

**As Passed by the Senate**

**125th General Assembly**

**Regular Session**

**2003-2004**

**Sub. H. B. No. 282**

**Representatives Flowers, Martin, Seitz, Setzer, Allen, G. Smith, Daniels,  
Driehaus, Faber, Fessler, Gibbs, Hughes, Koziura, T. Patton, Seaver, Sferra,  
White, Wolpert, Woodard, Barrett, Book, Brown, Calvert, Carano, Cirelli,  
Clancy, Collier, DeBose, Distel, Domenick, C. Evans, D. Evans, Gilb, Hagan,  
Hartnett, Harwood, Hollister, Hoops, Jerse, Key, Mason, Miller, Niehaus,  
Oelslager, Olman, Reidelbach, Schaffer, Schlichter, Schmidt, S. Smith,  
D. Stewart, J. Stewart, Strahorn, Taylor, Widener, Willamowski, Wilson,  
Yates**

**Senators Nein, Fingerhut, Austria, Mumper, Stivers, Padgett, Carey, Fedor,  
Robert Gardner, Coughlin, Armbruster, Harris, Jacobson, Randy Gardner,  
Spada, Schuring**

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**A B I L L**

To amend sections 3903.28 and 3903.32 and to enact 1  
sections 3929.62, 3929.63, 3929.631, 3929.632, 2  
3929.64, 3929.65, 3929.66, 3929.661, 3929.67, 3  
3929.68, 3929.681, 3929.682, 3929.69, and 3929.70 4  
of the Revised Code to lengthen the time period 5  
during which the liquidator of an insolvent 6  
insurance company may void certain preferential 7  
transfers, to provide for the establishment of a 8  
Medical Liability Underwriting Association for 9  
medical liability insurance, to make an 10  
appropriation, and to declare an emergency. 11

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 3903.28 and 3903.32 be amended and 12  
sections 3929.62, 3929.63, 3929.631, 3929.632, 3929.64, 3929.65, 13  
3929.66, 3929.661, 3929.67, 3929.68, 3929.681, 3929.682, 3929.69, 14  
and 3929.70 of the Revised Code be enacted to read as follows: 15

**Sec. 3903.28.** (A)(1) A preference is a transfer of any of the 16  
property of an insurer or of an interest in the property of an 17  
insurer to or for the benefit of a creditor, for or on account of 18  
an antecedent debt, made or suffered by the insurer within ~~one~~ 19  
year two years before the ~~filing of a successful~~ complaint for 20  
~~liquidation under sections 3903.01 to 3903.59 of the Revised Code,~~ 21  
~~the effect of which transfer may be to enable the creditor to~~ 22  
~~obtain a greater percentage of his debt than another creditor of~~ 23  
~~the same class would receive. If a liquidation order is entered~~ 24  
~~while the insurer is already subject to a rehabilitation order,~~ 25  
~~then such transfer shall be deemed preferences if made or suffered~~ 26  
~~within one year before the filing of the successful complaint for~~ 27  
~~rehabilitation, or within two years before the filing of the~~ 28  
~~successful complaint for liquidation, whichever time is shorter~~ 29  
date that enables the creditor to receive more than the creditor 30  
would receive if the insurer was liquidated under this chapter, 31  
the transfer had not been made, and the creditor received payment 32  
of the debt to the extent provided by the provisions of this 33  
chapter. 34

(2) Any preference may be avoided by the liquidator if any of 35  
the following apply: 36

(a) The insurer was insolvent at the time of the transfer; 37

(b) The transfer was made within ~~four months~~ one hundred 38  
twenty days before the ~~filing of the~~ complaint date; 39

(c) The creditor receiving it or to be benefited thereby or 40  
~~his~~ the creditor's agent acting with reference thereto had, at the 41

time when the transfer was made, reasonable cause to believe that 42  
the insurer was insolvent or was about to become insolvent; 43

(d) The creditor receiving it was ~~an officer, or~~ any of the 44  
following: 45

(i) An officer or director of the insurer; 46

(ii) A person, including but not limited to an employee or 47  
attorney or other person, who was in fact in a position of 48  
comparable influence in to effect a level of control over the 49  
actions of the insurer comparable to that of an officer or 50  
director whether or not he the person held such position, or any 51  
but excluding employees of the department of insurance and any 52  
person retained or appointed by the department to assist in the 53  
examination, supervision, or other regulation or monitoring of the 54  
insurer; 55

(iii) A shareholder holding directly or indirectly more than 56  
five per cent of any class of any equity security issued by the 57  
insurer, or any; 58

(iv) Any other person, firm, corporation, association, or 59  
aggregation of persons with whom the insurer did not deal at arm's 60  
length. 61

(3) Where the preference is voidable, the liquidator may 62  
recover the property or the value of the property from the initial 63  
transferee, and if it the property has been transferred or 64  
converted, its the liquidator may recover the property or the 65  
value of the property from any person who has received or 66  
converted the property, except that a subsequent bona fide 67  
purchaser or lienor who has given consideration of less than fair 68  
equivalent value has a lien upon the property to the extent of the 69  
consideration actually given. Where a preference by way of lien or 70  
security title is voidable, ~~the court may on due notice order the~~ 71  
such lien or title ~~to be~~ is preserved for the benefit of the 72

estate, in which event the lien or title shall pass to the 73  
liquidator. 74

(4) The liquidator may not avoid a transfer under this 75  
section as provided by the following: 76

(a) To the extent that the transfer was intended, by both the 77  
insurer and the creditor to or for whose benefit the transfer was 78  
made, to be a contemporaneous exchange for new value given to the 79  
insurer and was in fact a substantially contemporaneous exchange; 80

(b) To the extent that the transfer was in payment of a debt 81  
incurred by the insurer in the ordinary course of business or 82  
financial affairs of the insurer and the transferee and the 83  
transfer both was made in the ordinary course of business or 84  
financial affairs of the insurer and the transferee and was made 85  
according to ordinary business terms; 86

(c) If the transfer was made to or for the benefit of a 87  
creditor, to the extent that after the transfer the creditor gave 88  
new value to or for the benefit of the insurer not secured by an 89  
otherwise unavoidable security interest, on account of which new 90  
value the insurer did not make an otherwise unavoidable transfer 91  
to or for the benefit of such creditor. 92

(B)(1) A transfer of property other than real property is 93  
deemed to be made or suffered when it becomes so far perfected 94  
that no subsequent lien obtainable by legal or equitable 95  
proceedings on a simple contract can become superior to the rights 96  
of the transferee. 97

(2) A transfer of real property is deemed to be made or 98  
suffered when it becomes so far perfected that no subsequent bona 99  
fide purchaser from the insurer can obtain rights superior to the 100  
rights of the transferee. 101

(3) A transfer which creates an equitable lien is not deemed 102  
to be perfected if there are available means by which a legal lien 103

can be created. 104

(4) A transfer not perfected prior to the ~~filing of a~~ 105  
complaint ~~for liquidation~~ date is deemed to be made immediately 106  
before the ~~filing of the successful~~ complaint date. 107

(5) The provisions of division (B) of this section apply 108  
whether or not there are or were creditors who might have obtained 109  
liens or persons who might have become bona fide purchasers. 110

(C)(1) A lien obtainable by legal or equitable proceedings 111  
upon a simple contract is one arising in the ordinary course of 112  
such proceedings upon the entry or docketing of a judgment or 113  
decree, or upon attachment, garnishment, execution, or like 114  
process, whether before, upon, or after judgment or decree and 115  
whether before or upon levy. It does not include liens which under 116  
applicable law are given a special priority over other liens which 117  
are prior in time. 118

(2) A lien obtainable by legal or equitable proceedings is 119  
superior to the rights of a transferee, or a purchaser may obtain 120  
rights superior to the rights of a transferee within the meaning 121  
of division (B) of this section, if such consequences follow only 122  
from the lien or purchase itself, or from the lien or purchase 123  
followed by any step wholly within the control of the respective 124  
lienholder or purchaser, with or without the aid of ministerial 125  
action by public officials. Such a lien is not, however, superior 126  
and such a purchase does not create superior rights for the 127  
purpose of division (B) of this section through any acts 128  
subsequent to the obtaining of such a lien or subsequent to such a 129  
purchase which require the agreement or concurrence of any third 130  
party or which require any further judicial action or ruling. 131

(D) A transfer of property for or on account of a new and 132  
contemporaneous consideration that is deemed under division (B) of 133  
this section to be made or suffered after the transfer because of 134

delay in perfecting it does not thereby become a transfer for or 135  
on account of an antecedent debt if any acts required by the 136  
applicable law to be performed in order to perfect the transfer as 137  
against liens or bona fide purchasers' rights are performed within 138  
twenty-one days or any period expressly allowed by the law, 139  
whichever is less. A transfer to secure a future loan, if such a 140  
loan is actually made, or a transfer which becomes security for a 141  
future loan, has the same effect as a transfer for or on account 142  
of a new and contemporaneous consideration. 143

(E) If any lien deemed voidable under division (A)(2) of this 144  
section has been dissolved by the furnishing of a bond or other 145  
obligation, the surety on which has been indemnified directly or 146  
indirectly by the transfer of or the creation of a lien upon any 147  
property of an insurer before the ~~filing of a complaint under~~ 148  
~~sections 3903.01 to 3903.59 of the Revised Code which results in a~~ 149  
~~liquidation order~~ date, the indemnifying transfer or lien is also 150  
deemed voidable. 151

(F) The property affected by any lien deemed voidable under 152  
divisions (A) and (E) of this section is discharged from such 153  
lien, and that property and any of the indemnifying property 154  
transferred to or for the benefit of a surety passes to the 155  
liquidator, except that the court may on due notice order any such 156  
lien to be preserved for the benefit of the estate and the court 157  
may direct that such conveyance be executed as may be proper or 158  
adequate to evidence the title of the liquidator. 159

(G) The Franklin county court of common pleas has ~~exclusive~~ 160  
jurisdiction of any proceeding initiated by the liquidator filed 161  
in the state to hear and determine the rights of any parties under 162  
this section. Reasonable notice of any hearing in the proceeding 163  
shall be given to all parties in interest, including the obligee 164  
of a releasing bond or other like obligation. Where an order is 165  
entered for the recovery of indemnifying property in kind or for 166

the avoidance of an indemnifying lien, the court, ~~upon motion of~~ 167  
~~any party in interest, shall~~ may in the same proceeding ascertain 168  
the value of the property or lien, and if the value is less than 169  
the amount for which the property is indemnity or than the amount 170  
of the lien, the transferee or lienholder may elect to retain the 171  
property or lien upon payment of its value, as ascertained by the 172  
court, to the liquidator, within such reasonable times as the 173  
court shall fix. 174

(H) The liability of a surety under a releasing bond or other 175  
like obligation shall be discharged to the extent of the value of 176  
the indemnifying property recovered or the indemnifying lien 177  
nullified and avoided by the liquidator, or where the property is 178  
retained under division (G) of this section to the extent of the 179  
amount paid to the liquidator. 180

~~(I) If a creditor has been preferred, and afterward in good~~ 181  
~~faith gives the insurer further credit without security of any~~ 182  
~~kind, for property which becomes a part of the insurer's estate,~~ 183  
~~the amount of the new credit remaining unpaid at the time of the~~ 184  
~~complaint may be set off against the preference which would~~ 185  
~~otherwise be recoverable from him.~~ 186

~~(J)~~ If an insurer shall, directly or indirectly, within ~~four~~ 187  
~~months~~ one hundred twenty days before the ~~filing of a successful~~ 188  
~~complaint for liquidation under sections 3903.01 to 3903.59 of the~~ 189  
~~Revised Code~~ date, or at any time in contemplation of a proceeding 190  
to liquidate it, pay money or transfer property to an 191  
attorney-at-law for services rendered or to be rendered, the 192  
transaction may be examined by the court on its own motion or 193  
shall be examined by the court on motion of the liquidator and 194  
shall be held valid only to the extent of a reasonable amount to 195  
be determined by the court, and the excess may be recovered by the 196  
liquidator for the benefit of the estate provided that where the 197  
attorney is in a position of influence in the insurer or an 198

affiliate thereof, payment of any money or the transfer of any 199  
property to the attorney-at-law for services rendered or to be 200  
rendered shall be governed by the provisions of division (A)(2) of 201  
this section. 202

~~(K)(1) Every officer, manager, employee, shareholder, member, 203  
subscriber, attorney, or any other person acting on behalf of the 204  
insurer who knowingly participates in giving any preference when 205  
he has reasonable cause to believe the insurer is or is about to 206  
become insolvent at the time of the preference shall be personally 207  
liable to the liquidator for the amount of the preference. It 208  
shall be presumed that there is reasonable cause to so believe if 209  
the transfer was made within four months before the date of filing 210  
of the successful complaint for liquidation. 211~~

(2)(J) As to every transfer subject to avoidance under this 212  
section: 213

(1) Every person receiving any property from the insurer or 214  
the benefit thereof as a preference voidable under division (A) of 215  
this section shall be personally liable for the property and shall 216  
be bound to account to the liquidator. 217

(3)(2) The liquidator has the burden of proving that a 218  
transfer is voidable under division (A)(2) of this section, and 219  
the person against which recovery or voidability is sought has the 220  
burden of proving that a transfer is not voidable under division 221  
(A)(4) of this section. 222

(3) The fact that the insurer was under examination, 223  
supervision, or other regulatory oversight by the department of 224  
insurance, or that the department may have acquiesced in or 225  
approved any payments made by the insurer, does not effect or 226  
otherwise create a defense to avoidance of a transfer voidable 227  
under this section. 228

(K) Nothing in this division shall be construed to prejudice 229



any other claim by the liquidator against any person. 230

(L) As used in this section: 231

(1) "Complaint date" means the date on which a complaint is 232  
filed by the superintendent of insurance seeking the liquidation 233  
of an insurer, if the complaint results in an order of 234  
liquidation. If the insurer is placed in rehabilitation, which 235  
rehabilitation is later converted to liquidation, the "complaint 236  
date" is the date on which the original complaint seeking 237  
rehabilitation was filed. 238

(2) "New value" means money or money's worth in goods, 239  
services, new credit, or the release by a transferee of property 240  
previously transferred to the transferee in a transaction that is 241  
neither void nor voidable by the liquidator under any applicable 242  
law, including the proceeds of the transferred property, but does 243  
not include an obligation substituted for an existing obligation. 244

**Sec. 3903.32.** The amount recoverable by the liquidator from 245  
reinsurers shall not be reduced as a result of delinquency 246  
proceedings, regardless of any provision in the reinsurance 247  
contract or other agreement. Payment made by a reinsurer directly 248  
to an insured or other creditor does not diminish the reinsurer's 249  
obligation to the insurer's estate except when the reinsurance 250  
contract or other written agreement either provides for direct 251  
payment of the reinsurance to the insured or beneficiary of the 252  
insurance policy in the event of the insolvency of the ceding 253  
insurer or provides for payment to a third party and has received 254  
the prior written approval of the superintendent of insurance. 255

**Sec. 3929.62.** As used in sections 3929.62 to 3929.70 of the 256  
Revised Code and any rules adopted pursuant to those sections: 257

(A) "Applicant" means any licensed physician, podiatrist, or 258  
hospital as those terms are defined in section 2305.113 of the 259

Revised Code.

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(B) "Medical liability underwriting association" means a nonprofit unincorporated underwriting association for medical liability insurance established under section 3929.63 of the Revised Code.

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(C) "Medical liability 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 or related to the credentialing or accreditation of any medical professional or hospital by any licensed physician, podiatrist, or hospital, as those terms are defined in section 2305.113 of the Revised Code, or any employee or agent acting within the scope of their duties for a physician, podiatrist, or hospital.

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**Sec. 3929.63.** (A) A medical liability underwriting association for medical liability insurance may be created for one or more classes of insurance by rule of the superintendent of insurance pursuant to Chapter 119. of the Revised Code upon a finding by the superintendent that both of the following circumstances exist:

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(1) A substantial number of applicants for such class or classes of medical liability insurance have not been placed with insurers authorized to write medical liability insurance in this state, and are insurable risks. For purposes of this section, "insurable risk" means that the physician, podiatrist, or hospital is licensed, certified, or accredited as required by law.

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(2) The lack of such class or classes of medical liability insurance threatens the availability of health care for any group of individuals in this state.

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<u>(B) The medical liability underwriting association may:</u>	290
<u>(1) Issue or cause to be issued policies of insurance to applicants, including incidental coverages, subject to terms, conditions, exclusions, and limits, established by the medical liability underwriting association's board of governors subject to the superintendent's approval. Coverages under such policies may be made available as primary or excess protection, provided limits of primary protection under one policy shall not exceed one million dollars for each claim and three million dollars in any year unless otherwise provided for in the plan of operation.</u>	291 292 293 294 295 296 297 298 299
<u>(2) Underwrite the insurance and adjust and pay losses with respect thereto, or appoint service companies or associations to perform those functions;</u>	300 301 302
<u>(3) Assume reinsurance;</u>	303
<u>(4) Cede reinsurance.</u>	304
<b>Sec. 3929.631.</b> <u>(A) In the event the superintendent of insurance creates the medical liability underwriting association under section 3929.63 of the Revised Code or reactivates the medical liability underwriting association under section 3929.632 of the Revised Code, the superintendent also shall create a stabilization reserve fund for the medical liability underwriting association under Chapter 119. of the Revised Code. The stabilization reserve fund shall be administered by thirteen directors, one of whom shall be the superintendent of insurance or the superintendent's deputy. The remaining twelve directors shall be appointed by the superintendent. Of these twelve directors, five shall be doctors of medicine and surgery, two shall be doctors of osteopathic medicine and surgery, one shall be a doctor of podiatric medicine, and four shall be representatives of hospitals.</u>	305 306 307 308 309 310 311 312 313 314 315 316 317 318 319

(B) The directors shall act by majority vote with seven 320  
directors constituting a quorum for the transaction of any 321  
business or the exercise of any power of the stabilization reserve 322  
fund. The directors shall serve without salary, but each director 323  
shall be reimbursed for actual and necessary expenses incurred in 324  
the performance of official duties as a director of the 325  
stabilization reserve fund. The directors are not subject to any 326  
personal liability with respect to administration of the fund. 327

(C) Each policyholder of the medical liability underwriting 328  
association shall pay to the medical liability underwriting 329  
association annually a stabilization reserve fund charge. The 330  
charge shall be determined by the directors with the agreement of 331  
the board of governors of the medical liability underwriting 332  
association, subject to the approval of the superintendent. In the 333  
event that there is no agreement among the directors, the board of 334  
governors, and the superintendent as to the charge, the 335  
superintendent shall determine the charge. The amount of the 336  
charge may differentiate between types of coverage, but shall be 337  
sufficient to ensure that the medical liability underwriting 338  
association is actuarially sound, adequately reserved, financially 339  
stable, and efficiently managed so as to satisfy the purposes of 340  
sections 3929.62 to 3929.70 of the Revised Code. The medical 341  
liability underwriting association shall cancel the policy of any 342  
policyholder who fails to pay the stabilization reserve fund 343  
charge. 344

(D) The medical liability underwriting association promptly 345  
shall pay to the trustee of the stabilization reserve fund all 346  
stabilization reserve fund charges that it collects from its 347  
policyholders. 348

(E) All money received by the stabilization reserve fund 349  
shall be held in trust by a corporate trustee selected by the 350  
directors. The corporate trustee may invest the money held in 351

trust, subject to the approval of the directors. All investment 352  
income shall be credited to the stabilization reserve fund. All 353  
expenses of administration of the stabilization reserve fund shall 354  
be charged against the stabilization reserve fund. The money held 355  
in trust shall be used for the purpose of reimbursing the medical 356  
liability underwriting association for any deficit that arises out 357  
of the operations of the medical liability underwriting 358  
association and for any other purpose that is approved by the 359  
board of directors, if the purpose is reasonably consistent with 360  
the purposes of the association. Such payment to the medical 361  
liability underwriting association shall be made by the directors 362  
upon the medical liability underwriting association's 363  
certification to the directors of the amount due. 364

(F) If the board of governors determines that the moneys 365  
contained in the stabilization reserve fund at the end of a fiscal 366  
year, exclusive of dollars allocated for pending claims and after 367  
payment of all claims and expenses, are in excess of amounts that 368  
are necessary to ensure that the medical liability underwriting 369  
association is actuarially sound, adequately reserved, financially 370  
stable, and efficiently managed as to satisfy the purposes of 371  
sections 3929.62 to 3929.70 of the Revised Code, and the 372  
superintendent concurs, the superintendent shall cause the return 373  
of the excess fund moneys to applicants that have contributed to 374  
the fund and that are not medical liability underwriting 375  
association policyholders at the end of the fiscal year. In 376  
effectuating the return of fund moneys, the superintendent shall 377  
ascertain the total amount contributed to the fund by each 378  
applicant during the entire period of the fund's existence. Within 379  
a reasonable time period not to exceed one year, the 380  
superintendent shall remit to each eligible applicant an amount 381  
that bears the same ratio to the total amount of excess fund 382  
moneys as the total amount contributed to the fund by each 383

applicant bears to the total amount contributed to the fund by all 384  
applicants. Notwithstanding the return of moneys under this 385  
division, policyholders shall continue to be subject to the 386  
charges of the stabilization reserve fund under this section. The 387  
total amount to be returned under this division shall reflect any 388  
interest actually earned by the fund less fund operating expenses. 389

Sec. 3929.632. (A) The medical liability underwriting 390  
association created under section 3929.63 of the Revised Code may 391  
be dissolved, or its operations may be suspended, by rule of the 392  
superintendent of insurance adopted pursuant to Chapter 119. of 393  
the Revised Code, upon a finding by the superintendent that the 394  
circumstances described in division (A) of section 3929.63 of the 395  
Revised Code no longer exist, or if the superintendent finds that 396  
the continued operation of the medical liability underwriting 397  
association undermines its statutory purpose or threatens its 398  
ability to meet its contractual obligations. 399

(B) In the case of any dissolution or suspension under 400  
division (A) of this section, the superintendent shall adopt rules 401  
pursuant to Chapter 119. of the Revised Code that establish 402  
standards and procedures for the fair and equitable cessation or 403  
suspension of operations, including rules that ensure the payment 404  
of all claims on policies issued and expenses incurred by the 405  
medical liability underwriting association. Rules adopted under 406  
this section may include rules relating to reinsurance. The 407  
remaining funds of the medical liability underwriting association 408  
shall be used for funding the medical liability underwriting 409  
association or for funding another medical malpractice initiative 410  
with the approval of the general assembly. 411

(C) If operations of the medical liability underwriting 412  
association are suspended, the superintendent may subsequently 413  
reactivate its operations by rule adopted in accordance with 414

Chapter 119. of the Revised Code.

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(D) The following persons shall not incur or suffer any liability to any person, by reason of actions taken in order to comply with this section:

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(1) The medical liability underwriting association;

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(2) The board of governors of the medical liability underwriting association or any member of the board;

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(3) The agents or employees of the medical liability underwriting association;

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(4) The superintendent;

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(5) Any other state officer responsible for the care and custody of the funds of the medical liability underwriting association.

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**Sec. 3929.64.** (A)(1) A board of governors consisting of nine members shall govern the medical liability underwriting association. The members shall be appointed by the governor with the advice of the superintendent of insurance. Five shall be selected from insurers licensed to write and writing liability insurance in this state, at least two of which insurers must write medical liability insurance in this state. One shall be a licensed physician and one shall be from a hospital operating in this state. One shall be an insurance agent licensed and writing medical liability insurance in this state. One shall represent the interests of consumers and shall neither be a member of, or associated with, a health insuring corporation holding a certificate of authority under Chapter 1751. of the Revised Code or an insurance company. The members of the board of governors shall serve without compensation but shall be reimbursed for their actual and necessary expenses incurred in the discharge of their official duties. The directors of the stabilization reserve fund

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shall serve as ex officio members of the medical liability  
underwriting association's board of governors.

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(2) Of the initial member appointments made under division  
(A)(1) of this section, three shall be for terms of one year,  
three shall be for terms of two years, and three shall be for  
terms of three years, with the members' terms determined from the  
date the medical liability underwriting association is created  
under section 3929.63 of the Revised Code. Thereafter, terms of  
office for appointed members shall be for three years, each term  
ending on the same day of the same month of the year as did the  
term it succeeds. A vacancy shall be filled in the same manner as  
the original appointment. Members may be reappointed to the board  
of governors.

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(B) The board of governors may employ, compensate, and  
prescribe the duties and powers of as many employees and  
consultants as are necessary to carry out the purposes of sections  
3929.62 to 3929.70 of the Revised Code.

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**Sec. 3929.65.** (A)(1) Within forty-five days after the  
creation or a reactivation of the medical liability underwriting  
association, the board of governors of the medical liability  
underwriting association shall submit to the superintendent of  
insurance, for the superintendent's review, a proposed plan of  
operation consistent with sections 3929.62 to 3929.70 of the  
Revised Code. The superintendent may adopt this plan by rule  
promulgated in accordance with Chapter 119. of the Revised Code.  
If the superintendent does not adopt the plan within thirty days  
of its submission, the superintendent shall formulate a plan of  
operation consistent with sections 3929.62 to 3929.70 of the  
Revised Code. Subsequent to the termination of the thirty-day  
period, the superintendent shall establish the plan by rule in the

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minimum time permitted by Chapter 119. of the Revised Code. 475

(2) At any time after the adoption of a plan of operation 476  
under division (A)(1) of this section, the board of governors may 477  
submit proposals for amendments to the plan of operation to the 478  
superintendent for the superintendent's approval. The 479  
superintendent also may propose amendments to the plan of 480  
operation. All amendments to the plan of operation shall be 481  
consistent with sections 3929.62 to 3929.70 of the Revised Code 482  
and shall be adopted as rules in accordance with Chapter 119. of 483  
the Revised Code. 484

(B) The plan of operation shall provide for economic, fair, 485  
and nondiscriminatory administration and for the prompt and 486  
efficient provision of medical liability insurance, and shall 487  
contain other provisions, including, but not limited to, 488  
provisions relating to all of the following: 489

(1) Establishment of necessary facilities; 490

(2) Management of the medical liability underwriting 491  
association; 492

(3) Reasonable and objective eligibility and underwriting 493  
standards; 494

(4) Acceptance and cession of reinsurance; 495

(5) The appointment of servicing carriers or the direct 496  
issuance of syndicate policies; 497

(6) The issuance of a binder providing coverage for which an 498  
applicant tenders an amount equal to the annual premium as 499  
estimated by the medical liability underwriting association. 500

(C) The medical liability underwriting association shall 501  
separately code all policies written so that appropriate records 502  
may be compiled for purposes of calculating the adequate premium 503

levels for each classification of risk. The plan of operation 504  
shall set forth the manner in which policies are coded. 505

Sec. 3929.66. (A) Any applicant practicing or operating in 506  
this state seeking to purchase medical liability insurance being 507  
offered by the medical liability underwriting association, on or 508  
after the effective date of the medical liability underwriting 509  
association's plan of operation, may apply to the medical 510  
liability underwriting association for medical liability 511  
insurance. The application may be made on behalf of an applicant 512  
by a broker or agent authorized by the applicant, or may be made 513  
on behalf of a number of eligible applicants who are members of a 514  
medical society. 515

(B) The board of governors of the medical liability 516  
underwriting association, in formulating the plan of operation 517  
under section 3929.65 of the Revised Code, shall include minimum 518  
eligibility and underwriting standards for applicants. If the 519  
medical liability underwriting association determines that an 520  
applicant meets the eligibility and underwriting standards of the 521  
medical liability underwriting association as prescribed in the 522  
plan of operation and there is no unpaid, uncontested premium due 523  
to the medical liability underwriting association from the 524  
applicant for prior medical liability insurance, the medical 525  
liability underwriting association, upon receipt of the premium, 526  
or such portion thereof as is prescribed in the plan of operation, 527  
shall issue a policy of medical liability insurance for a term of 528  
one year. 529

(C)(1) The medical liability underwriting association is 530  
under no obligation to issue any policy of insurance to any 531  
applicant who fails to meet the medical liability underwriting 532  
association's eligibility and underwriting standards. 533

(2) As an eligibility standard, the medical liability 534

underwriting association, as a condition for issuing or renewing 535  
insurance, shall require that the applicant has been declined for 536  
medical liability insurance by two insurers authorized to write 537  
medical liability insurance in this state. 538

(D) The rates, rating plans, rating rules, rating 539  
classifications, territories, and policy forms applicable to the 540  
insurance written by the medical liability underwriting 541  
association and related statistics are subject to Chapter 3937. of 542  
the Revised Code and shall be established by the board of 543  
governors subject to the approval of the superintendent of 544  
insurance, giving due consideration to the past and prospective 545  
loss and expense experience for medical liability insurance sold 546  
by insurers in this state, trends in the frequency and severity of 547  
losses, and such other information as the superintendent may 548  
require. All rates shall be on an actuarially sound basis, and 549  
shall be calculated to be self-supporting exclusive of any amounts 550  
held by the stabilization reserve fund. There shall be a 551  
presumption that the rates filed and premiums for the business of 552  
the medical liability underwriting association are not 553  
unreasonable or excessive. The superintendent shall take all 554  
appropriate steps to make available to the medical liability 555  
underwriting association the profit, loss, and expense experience 556  
of insurers currently or previously writing medical liability 557  
insurance in this state. 558

(E) All policies issued by or on behalf of the medical 559  
liability underwriting association shall be written so as to apply 560  
only to death, disease, or injury which results from acts or 561  
omissions covered by the policy and reported during the policy 562  
period and for which written claim is made against the insured, 563  
unless otherwise provided for in the plan of operation. 564

(F) All policies issued by or on behalf of the medical 565  
liability underwriting association shall contain a provision that 566

upon termination of the policy through cancellation on grounds 567  
other than nonpayment of premiums, or through retirement or death 568  
of the insured, the insured or the insured's estate has the right 569  
on payment of appropriate additional premiums to extend coverage 570  
to include claims covered by the policy and discovered and 571  
reported after the policy period and for which written claim is 572  
made against the insured. 573

Sec. 3929.661. The medical liability underwriting association 574  
may offer policyholders the option of being liable as a co-insurer 575  
on sums paid out by way of settlement or judgment against the 576  
policyholder on any claim made under the policy. The medical 577  
liability underwriting association has sole authority to settle 578  
any claim subject to the co-insurance option without the consent 579  
of the insured. The plan of operation shall set forth the terms 580  
and conditions of the optional co-insurance coverage. 581

Sec. 3929.67. (A) A medical liability insurance policy that 582  
insures a physician or podiatrist, written by or on behalf of the 583  
medical liability underwriting association pursuant to sections 584  
3929.62 to 3929.70 of the Revised Code, may only be cancelled 585  
during the term of the policy for one of the following reasons: 586

(1) Nonpayment of premiums; 587

(2) The license of the insured to practice medicine and 588  
surgery, osteopathic medicine and surgery, or podiatric medicine 589  
and surgery has been suspended or revoked; 590

(3) The insured's failure to meet minimum eligibility and 591  
underwriting standards; 592

(4) The occurrence of a change in the individual risk that 593  
substantially increases any hazard insured against after the 594  
coverage has been issued or renewed, except to the extent that the 595  
medical liability underwriting association reasonably should have 596

foreseen the change or contemplated the risk in writing the 597  
policy; 598

(5) Discovery of fraud or material misrepresentation in the 599  
procurement of insurance or with respect to any claim submitted 600  
thereunder. 601

(B) A medical liability insurance policy that insures a 602  
hospital, written by or on behalf of the medical liability 603  
underwriting association pursuant to sections 3929.62 to 3929.70 604  
of the Revised Code, may only be cancelled during the term of the 605  
policy for one of the following reasons: 606

(1) Nonpayment of premiums; 607

(2) The hospital is not certified or accredited in accordance 608  
with Chapter 3727. of the Revised Code; 609

(3) An injunction against the hospital has been granted under 610  
section 3727.05 of the Revised Code; 611

(4) The insured's failure to meet minimum eligibility and 612  
underwriting standards; 613

(5) The occurrence of a change in the individual risk that 614  
substantially increases any hazard insured against after the 615  
coverage has been issued or renewed, except to the extent that the 616  
medical liability underwriting association reasonably should have 617  
foreseen the change or contemplated the risk in writing the 618  
policy; 619

(6) Discovery of fraud or material misrepresentation in the 620  
procurement of insurance or with respect to any claim submitted 621  
thereunder. 622

**Sec. 3929.68.** (A) There shall be no liability imposed on the 623  
part of, and no cause of action of any nature arises against, the 624  
medical liability underwriting association or the stabilization 625

reserve fund, its board of governors, directors, agents, or 626  
employees, an insurer or its employees, any licensed agent or 627  
broker, or the superintendent of insurance or the superintendent's 628  
authorized representatives and employees, for any action taken by 629  
them in the performance of their powers and duties under sections 630  
3929.62 to 3929.70 of the Revised Code. Any reports and 631  
communications made in connection with those actions are not 632  
public records. 633

(B) With respect to any policy of insurance issued by the 634  
medical liability underwriting association, any contract executed 635  
by the medical liability underwriting association or the 636  
stabilization reserve fund, or any action taken under or related 637  
to sections 3929.62 to 3929.70 of the Revised Code, there shall be 638  
no liability on the part of the state beyond amounts paid into or 639  
earned by the medical liability underwriting association and 640  
stabilization reserve fund. 641

**Sec. 3929.681.** Any insurer or other person aggrieved by any 642  
action or decision of the medical liability underwriting 643  
association may appeal to the board of governors. The decision of 644  
the board of governors may be appealed to the superintendent of 645  
insurance within thirty days from the date of the action or the 646  
decision. The superintendent shall, after a hearing held upon 647  
proper notice, issue an order approving or disapproving the action 648  
or decision, with respect to the matter that is the subject of 649  
appeal. All final orders and decisions of the superintendent are 650  
subject to judicial review as provided in Chapter 119. of the 651  
Revised Code. 652

**Sec. 3929.682.** (A) A medical liability fund is hereby created 653  
in the state treasury. The medical liability fund shall consist of 654  
the remaining funds of the joint underwriting association, the 655

association created under section 3929.72 of the Revised Code and 656  
dissolved under section 3929.721 of the Revised Code, and shall be 657  
used for the purposes of funding the medical liability 658  
underwriting association that is created in accordance with 659  
sections 3929.62 to 3929.70 of the Revised Code or for funding 660  
another medical malpractice initiative with the approval of the 661  
general assembly. 662

(B) As used in this section, "remaining funds of the joint 663  
underwriting association" means funds paid to the treasurer of 664  
state in accordance with section 3929.721 of the Revised Code and 665  
any plan of dissolution or trust agreement adopted under section 666  
3929.721 of the Revised Code. 667

**Sec. 3929.69.** (A) Annually on or before the first day of 668  
March, the medical liability underwriting association and the 669  
stabilization reserve fund shall file in the office of the 670  
superintendent of insurance a statement or statements containing 671  
information with respect to their transactions, condition, 672  
operations, and affairs during the preceding year. The statement 673  
or statements shall contain such matters and information as are 674  
prescribed and shall be in a form approved by the superintendent. 675

(B) The superintendent or any person designated by the 676  
superintendent, at any time, may visit and examine the operation 677  
and experience of the medical liability underwriting association 678  
and stabilization reserve fund. The association and stabilization 679  
reserve fund shall give the superintendent or the superintendent's 680  
designee free access to all the books, records, files, papers, and 681  
documents that relate to the operation of the medical liability 682  
underwriting association and stabilization reserve fund, and may 683  
summon, qualify, and allow the examination as witnesses of all 684  
persons having knowledge of the operations of the medical 685

liability underwriting association and the stabilization reserve 686  
fund, including officers, agents, and employees of the medical 687  
liability underwriting association and the stabilization reserve 688  
fund. 689

(C) The medical liability underwriting association and 690  
stabilization reserve fund also are subject to examination by the 691  
superintendent in accordance with section 3901.07 of the Revised 692  
Code. 693

Sec. 3929.70. The medical liability underwriting association 694  
and the stabilization reserve fund are exempt from all license 695  
fees, and income, franchise, premium, and privilege taxes levied 696  
or assessed by this state or any of its political subdivisions. 697

**Section 2.** That existing sections 3903.28 and 3903.32 of the 698  
Revised Code are hereby repealed. 699

**Section 3.** The amendment by this act of section 3903.28 of 700  
the Revised Code shall apply only to liquidations for which an 701  
order of liquidation has been entered by the court on or after 702  
ninety days after the effective date of this section. 703

**Section 4.** The amendment by this act of section 3903.32 of 704  
the Revised Code first applies ninety days after the effective 705  
date of this section. 706

**Section 5.** (A) As used in this section: 707

(1) "Joint Underwriting Association" means the Joint 708  
Underwriting Association created under section 3929.72 of the 709  
Revised Code and dissolved under section 3929.721 of the Revised 710  
Code. 711

(2) "Remaining funds of the Joint Underwriting Association" 712



means funds paid to the Treasurer of State in accordance with 713  
section 3929.721 of the Revised Code and any plan of dissolution 714  
or trust agreement adopted under section 3929.721 of the Revised 715  
Code. 716

(B) The Superintendent of Insurance shall certify to the 717  
Director of Budget and Management the amount of cash deposited 718  
from the remaining funds of the Joint Underwriting Association to 719  
the General Revenue Fund. Notwithstanding section 3929.721 of the 720  
Revised Code, the Director of Budget and Management shall transfer 721  
an amount equal to the certified amount from the General Revenue 722  
Fund to the Medical Liability Fund created in section 3929.682 of 723  
the Revised Code. The amount transferred is hereby appropriated in 724  
fiscal year 2004. Any unencumbered and unallocated balances are 725  
hereby reappropriated in fiscal year 2005. 726

This section is not subject to the referendum. Therefore, 727  
under Ohio Constitution, Article II, Section 1d and section 1.471 728  
of the Revised Code, this section goes into immediate effect when 729  
this act becomes law. 730

**Section 6.** This act is hereby declared to be an emergency 731  
measure necessary for the immediate preservation of the public 732  
peace, health, and safety. The reason for this necessity is the 733  
need to maintain ready access to medical liability insurance for 734  
Ohio's physicians, podiatrists, and hospitals as the availability 735  
of this insurance in the market declines; access to medical 736  
liability insurance needed if Ohio's physicians, podiatrists, and 737  
hospitals are to maintain their practices and operations in this 738  
state, providing Ohio's residents with ready, quality medical 739  
care. Therefore, this act shall go into immediate effect. 740