

24-A §4608. POWERS AND DUTIES OF THE ASSOCIATION

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In addition to the powers and duties enumerated in other sections of this chapter: [1983, c. 846, (NEW).]

1. Impaired insurer; association action. If a member insurer is an impaired insurer, the association may, subject to any fair and equitable conditions imposed by the association that do not impair the contractual obligations of the impaired insurer and that are approved by the superintendent:

A. Guarantee, assume or reinsure, or cause to be guaranteed, assumed or reinsured all the covered policies of the impaired insurer; or [2005, c. 346, §6 (AMD); 2005, c. 346, §16 (AFF).]

B. Provide such money, pledges, loans, notes, guarantees or other means as are proper to effectuate paragraph A and assure payment of the appropriate contractual obligations of the impaired insurer pending action under paragraph A. [2005, c. 346, §6 (AMD); 2005, c. 346, §16 (AFF).]

C. [2005, c. 346, §16 (AFF); 2005, c. 346, §6 (RP).]

[2005, c. 346, §6 (AMD); 2005, c. 346, §16 (AFF).]

2. Foreign or alien impaired insurer; association action prior to final order of liquidation, rehabilitation or conservation.

[2005, c. 346, §16 (AFF); 2005, c. 346, §6 (RP).]

3. Domestic impaired insurer under final order of liquidation or rehabilitation; association action.

[2005, c. 346, §16 (AFF); 2005, c. 346, §6 (RP).]

3-A. Impaired and insolvent insurer; association action. If a member insurer is an insolvent insurer, the association may, in its discretion, either:

A. Take the following actions:

(1) Guarantee, assume or reinsure or cause to be guaranteed, assumed or reinsured the policies or contracts of the insolvent insurer, or assure payment of the contractual obligations of the insolvent insurer; and

(2) Provide money, pledges, loans, notes, guarantees or other means reasonably necessary to discharge the association's duties; or [2005, c. 346, §6 (NEW); 2005, c. 346, §16 (AFF).]

B. Provide benefits and coverages in accordance with this paragraph.

(1) With respect to life and health insurance policies and annuities, 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:

(a) With respect to group policies and contracts, not later than the earlier of the next renewal date under those policies or contracts or 45 days, but in no event less than 30 days, after the date on which the association becomes obligated with respect to the policies and contracts; and

(b) 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 and one year, but in no event less than 30 days, after the date on which the association becomes obligated with respect to the policies or contracts.

- (2) The association shall make diligent efforts to provide all known insureds or annuitants for nongroup policies and contracts, or group policy owners with respect to group policies and contracts, 30 days' notice of the termination of the benefits provided.
- (3) With respect to nongroup life and health insurance policies and annuities covered by the association, the association shall 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 who is not eligible for replacement group coverage, make available 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 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.
- (4) In providing substitute coverage, the association may offer either to reissue the terminated coverage or to issue an alternative policy in accordance with the following:
- (a) Alternative or reissued policies must be offered without requiring evidence of insurability and may not provide for any waiting period or exclusion that would not have applied under the terminated policy;
 - (b) The association may reinsure any alternative or reissued policy;
 - (c) Alternative policies adopted by the association are subject to the approval of the superintendent and the receivership court. The association may adopt alternative policies of various types for future issuance without regard to any particular impairment or insolvency;
 - (d) Alternative policies must contain at least the minimum statutory provisions required in this State and provide benefits that are not unreasonable in relation to the premium charged. The association shall set the premium in accordance with a table of rates that it adopts. The premium must reflect the amount of insurance to be provided and the age and class of risk of each insured, but may not reflect any changes in the health of the insured after the original policy was last underwritten; and
 - (e) Any alternative policy issued by the association must provide coverage of a type similar to that of the policy issued by the impaired or insolvent insurer, as determined by the association.
- (5) If the association elects to reissue terminated coverage at a premium rate different from that charged under the terminated policy, the premium must 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 superintendent and the receivership court.
- (6) The association's obligations with respect to coverage under any policy of the impaired or insolvent insurer or under any reissued or alternative policy must cease on the date the coverage or policy is replaced by another similar policy by the policy owner, the insured or the association.
- (7) When proceeding under this paragraph 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 4603.
- (8) Nonpayment of premiums within 31 days after the date required under the terms of any 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 with respect to any claims incurred or any net cash surrender value that 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 when any guaranty protection is provided to residents of this State by the laws of the domiciliary state or jurisdiction of the impaired or insolvent insurer other than this State. [2005, c. 346, §6 (NEW); 2005, c. 346, §16 (AFF).]

[2005, c. 346, §6 (NEW); 2005, c. 346, §16 (AFF) .]

4. Foreign or alien impaired insurer under final order of liquidation, rehabilitation or conservation; association action.

[2005, c. 346, §16 (AFF); 2005, c. 346, §6 (RP) .]

5. Policy liens; contract liens; moratoriums on payments.

[2005, c. 346, §16 (AFF); 2005, c. 346, §6 (RP) .]

5-A. Policy liens; contract liens; moratoriums on payments. In carrying out its duties under subsection 3-A, the association may:

A. Subject to approval by a court in this State, 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 such permanent policy or contract liens to be in the public interest; and [2005, c. 346, §6 (NEW); 2005, c. 346, §16 (AFF) .]

B. Subject to approval by a court in this State, impose temporary moratoriums or liens on payments of cash values and policy loans or on 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, in the event of a temporary moratorium or moratorium charge imposed by the receivership court 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 or insolvent insurer, the association may defer the payment of cash values, policy loans or other rights by the association for the period of the moratorium or moratorium charge imposed by the receivership court, except for claims covered by the association to be paid in accordance with a hardship procedure established by the liquidator or rehabilitator and approved by the receivership court. [2005, c. 346, §6 (NEW); 2005, c. 346, §16 (AFF) .]

[2005, c. 346, §6 (NEW); 2005, c. 346, §16 (AFF) .]

6. Association liability. The association has no liability under this section for any covered policy of a foreign or alien insurer whose domiciliary jurisdiction or state of entry provides by statute for residents of this State protection substantially similar to that provided by this chapter for residents of other states.

[2005, c. 346, §6 (AMD); 2005, c. 346, §16 (AFF) .]

6-A. Failure to act. If the association fails to act within a reasonable period of time with respect to an insolvent insurer, as provided in subsection 3-A, the superintendent has the powers and duties of the association under this chapter with respect to the insolvent insurer.

[2005, c. 346, §6 (NEW); 2005, c. 346, §16 (AFF) .]

6-B. Retention of deposit; final order of liquidation or rehabilitation plan. A deposit in this State, held pursuant to law or required by the superintendent 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 this Title must be promptly paid to the association. The association is entitled to retain a portion of any amount so paid to it equal to the percentage determined by dividing the aggregate amount of policy owners' claims related to that insolvency for which the association has provided statutory benefits by the aggregate amount of all policy owners' claims in this State related to that insolvency and shall remit to the domiciliary receiver the amount so paid to the association and not retained pursuant to this subsection. Any amount so paid to the association less the amount not retained by it must be treated as a distribution of estate assets pursuant to chapter 57 or similar provision of the state of domicile of the impaired or insolvent insurer.

[2005, c. 346, §6 (NEW); 2005, c. 346, §16 (AFF) .]

7. Assistance and advice to superintendent. The association may render assistance and advice to the superintendent, upon the superintendent's request, concerning rehabilitation, payment of claims, continuations of coverage or the performance of other contractual obligations of any impaired or insolvent insurer.

[2005, c. 346, §6 (AMD); 2005, c. 346, §16 (AFF) .]

8. Standing to appear before court. The association has 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 whom the association may have rights through subrogation or otherwise. This standing extends 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 and contractual obligations of the impaired or insolvent insurer and the determination of the covered policies or contracts and contractual obligations. The association also has the right to appear or intervene before a 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.

[2005, c. 346, §6 (AMD); 2005, c. 346, §16 (AFF) .]

9. Subrogation rights. Any person receiving benefits under this chapter is deemed to have assigned that person's 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 it of these rights and cause of action by any payee, policy or contract owner, beneficiary, insured or annuitant as a condition precedent to the receipt of any rights or benefits conferred by this chapter upon that person. The association is subrogated to these rights against the assets of any impaired or insolvent insurer.

The subrogation rights of the association under this subsection must 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.

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 or insolvent insurer or owner, beneficiary or payee of a 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 a person originally or by succession responsible for the losses arising from the personal injury relating to the annuity or payment therefor, excepting any such person responsible solely by reason of serving as an assignee in respect of a qualified assignment under Section 130 of the federal Internal Revenue Code.

If the provisions of this subsection 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 must be reduced by the amount realized by any other person with respect to the person or claim that is attributable to the policies or portion thereof covered by the association.

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 this subsection, the person shall pay to the association the portion of the recovery attributable to the policies or portion thereof covered by the association.

[2005, c. 346, §6 (AMD); 2005, c. 346, §16 (AFF) .]

10. Association's contractual obligation; impaired insurer.

[2005, c. 346, §16 (AFF); 2005, c. 346, §6 (RP) .]

11. Other powers. The association may:

A. Enter into such contracts as are necessary or proper to carry out the provisions and purposes of this chapter; [1983, c. 846, (NEW).]

B. Subject to the provisions of section 4617, sue or be sued, including taking any legal actions necessary or proper for recovery of any unpaid assessments under section 4609 or to settle claims or potential claims against it; [2005, c. 346, §6 (AMD); 2005, c. 346, §16 (AFF).]

C. Borrow money to effect the purposes of this chapter. Any notes or other evidence of indebtedness of the association not in default are legal investments for domestic insurers and may be carried as admitted assets; [2005, c. 346, §6 (AMD); 2005, c. 346, §16 (AFF).]

D. Employ or retain such persons as are necessary or appropriate to handle the financial transactions of the association and to perform such other functions as become necessary or proper under this chapter; [2005, c. 346, §6 (AMD); 2005, c. 346, §16 (AFF).]

E. Negotiate and contract with any liquidator, rehabilitator, conservator or ancillary receiver to carry out the powers and duties of the association; [1983, c. 846, (NEW).]

F. Take such legal action as may be necessary to avoid or recover payment of improper claims; [2005, c. 346, §6 (AMD); 2005, c. 346, §16 (AFF).]

G. Exercise, for the purposes of this chapter and to the extent approved by the superintendent, 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 the contractual obligations of the impaired insurer; [2005, c. 346, §6 (AMD); 2005, c. 346, §16 (AFF).]

H. Organize itself as a corporation or in other legal form permitted by the laws of this State; [2005, c. 346, §6 (NEW); 2005, c. 346, §16 (AFF).]

I. Request information from a person seeking coverage from the association in order to aid the association in determining its obligations under this chapter with respect to the person, and the person shall promptly comply with the request; [2005, c. 346, §6 (NEW); 2005, c. 346, §16 (AFF).]

J. 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; and [2005, c. 346, §6 (NEW); 2005, c. 346, §16 (AFF).]

K. Take necessary or appropriate action to discharge its duties and obligations under this chapter or to exercise its powers under this chapter. [2005, c. 346, §6 (NEW); 2005, c. 346, §16 (AFF).]

[2005, c. 346, §6 (AMD); 2005, c. 346, §16 (AFF) .]

12. Reinsurance of obligations; election by association. At any time within one year after the date on which the association becomes responsible for the obligations of a member insurer, 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 covered in whole or in part by the association under any one or more indemnity reinsurance agreements entered into by the member insurer as a ceding insurer and selected by the association. However, the association may not exercise an election with respect to a reinsurance agreement if the receiver, rehabilitator or liquidator of the member insurer has previously and expressly disaffirmed the reinsurance agreement. The election is effected by a notice to the receiver, rehabilitator or liquidator and to the affected reinsurers. If the association makes an election, the following requirements apply with respect to the agreements selected by the association.

A. For contracts covered in whole or in part by the association, 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. The association may charge contracts covered in part by the association, through reasonable allocation methods, the costs for reinsurance in excess of the obligations of the association. [2005, c. 346, §6 (NEW); 2005, c. 346, §16 (AFF).]

B. The association is entitled to any amounts payable by the reinsurer under the agreements with respect to 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, except that, upon receipt of any such amounts, the association is 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 excess of the amount received by the association over the benefits paid by the association on account of the policy or contract less the retention of the impaired or insolvent insurer applicable to the loss or event. [2005, c. 346, §6 (NEW); 2005, c. 346, §16 (AFF).]

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 reinsurance agreement as of the date of the association's election, giving 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 indemnity reinsurer shall pay the net balance due the other within 5 days of the completion of the calculation. If the receiver, rehabilitator or liquidator has received any amounts due the association pursuant to paragraph B, the receiver, rehabilitator or liquidator shall remit them to the association as promptly as practicable. [2005, c. 346, §6 (NEW); 2005, c. 346, §16 (AFF).]

D. If the association, within 60 days of the election, 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 is not entitled to terminate the reinsurance agreements insofar as the agreements relate to contracts covered by the association in whole or in part and is not entitled to set off any unpaid premium due for periods prior to the coverage date against amounts due the association. [2005, c. 346, §6 (NEW); 2005, c. 346, §16 (AFF).]

E. In the event the association transfers its obligations to another insurer and if the association and the other insurer agree, the other insurer must succeed to the rights and obligations of the association under this chapter effective as of the date agreed upon by the association and the other insurer and regardless of whether the association has made the election referred to in this subsection, except that:

- (1) The indemnity reinsurance agreements automatically terminate for new reinsurance unless the indemnity reinsurer and the other insurer agree to the contrary; and
- (2) The obligations described in this chapter no longer apply on and after the date the indemnity reinsurance agreement is transferred to the 3rd-party insurer.

This paragraph does not apply if the association has previously expressly determined in writing that it will not exercise the election. [2005, c. 346, §6 (NEW); 2005, c. 346, §16 (AFF).]

F. This subsection supersedes the provisions of any law of this State or 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 of an insolvent insurer. The receiver, rehabilitator or liquidator is 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 set-off provisions. [2005, c. 346, §6 (NEW); 2005, c. 346, §16 (AFF).]

G. Except as otherwise expressly provided, this subsection does not alter or modify the terms and conditions of the indemnity reinsurance agreements of an insolvent insurer. This subsection may not be construed to abrogate or limit any rights of any reinsurer to claim that it is entitled to rescind a reinsurance agreement. This subsection may not be construed to 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. [2005, c. 346, §6 (NEW); 2005, c. 346, §16 (AFF).]

[2005, c. 346, §6 (NEW); 2005, c. 346, §16 (AFF) .]

13. Discretion. The board of directors of the association has discretion and may exercise reasonable business judgment to determine the means by which the association is to provide the benefits of this chapter in an economical and efficient manner.

[2005, c. 346, §6 (NEW); 2005, c. 346, §16 (AFF) .]

14. No additional benefits. When 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.

[2005, c. 346, §6 (NEW); 2005, c. 346, §16 (AFF) .]

15. Venue. Venue in a suit against the association arising under this chapter is Kennebec County. The association may not be required to give an appeal bond in an appeal that relates to a cause of action arising under this chapter.

[2005, c. 346, §6 (NEW); 2005, c. 346, §16 (AFF) .]

16. Issuance of substitute coverage. In carrying out its duties in connection with guaranteeing, assuming or reinsuring policies or contracts under this section, 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 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 this subsection.

A. In lieu of the index or other external reference provided for in the original policy or contract, the alternative policy or contract must provide for:

- (1) A fixed interest rate;
- (2) Payment or dividends with minimum guarantees; or
- (3) A different method for calculating interest or changes in value. [2005, c. 346, §6 (NEW); 2005, c. 346, §16 (AFF).]

B. There may not be a requirement for evidence of insurability, waiting period or other exclusion that would not have applied under the replaced policy or contract. [2005, c. 346, §6 (NEW); 2005, c. 346, §16 (AFF).]

C. The alternative policy or contract must be substantially similar to the replaced policy or contract in all other material terms. [2005, c. 346, §6 (NEW); 2005, c. 346, §16 (AFF).]

[2005, c. 346, §6 (NEW); 2005, c. 346, §16 (AFF) .]

SECTION HISTORY

1983, c. 846, (NEW). 2005, c. 346, §6 (AMD). 2005, c. 346, §16 (AFF).

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