(1) The contractual obligations for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer.

(2) Any of the following:

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

(i) Three hundred thousand dollars in life insurance death benefits, but not more than one hundred thousand dollars in net cash surrender and net cash withdrawal values for life insurance.

(ii) Five hundred thousand dollars for health insurance benefits which are basic hospital expense coverage, basic medical-surgical expense coverage, or major medical expense coverage as defined by the commissioner by rule pursuant to section 514D.4; three hundred thousand dollars for health insurance benefits which are disability income protection as defined by the commissioner by rule pursuant to section 514D.4; three hundred thousand dollars for long-term care insurance as defined in section 514G.103; or one hundred thousand dollars for other health insurance benefits including any net cash surrender and net cash withdrawal values.

(iii) Two hundred fifty thousand dollars in the present value of annuity benefits, including net cash surrender and net cash withdrawal values.

(iv) With respect to each payee of a structured settlement annuity, or the beneficiary or beneficiaries of the payee if the payee is deceased, two hundred fifty thousand dollars in present value annuity benefits, in the aggregate, including net cash surrender and net cash withdrawal values.

(b) (i) With respect to each individual participating in a benefit plan established under section 401, 403(b), or 457 of the United States Internal Revenue Code, or each unallocated annuity contract account, excluding a plan established under section 401, 403(b), or 457 of the United States Internal Revenue Code, not more than two hundred fifty thousand dollars in the aggregate, in present value annuity benefits, including net cash surrender and net cash withdrawal values for the beneficiaries of the deceased individual.

(ii) However, the association shall not in any event be obligated to cover more than an aggregate of three hundred fifty thousand dollars in benefits with respect to any one life under subparagraph division (a) and this subparagraph division (b), except with respect to benefits for basic hospital expense coverage, basic medical-surgical expense coverage, or major medical expense coverage under subparagraph division (a), subparagraph subdivision (ii), in which case the aggregate liability of the association shall not exceed five hundred thousand dollars with respect to any one individual, or more than five million dollars in benefits to one owner of multiple nongroup policies of life insurance regardless of whether the policy owner is an individual, firm, corporation, or other person, and whether the persons insured are officers, managers, employees, or other persons, and regardless of the number of policies and contracts held by the owner.

(c) With respect to a plan sponsor whose plan owns, directly or in trust, one or more unallocated annuity contracts not included under subparagraph division (b), not more than five million dollars in benefits, regardless of the number of contracts held by the plan sponsor. However, where one or more such unallocated annuity contracts are covered contracts under this chapter and are owned by a trust or other entity for the benefit of two or more plan sponsors, the association shall provide coverage if the largest interest in the trust or entity owning the contract is held by a plan sponsor whose principal place of business is in the state but in no event shall the association be obligated to cover more than five million dollars in benefits in the aggregate with respect to all such unallocated contracts.

b. The limitations on the association's obligation to cover benefits that are set forth under this subsection do not take into account the association's subrogation and assignment rights or the extent to which such benefits could be provided out of the assets of the impaired or insolvent insurer that are attributable to covered policies. The association's obligations under this chapter may be met by the use of assets attributable to covered policies or reimbursed to the association pursuant to the association's subrogation and assignment rights.

9. The association has no obligation to issue a group conversion policy of any nature to a

person or to continue a group coverage in force for more than sixty days following the date the member insurer was adjudicated to be insolvent.

10. The association may do any of the following:

- a. Enter into contracts as necessary or proper to carry out this chapter.
- b. Sue or be sued, including taking any legal actions necessary or proper for recovery of any unpaid assessments under section 508C.9.
- c. Borrow money to effect the purposes of this chapter. Any notes or other evidence of indebtedness of the association held by domestic insurers and not in default qualify as investments eligible for deposit under section 511.8, subsection 16.
- d. Employ or retain persons as necessary to handle the financial transactions of the association, and to perform other functions as 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 as necessary to avoid payment of improper claims.
- g. For the purposes of this chapter and to the extent approved by the commissioner, exercise the powers of a domestic life or health insurer. However, the association shall not issue insurance policies or annuity contracts other than those issued to perform the contractual obligations of the impaired or insolvent insurer.
- h. 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.

11. a. (1) At any time within one hundred eighty days of the date of an order of liquidation, the association may elect to succeed to the rights and obligations of a ceding member insurer that relate to policies or contracts covered, in whole or in part, by the association in each case under any reinsurance contract entered into by the insolvent insurer and its reinsurers, selected by the association. Any such assumption of rights and obligations shall be effective as of the date of the order of liquidation. The election shall be effected by the association or by the national organization of life and health insurance guaranty associations on its behalf by sending written notices, return receipt requested, to the affected reinsurers. As used in this subsection, “*date of election*” means the date of the election of the association to succeed to the rights and obligations of the ceding member insurer as provided in this subparagraph.

(2) To facilitate the earliest practicable decision about whether to assume any of the contracts of reinsurance of the ceding member insurer, and in order to protect the financial position of the state, the receiver and each reinsurer of the ceding member insurer shall make available upon request to the association, or to the national organization of life and health insurance guaranty associations on its behalf, as soon as possible after commencement of formal delinquency proceedings all of the following:

- (a) Copies of in-force contracts of reinsurance and all related files and records relevant to the determination of whether such contracts should be assumed.
- (b) Notices of any defaults under the reinsurance contracts or any known event or condition which with the passage of time could become a default under the reinsurance contract.

(3) The following provisions shall apply to reinsurance contracts so assumed by the association:

(a) The association shall be responsible for all unpaid premiums due under the reinsurance contracts for periods both before and after the date of the order of liquidation and shall be responsible for the performance of all other obligations to be performed after the date of the order of liquidation, in each case which relate to policies or contracts covered, in whole or in part, by the association. The association may charge policies or contracts covered in part by the association, through reasonable allocation methods, the cost for reinsurance in excess of the obligations of the association and shall provide notice and an accounting of these charges to the liquidator.

(b) The association shall be entitled to any amounts payable by the reinsurer under the reinsurance contracts with respect to losses or events that occur in periods after the date of the order of liquidation and that relate to policies or contracts covered, in whole or in part, by the association, provided that, upon receipt of any such amounts, the association shall be

obliged to pay to the beneficiary under the policy or contract on account of which the amounts were paid, a portion of the amount equal to the lesser of any of the following:

(i) The amount received by the association.

(ii) The excess of the amount received by the association over the amount equal to the benefits paid by the association on account of the policy or contract less the retention of the insurer applicable to the loss or event.

(c) Within thirty days following the date of election, the association and each reinsurer under reinsurance contracts assumed by the association shall calculate the net balance due to or from the association under each reinsurance contract as of the date of election with respect to policies or contracts covered, in whole or in part, by the association, which calculation shall give full credit to all items paid by either the insurer or its receiver or the reinsurer prior to the date of election. The reinsurer shall pay the receiver any amounts due for losses or events prior to the date of the order of liquidation, subject to any setoff for premiums unpaid for periods prior to the date, and the association or reinsurer shall pay any remaining balance due the other, in each case within five days of the completion of the aforementioned calculation. Any disputes over the amounts due to either the association or the reinsurer shall be resolved by arbitration pursuant to the terms of the affected reinsurance contracts or, if the contract contains no arbitration clause, as otherwise provided by law. If the receiver has received any amounts due the association pursuant to subparagraph division (b), the receiver shall remit the same to the association as promptly as practicable.

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

b. During the period from the date of the order of liquidation, until the date of election or, if the association does not elect to succeed to the rights and obligations of the ceding member insurer as provided in paragraph "a", subparagraph (1), until one hundred eighty days after the date of the order of liquidation all of the following provisions are applicable:

(1) The association and the reinsurer shall not have any rights or obligations under reinsurance contracts that the association has the right to assume under paragraph "a", whether for periods prior to or after the date of liquidation.

(2) The reinsurer, the receiver, and the association shall, to the extent practicable, provide each other with data and records reasonably requested.

(3) Once the association elects to assume a reinsurance contract, the parties' rights and obligations shall be governed by the provisions of paragraph "a".

c. If the association does not elect to assume the rights and obligations under a reinsurance contract, the association shall have no rights or obligations in each case for periods both before and after the date of the order of liquidation, with respect to the reinsurance contract.

d. When policies or contracts, or covered obligations with respect thereto, are transferred to an assuming insurer, reinsurance on the policies or contracts may also be transferred by the association, in the case of rights and obligations under reinsurance contracts assumed under paragraph "a", subject to the following provisions:

(1) Unless the reinsurer and the assuming insurer agree otherwise, the reinsurance contracts transferred shall not cover any new policies or contracts of insurance in addition to those transferred.

(2) The obligations described in paragraph "a" shall no longer apply with respect to matters arising after the effective date of the transfer.

(3) 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.

e. This subsection shall 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 contract with respect to losses or events that occur in periods prior to the date of the order of liquidation, subject to applicable setoff provisions.

f. Except as otherwise provided in this subsection, this subsection shall not be construed to do any of the following:

- (1) Alter or modify the terms and conditions of any reinsurance contract.
- (2) Abrogate or limit any rights of any reinsurer to claim that the reinsurer is entitled to rescind a reinsurance contract.
- (3) Give a policyholder or beneficiary an independent cause of action against a reinsurer that is not otherwise set forth in the reinsurance contract.
- (4) Limit or affect the association's rights as a creditor of the state against the assets of this state.
- (5) Apply to reinsurance agreements covering property or casualty risks.

12. The board of directors of the association shall have discretion and may exercise reasonable business judgment to determine the means by which the association will provide the benefits of this chapter in an economical and efficient manner.

13. Where 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 shall not be entitled to benefits from the association in addition to or other than those provided under the plan or arrangement.

14. Venue in a suit against the association arising under this chapter shall be in the district court of Polk 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.

15. In carrying out its duties in connection with guaranteeing, assuming, or reinsuring policies or contracts under subsections 2 and 3, the association may, subject to approval of the receivership court, issue substitute coverage for a policy or contract that provides an interest rate, crediting rate, or similar factor determined by the 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. In lieu of the index or other external reference provided for in the original policy or contract the alternative policy or contract provides for one of the following:

- (1) A fixed interest rate.
- (2) Payment of dividends with minimum guarantees.
- (3) 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.

87 Acts, ch 223, §8; 88 Acts, ch 1135, §9; 90 Acts, ch 1234, §21, 22; 91 Acts, ch 26, §37; 92 Acts, ch 1162, §8; 2008 Acts, ch 1123, §16, 17; 2009 Acts, ch 41, §157, 158; 2010 Acts, ch 1063, §16 – 22

Referred to in §508C.5, 508C.9, 508C.10, 508C.13