

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.

1A. If a domestic, foreign, or alien insurer is an insolvent insurer, subject to the approval of the commissioner, the association shall:

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

b. Assure payment of the contractual obligations of the insolvent insurer.

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

2. *a.* If a domestic, foreign, or alien insurer is an impaired insurer and the insurer is not paying claims timely, then, subject to the approval of the commissioner and to the preconditions specified in this subsection, the association may do either or both of the following:

(1) Take any of the actions specified in subsection 1, subject to the conditions in that subsection.

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

b. The association is subject to this subsection only if all of the following conditions are met:

(1) The laws of the 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 interest on the payments and expenses have been repaid to the guaranty associations or a plan of repayment by the impaired insurer has been approved by the guaranty associations all of the following apply:

(a) The delinquency proceeding shall not be dismissed.

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

(c) The impaired insurer shall not be permitted to solicit or accept new business or have any suspended or revoked license restored.

(2) 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; or, if the impaired insurer is a foreign or alien insurer it has been prohibited from soliciting or accepting new business in this state, its certificate of authority has been suspended or revoked in this state, and a petition for rehabilitation or liquidation has been filed in a court of competent jurisdiction in its state or nation of domicile by the commissioner of that state or similar authority in an alien nation.

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. The association has standing to appear before any court in this state with jurisdiction over an impaired or insolvent insurer concerning which the association is or may become obligated under this chapter. Standing shall extend to all matters germane to the powers and duties of the association including, but not limited to, proposals for reinsuring or guaranteeing the covered policies of the impaired or insolvent insurer and the determination of the covered policies and contractual obligations.

7. *a.* A person receiving benefits under this chapter is deemed to have assigned the rights under the covered policy to the association to the extent of the benefits received under this chapter, whether the benefits are

payments of contractual obligations or a continuation of coverage. The association may require an assignment to the association of the rights by a 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 insolvent insurer.

b. The subrogation rights of the association under this subsection have the same priority against the assets of the 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 insolvent insurer or holder of a policy or contract.

8. The contractual obligations of the insolvent insurer, for which the association becomes or may become liable, are as great as but not greater than the contractual obligations of the insolvent insurer would have been in the absence of an insolvency, unless the obligations are reduced as permitted in this chapter. However, with respect to any one life, the aggregate liability of the association shall not exceed one hundred thousand dollars in cash and termination values, or three hundred thousand dollars for all benefits, including cash and termination values, death benefits, annuity payments, accident and health benefits, and all other amounts payable under all policies or contracts of the insolvent insurer. With respect to any one holder of an unallocated annuity contract, the aggregate liability of the association shall not exceed one million dollars of contract benefits, irrespective of the number of contracts held by the contract holder.

9. The association has no obligation for either of the following:

a. To continue coverage, or to pay a claim for benefits to any person under an individual accident, health, or disability policy accruing more than three years following the date the member insurer is adjudicated to be insolvent.

b. 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.

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