

As Reported by the House Insurance Committee

125th General Assembly

Regular Session

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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**

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, and to make an 10
appropriation. 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, 3829.631, 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, it 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

<u>insurer and was in fact a substantially contemporaneous exchange;</u>	80
<u>(b) To the extent that the transfer was in payment of a debt</u>	81
<u>incurred by the insurer in the ordinary course of business or</u>	82
<u>financial affairs of the insurer and the transferee and the</u>	83
<u>transfer both was made in the ordinary course of business or</u>	84
<u>financial affairs of the insurer and the transferee and was made</u>	85
<u>according to ordinary business terms;</u>	86
<u>(c) If the transfer was made to or for the benefit of a</u>	87
<u>creditor, to the extent that after the transfer the creditor gave</u>	88
<u>new value to or for the benefit of the insurer not secured by an</u>	89
<u>otherwise unavoidable security interest, on account of which new</u>	90
<u>value the insurer did not make an otherwise unavoidable transfer</u>	91
<u>to or for the benefit of such creditor.</u>	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 <u>date</u> is deemed to be made immediately	106
before the filing of the successful complaint <u>date</u> .	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 by the liquidator to hear and 161
determine the rights of any parties under this section. Reasonable 162
notice of any hearing in the proceeding shall be given to all 163
parties in interest, including the obligee of a releasing bond or 164
other like obligation. Where an order is entered for the recovery 165
of indemnifying property in kind or for the avoidance of an 166
indemnifying lien, the court, ~~upon motion of any party in~~ 167
~~interest, shall~~ may in the same proceeding ascertain the value of 168
the property or lien, and if the value is less than the amount for 169
which the property is indemnity or than the amount of the lien, 170
the transferee or lienholder may elect to retain the property or 171
lien upon payment of its value, as ascertained by the court, to 172
the liquidator, within such reasonable times as the court shall 173

fix.	174
(H) The liability of a surety under a releasing bond or other like obligation shall be discharged to the extent of the value of the indemnifying property recovered or the indemnifying lien nullified and avoided by the liquidator, or where the property is retained under division (G) of this section to the extent of the amount paid to the liquidator.	175 176 177 178 179 180
(I) If a creditor has been preferred, and afterward in good faith gives the insurer further credit without security of any kind, for property which becomes a part of the insurer's estate, the amount of the new credit remaining unpaid at the time of the complaint may be set off against the preference which would otherwise be recoverable from him.	181 182 183 184 185 186
(J) If an insurer shall, directly or indirectly, within four <u>months one hundred twenty days</u> before the filing of a successful complaint for liquidation under sections 3903.01 to 3903.59 of the Revised Code <u>date</u>, or at any time in contemplation of a proceeding to liquidate it, pay money or transfer property to an attorney-at-law for services rendered or to be rendered, the transaction may be examined by the court on its own motion or shall be examined by the court on motion of the liquidator and shall be held valid only to the extent of a reasonable amount to be determined by the court, and the excess may be recovered by the liquidator for the benefit of the estate provided that where the attorney is in a position of influence in the insurer or an affiliate thereof, payment of any money or the transfer of any property to the attorney-at-law for services rendered or to be rendered shall be governed by the provisions of division (A)(2) of this section.	187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202
(K)(1) Every officer, manager, employee, shareholder, member, subscriber, attorney, or any other person acting on behalf of the insurer who knowingly participates in giving any preference when	203 204 205

~~he has reasonable cause to believe the insurer is or is about to
become insolvent at the time of the preference shall be personally
liable to the liquidator for the amount of the preference. It
shall be presumed that there is reasonable cause to so believe if
the transfer was made within four months before the date of filing
of the successful complaint for liquidation.~~

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

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

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

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

(K) Nothing in this division shall be construed to prejudice
any other claim by the liquidator against any person.

(L) As used in this section:

(1) "Complaint date" means the date on which a complaint is
filed by the superintendent of insurance seeking the liquidation
of an insurer, if the complaint results in an order of
liquidation. If the insurer is placed in rehabilitation, which

rehabilitation is later converted to liquidation, the "complaint date" is the date on which the original complaint seeking rehabilitation was filed. 236
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(2) "New value" means money or money's worth in goods, services, new credit, or the release by a transferee of property previously transferred to the transferee in a transaction that is neither void nor voidable by the liquidator under any applicable law, including the proceeds of the transferred property, but does not include an obligation substituted for an existing obligation. 239
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Sec. 3903.32. The amount recoverable by the liquidator from reinsurers shall not be reduced as a result of delinquency proceedings, regardless of any provision in the reinsurance contract or other agreement. Payment made by a reinsurer directly to an insured or other creditor does not diminish the reinsurer's obligation to the insurer's estate except when the reinsurance contract or other written agreement either provides for direct payment of the reinsurance to the insured or beneficiary of the insurance policy in the event of the insolvency of the ceding insurer or provides for payment to a third party and has received the prior written approval of the superintendent of insurance. 245
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Sec. 3929.62. As used in sections 3929.62 to 3929.70 of the Revised Code and any rules adopted pursuant to those sections: 256
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(A) "Applicant" means any licensed physician or hospital as those terms are defined in section 2305.113 of the Revised Code. 258
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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. 260
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(C) "Medical liability insurance" means insurance coverage against the legal liability of the insured and against loss, 264
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damage, or expense incident to a claim arising out of the death, 266
disease, or injury of any person as the result of negligence or 267
malpractice in rendering professional service by any licensed 268
physician or hospital, as those terms are defined in section 269
2305.113 of the Revised Code, or any employee or agent acting 270
within the scope of their duties for a physician or hospital, 271
which coverage may include coverage relating to the accreditation 272
of medical professionals. 273

Sec. 3929.63. (A) A medical liability underwriting 274
association for medical liability insurance may be created for one 275
or more classes of insurance by rule of the superintendent of 276
insurance pursuant to Chapter 119. of the Revised Code upon a 277
finding by the superintendent that both of the following 278
circumstances exist: 279

(1) A substantial number of applicants for such class or 280
classes of medical liability insurance have not been placed with 281
insurers authorized to write medical liability insurance in this 282
state, and are insurable risks. For purposes of this section, 283
"insurable risk" means that the physician or hospital is licensed, 284
certified, or accredited as required by law. 285

(2) The lack of such class or classes of medical liability 286
insurance threatens the availability of health care for any group 287
of individuals in this state. 288

(B) The medical liability underwriting association may: 289

(1) Issue or cause to be issued policies of insurance to 290
applicants, including incidental coverages, subject to terms, 291
conditions, exclusions, and limits, established by the medical 292
liability underwriting association's board of governors subject to 293
the superintendent's approval. Coverages under such policies may 294
be made available as primary or excess protection, provided limits 295

of primary protection under one policy shall not exceed one 296
million dollars for each claim and three million dollars in any 297
year unless otherwise provided for in the plan of operation. 298

(2) Underwrite the insurance and adjust and pay losses with 299
respect thereto, or appoint service companies or associations to 300
perform those functions; 301

(3) Assume reinsurance; 302

(4) Cede reinsurance. 303

Sec. 3929.631. (A) In the event the superintendent of 304
insurance creates the medical liability underwriting association 305
under section 3929.63 of the Revised Code or reactivates the 306
medical liability underwriting association under section 3929.632 307
of the Revised Code, the superintendent also shall create a 308
stabilization reserve fund for the medical liability underwriting 309
association under Chapter 119. of the Revised Code. The 310
stabilization reserve fund shall be administered by thirteen 311
directors, one of whom shall be the superintendent of insurance or 312
the superintendent's deputy. The remaining twelve directors shall 313
be appointed by the superintendent. Of these twelve directors, 314
five shall be doctors of medicine and surgery, two shall be 315
doctors of osteopathic medicine and surgery, one shall be a doctor 316
of podiatric medicine, and four shall be representatives of 317
hospitals. 318

(B) The directors shall act by majority vote with seven 319
directors constituting a quorum for the transaction of any 320
business or the exercise of any power of the stabilization reserve 321
fund. The directors shall serve without salary, but each director 322
shall be reimbursed for actual and necessary expenses incurred in 323
the performance of official duties as a director of the 324
stabilization reserve fund. The directors are not subject to any 325

personal liability with respect to administration of the fund. 326

(C) Each policyholder of the medical liability underwriting association shall pay to the medical liability underwriting association annually a stabilization reserve fund charge. The charge shall be determined by the directors with the agreement of the board of governors of the medical liability underwriting association, subject to the approval of the superintendent. In the event that there is no agreement among the directors, the board of governors, and the superintendent as to the charge, the superintendent shall determine the charge. The amount of the charge may differentiate between types of coverage, but shall be sufficient to ensure that the medical liability underwriting association is actuarially sound, adequately reserved, financially stable, and efficiently managed so as to satisfy the purposes of sections 3929.62 to 3929.70 of the Revised Code. The medical liability underwriting association shall cancel the policy of any policyholder who fails to pay the stabilization reserve fund charge. 327
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(D) The medical liability underwriting association promptly shall pay to the trustee of the stabilization reserve fund all stabilization reserve fund charges that it collects from its policyholders. 344
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(E) All money received by the stabilization reserve fund shall be held in trust by a corporate trustee selected by the directors. The corporate trustee may invest the money held in trust, subject to the approval of the directors. All investment income shall be credited to the stabilization reserve fund. All expenses of administration of the stabilization reserve fund shall be charged against the stabilization reserve fund. The money held in trust shall be used for the purpose of reimbursing the medical liability underwriting association for any deficit that arises out of the operations of the medical liability underwriting 348
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association and for any other purpose that is approved by the 358
board of directors, if the purpose is reasonably consistent with 359
the purposes of the association. Such payment to the medical 360
liability underwriting association shall be made by the directors 361
upon the medical liability underwriting association's 362
certification to the directors of the amount due. 363

(F) If the board of governors determines that the moneys 364
contained in the stabilization reserve fund at the end of a fiscal 365
year, exclusive of dollars allocated for pending claims and after 366
payment of all claims and expenses, are in excess of amounts that 367
are necessary to ensure that the medical liability underwriting 368
association is actuarially sound, adequately reserved, financially 369
stable, and efficiently managed as to satisfy the purposes of 370
sections 3929.62 to 3929.70 of the Revised Code, and the 371
superintendent concurs, the superintendent shall cause the return 372
of the excess fund moneys to applicants that have contributed to 373
the fund and that are not medical liability underwriting 374
association policyholders at the end of the fiscal year. In 375
effectuating the return of fund moneys, the superintendent shall 376
ascertain the total amount contributed to the fund by each 377
applicant during the entire period of the fund's existence. Within 378
a reasonable time period not to exceed one year, the 379
superintendent shall remit to each eligible applicant an amount 380
that bears the same ratio to the total amount of excess fund 381
moneys as the total amount contributed to the fund by each 382
applicant bears to the total amount contributed to the fund by all 383
applicants. Notwithstanding the return of moneys under this 384
division, policyholders shall continue to be subject to the 385
charges of the stabilization reserve fund under this section. The 386
total amount to be returned under this division shall reflect any 387
interest actually earned by the fund less fund operating expenses. 388

Sec. 3929.632. (A) The medical liability underwriting association created under section 3929.63 of the Revised Code may be dissolved, or its operations may be suspended, by rule of the superintendent of insurance adopted pursuant to Chapter 119. of the Revised Code, upon a finding by the superintendent that the circumstances described in division (A) of section 3929.63 of the Revised Code no longer exist. 389
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(B) In the case of any dissolution or suspension under division (A) of this section, the superintendent shall adopt rules pursuant to Chapter 119. of the Revised Code that establish standards and procedures for the fair and equitable cessation or suspension of operations, including rules that ensure the payment of all claims on policies issued and expenses incurred by the medical liability underwriting association. Rules adopted under this section may include rules relating to reinsurance. The remaining funds of the medical liability underwriting association shall be used for funding the medical liability underwriting association or for funding another medical malpractice initiative with the approval of the general assembly. 396
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(C) If operations of the medical liability underwriting association are suspended, the superintendent may subsequently reactivate its operations by rule adopted in accordance with Chapter 119. of the Revised Code. 408
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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: 412
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(1) The medical liability underwriting association; 415

(2) The board of governors of the medical liability underwriting association or any member of the board; 416
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(3) The agents or employees of the medical liability 418

underwriting association; 419

(4) The superintendent; 420

(5) Any other state officer responsible for the care and 421
custody of the funds of the medical liability underwriting 422
association. 423

Sec. 3929.64. (A)(1) A board of governors consisting of nine 424
members shall govern the medical liability underwriting 425
association, seven of whom shall be appointed by the 426
superintendent of insurance. Of the seven members appointed by the 427
superintendent, five shall be selected from insurers licensed to 428
write and writing liability insurance in this state, at least two 429
of which insurers must write medical liability insurance in this 430
state. In addition to representatives from the five insurers, the 431
superintendent also shall appoint one member who is a licensed 432
physician and one member from a hospital operating in this state. 433
The governor shall appoint two members. Of the two members 434
appointed by the governor, one shall be an insurance agent 435
licensed and writing medical liability insurance in this state. 436
The other member appointed by the governor shall represent the 437
interests of consumers and shall neither be a member of, or 438
associated with, a health care provider or profession nor 439
associated with a health insuring corporation holding a 440
certificate of authority under Chapter 1751. of the Revised Code 441
or an insurance company. The members of the board of governors 442
shall serve without compensation but shall be reimbursed for their 443
actual and necessary expenses incurred in the discharge of their 444
official duties. The directors of the stabilization reserve fund 445
shall serve as ex officio members of the medical liability 446
underwriting association's board of governors. 447

(2) Of the initial member appointments made under division 448
(A)(1) of this section, three shall be for terms of one year, 449

three shall be for terms of two years, and three shall be for 450
terms of three years, with the members' terms determined from the 451
date the medical liability underwriting association is created 452
under section 3929.63 of the Revised Code. Thereafter, terms of 453
office for appointed members shall be for three years, each term 454
ending on the same day of the same month of the year as did the 455
term it succeeds. A vacancy shall be filled in the same manner as 456
the original appointment. Members may be reappointed to the board 457
of governors. 458

(B) The board of governors may employ, compensate, and 459
prescribe the duties and powers of as many employees and 460
consultants as are necessary to carry out the purposes of sections 461
3929.62 to 3929.70 of the Revised Code. 462

Sec. 3929.65. (A)(1) Within forty-five days after the 463
creation or a reactivation of the medical liability underwriting 464
association, the board of governors of the medical liability 465
underwriting association shall submit to the superintendent of 466
insurance, for the superintendent's review, a proposed plan of 467
operation consistent with sections 3929.62 to 3929.70 of the 468
Revised Code. The superintendent may adopt this plan by rule 469
promulgated in accordance with Chapter 119. of the Revised Code. 470
If the superintendent does not adopt the plan within thirty days 471
of its submission, the superintendent shall formulate a plan of 472
operation consistent with sections 3929.62 to 3929.70 of the 473
Revised Code. Subsequent to the termination of the thirty-day 474
period, the superintendent shall establish the plan by rule in the 475
minimum time permitted by Chapter 119. of the Revised Code. 476

(2) At any time after the adoption of a plan of operation 477
under division (A)(1) of this section, the board of governors may 478
submit proposals for amendments to the plan of operation to the 479
superintendent for the superintendent's approval. The 480

superintendent also may propose amendments to the plan of 481
operation. All amendments to the plan of operation shall be 482
consistent with sections 3929.62 to 3929.70 of the Revised Code 483
and shall be adopted as rules in accordance with Chapter 119. of 484
the Revised Code. 485

(B) The plan of operation shall provide for economic, fair, 486
and nondiscriminatory administration and for the prompt and 487
efficient provision of medical liability insurance, and shall 488
contain other provisions, including, but not limited to, 489
provisions relating to all of the following: 490

(1) Establishment of necessary facilities; 491

(2) Management of the medical liability underwriting 492
association; 493

(3) Reasonable and objective underwriting 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 3929.641 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) The medical liability underwriting association is under 530
no obligation to issue any policy of insurance to any applicant 531
who fails to meet the medical liability underwriting association's 532
eligibility and underwriting standards. 533

(D) The rates, rating plans, rating rules, rating 534
classifications, territories, and policy forms applicable to the 535
insurance written by the medical liability underwriting 536
association and related statistics are subject to Chapter 3937. of 537
the Revised Code and shall be established by the board of 538
governors subject to the approval of the superintendent of 539
insurance, giving due consideration to the past and prospective 540

loss and expense experience for medical liability insurance sold 541
by insurers in this state, trends in the frequency and severity of 542
losses, and such other information as the superintendent may 543
require. All rates shall be on an actuarially sound basis, and 544
shall be calculated to be self-supporting exclusive of any amounts 545
held by the stabilization reserve fund. There shall be a 546
presumption that the rates filed and premiums for the business of 547
the medical liability underwriting association are not 548
unreasonable or excessive. The superintendent shall take all 549
appropriate steps to make available to the medical liability 550
underwriting association the profit, loss, and expense experience 551
of insurers currently or previously writing medical liability 552
insurance in this state. 553

(E) All policies issued by or on behalf of the medical 554
liability underwriting association shall be written so as to apply 555
only to death, disease, or injury which results from acts or 556
omissions covered by the policy and reported during the policy 557
period and for which written claim is made against the insured, 558
unless otherwise provided for in the plan of operation. 559

(F) All policies issued by or on behalf of the medical 560
liability underwriting association shall contain a provision that 561
upon termination of the policy through cancellation on grounds 562
other than nonpayment of premiums, or through retirement or death 563
of the insured, the insured or the insured's estate has the right 564
on payment of appropriate additional premiums to extend coverage 565
to include claims covered by the policy and discovered and 566
reported after the policy period and for which written claim is 567
made against the insured. 568

Sec. 3929.661. The medical liability underwriting association 569
may offer policyholders the option of being liable as a co-insurer 570
on sums paid out by way of settlement or judgment against the 571

policyholder on any claim made under the policy. The medical 572
liability underwriting association has sole authority to settle 573
any claim subject to the co-insurance option without the consent 574
of the insured. The plan of operation shall set forth the terms 575
and conditions of the optional co-insurance coverage. 576

Sec. 3929.67. (A) A medical liability insurance policy that 577
insures a physician, written by or on behalf of the medical 578
liability underwriting association pursuant to sections 3929.62 to 579
3929.70 of the Revised Code, may only be cancelled during the term 580
of the policy for one of the following reasons: 581

(1) Nonpayment of premiums; 582

(2) The license of the insured to practice medicine and 583
surgery or osteopathic medicine and surgery has been suspended or 584
revoked; 585

(3) The insured's failure to meet minimum underwriting 586
standards; 587

(4) The occurrence of a change in the individual risk that 588
substantially increases any hazard insured against after the 589
coverage has been issued or renewed, except to the extent that the 590
insurer reasonably should have foreseen the change or contemplated 591
the risk in writing the policy. 592

(B) A medical liability insurance policy that insures a 593
hospital, written by or on behalf of the medical liability 594
underwriting association pursuant to sections 3929.62 to 3929.70 595
of the Revised Code, may only be cancelled during the term of the 596
policy for one of the following reasons: 597

(1) Nonpayment of premiums; 598

(2) The hospital is not certified or accredited in accordance 599
with Chapter 3727. of the Revised Code; 600

(3) An injunction against the hospital has been granted under section 3727.05 of the Revised Code; 601
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(4) The occurrence of a change in the individual risk that substantially increases any hazard insured against after the coverage has been issued or renewed, except to the extent that the insurer reasonably should have foreseen the change or contemplated the risk in writing the policy. 603
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Sec. 3929.68. There shall be no liability imposed on the part of, and no cause of action of any nature arises against, the medical liability underwriting association or the stabilization reserve fund, its board of governors, directors, agents, or employees, an insurer or its employees, any licensed agent or broker, or the superintendent of insurance or the superintendent's authorized representatives and employees, for any action taken by them in the performance of their powers and duties under sections 3929.62 to 3929.70 of the Revised Code. Any reports and communications made in connection with those actions are not public records. 608
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Sec. 3929.681. Any insurer or other person aggrieved by any action or decision of the medical liability underwriting association may appeal to the board of governors. The decision of the board of governors may be appealed to the superintendent of insurance within thirty days from the date of the action or the decision. The superintendent shall, after a hearing held upon proper notice, issue an order approving or disapproving the action or decision, with respect to the matter that is the subject of appeal. All final orders and decisions of the superintendent are subject to judicial review as provided in Chapter 119. of the Revised Code. 619
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Sec. 3929.682. (A) A medical liability fund is hereby created 630

in the state treasury. The medical liability fund shall consist of 631
the remaining funds of the joint underwriting association, the 632
association created under section 3929.72 of the Revised Code and 633
dissolved under section 3929.721 of the Revised Code, and shall be 634
used for the purposes of funding the medical liability 635
underwriting association that is created in accordance with 636
sections 3929.62 to 3929.70 of the Revised Code or for funding 637
another medical malpractice initiative with the approval of the 638
general assembly. 639

(B) As used in this section, "remaining funds of the joint 640
underwriting association" means funds paid to the treasurer of 641
state in accordance with section 3929.721 of the Revised Code and 642
any plan of dissolution or trust agreement adopted under section 643
3929.721 of the Revised Code. 644

Sec. 3929.69. (A) Annually on or before the first day of 645
March, the medical liability underwriting association shall file 646
in the office of the superintendent of insurance a statement 647
containing information with respect to its transactions, 648
condition, operations, and affairs during the preceding year. The 649
statement shall contain such matters and information as are 650
prescribed and shall be in a form approved by the superintendent. 651

(B) The superintendent or any person designated by the superintendent, at any time, may visit and examine the operation and experience of the medical liability underwriting association. The association shall give the superintendent or the superintendent's designee free access to all the books, records, files, papers, and documents that relate to the operation of the medical liability underwriting association, and may summon, qualify, and allow the examination as witnesses of all persons having knowledge of the medical liability underwriting association's operations, including officers, agents, and employees of the medical liability underwriting association.

(C) The medical liability underwriting association also is subject to examination by the superintendent in accordance with section 3901.07 of the Revised Code.

Sec. 3929.70. The medical liability underwriting association is exempt from all license fees, and income, franchise, premium, and privilege taxes levied or assessed by this state or any of its political subdivisions.

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

Section 3. Section 3903.28 of the Revised Code, as amended by this act, shall apply only to liquidations for which an order of liquidation has been entered by the court on or after the effective date of this act.

Section 4. (A) As used in this section:

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

(2) "Remaining funds of the Joint Underwriting Association" 681
means funds paid to the Treasurer of State in accordance with 682
section 3929.721 of the Revised Code and any plan of dissolution 683
or trust agreement adopted under section 3929.721 of the Revised 684
Code. 685

(B) The Superintendent of Insurance shall certify to the 686
Director of Budget and Management the amount of cash deposited 687
from the remaining funds of the Joint Underwriting Association to 688
the General Revenue Fund. Notwithstanding section 3929.721 of the 689
Revised Code, the Director of Budget and Management shall transfer 690
an amount equal to the certified amount from the General Revenue 691
Fund to the Medical Liability Fund created in section 3929.682 of 692
the Revised Code. The amount transferred is hereby appropriated in 693
fiscal year 2004. Any unencumbered and unallocated balances are 694
hereby reappropriated in fiscal year 2005. 695

This section is not subject to the referendum. Therefore, 696
under Ohio Constitution, Article II, Section 1d and section 1.471 697
of the Revised Code, this section goes into immediate effect when 698
this act becomes law. 699