

**As Reported by the Senate Insurance, Commerce and Labor
Committee**

**125th General Assembly
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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,
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D. Stewart, J. Stewart, Strahorn, Taylor, Widener, Willamowski, Wilson,
Yates**

A B I L L

| | |
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| 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:

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| 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

(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

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| <u>(L) As used in this section:</u> | 231 |
| <u>(1) "Complaint date" means the date on which a complaint is</u> | 232 |
| <u>filed by the superintendent of insurance seeking the liquidation</u> | 233 |
| <u>of an insurer, if the complaint results in an order of</u> | 234 |
| <u>liquidation. If the insurer is placed in rehabilitation, which</u> | 235 |
| <u>rehabilitation is later converted to liquidation, the "complaint</u> | 236 |
| <u>date" is the date on which the original complaint seeking</u> | 237 |
| <u>rehabilitation was filed.</u> | 238 |
| <u>(2) "New value" means money or money's worth in goods,</u> | 239 |
| <u>services, new credit, or the release by a transferee of property</u> | 240 |
| <u>previously transferred to the transferee in a transaction that is</u> | 241 |
| <u>neither void nor voidable by the liquidator under any applicable</u> | 242 |
| <u>law, including the proceeds of the transferred property, but does</u> | 243 |
| <u>not include an obligation substituted for an existing obligation.</u> | 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 <u>either</u> 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 <u>or provides for payment to a third party and has received</u> | 254 |
| <u>the prior written approval of the superintendent of insurance.</u> | 255 |
| Sec. 3929.62. <u>As used in sections 3929.62 to 3929.70 of the</u> | 256 |
| <u>Revised Code and any rules adopted pursuant to those sections:</u> | 257 |
| <u>(A) "Applicant" means any licensed physician, podiatrist, or</u> | 258 |
| <u>hospital as those terms are defined in section 2305.113 of the</u> | 259 |
| <u>Revised Code.</u> | 260 |

(B) "Medical liability underwriting association" means a 261
nonprofit unincorporated underwriting association for medical 262
liability insurance established under section 3929.63 of the 263
Revised Code. 264

(C) "Medical liability insurance" means insurance coverage 265
against the legal liability of the insured and against loss, 266
damage, or expense incident to a claim arising out of the death, 267
disease, or injury of any person as the result of negligence or 268
malpractice in rendering professional service or related to the 269
credentialing or accreditation of any medical professional or 270
hospital by any licensed physician, podiatrist, or hospital, as 271
those terms are defined in section 2305.113 of the Revised Code, 272
or any employee or agent acting within the scope of their duties 273
for a physician, podiatrist, or hospital. 274

Sec. 3929.63. (A) A medical liability underwriting 275
association for medical liability insurance may be created for one 276
or more classes of insurance by rule of the superintendent of 277
insurance pursuant to Chapter 119. of the Revised Code upon a 278
finding by the superintendent that both of the following 279
circumstances exist: 280

(1) A substantial number of applicants for such class or 281
classes of medical liability insurance have not been placed with 282
insurers authorized to write medical liability insurance in this 283
state, and are insurable risks. For purposes of this section, 284
"insurable risk" means that the physician, podiatrist, or hospital 285
is licensed, certified, or accredited as required by law. 286

(2) The lack of such class or classes of medical liability 287
insurance threatens the availability of health care for any group 288
of individuals in this state. 289

(B) The medical liability underwriting association may: 290

(1) Issue or cause to be issued policies of insurance to 291
applicants, including incidental coverages, subject to terms, 292
conditions, exclusions, and limits, established by the medical 293
liability underwriting association's board of governors subject to 294
the superintendent's approval. Coverages under such policies may 295
be made available as primary or excess protection, provided limits 296
of primary protection under one policy shall not exceed one 297
million dollars for each claim and three million dollars in any 298
year unless otherwise provided for in the plan of operation. 299

(2) Underwrite the insurance and adjust and pay losses with 300
respect thereto, or appoint service companies or associations to 301
perform those functions; 302

(3) Assume reinsurance; 303

(4) Cede reinsurance. 304

Sec. 3929.631. (A) In the event the superintendent of 305
insurance creates the medical liability underwriting association 306
under section 3929.63 of the Revised Code or reactivates the 307
medical liability underwriting association under section 3929.632 308
of the Revised Code, the superintendent also shall create a 309
stabilization reserve fund for the medical liability underwriting 310
association under Chapter 119. of the Revised Code. The 311
stabilization reserve fund shall be administered by thirteen 312
directors, one of whom shall be the superintendent of insurance or 313
the superintendent's deputy. The remaining twelve directors shall 314
be appointed by the superintendent. Of these twelve directors, 315
five shall be doctors of medicine and surgery, two shall be 316
doctors of osteopathic medicine and surgery, one shall be a doctor 317
of podiatric medicine, and four shall be representatives of 318
hospitals. 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. 415

(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: 416
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(1) The medical liability underwriting association; 419

(2) The board of governors of the medical liability underwriting association or any member of the board; 420
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(3) The agents or employees of the medical liability underwriting association; 422
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(4) The superintendent; 424

(5) Any other state officer responsible for the care and custody of the funds of the medical liability underwriting association. 425
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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 shall serve as ex officio members of the medical liability 428
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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
minimum time permitted by Chapter 119. of the Revised Code.

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(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 procurement of insurance or with respect to any claim submitted thereunder. 599
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(B) A medical liability insurance policy that insures a hospital, written by or on behalf of the medical liability underwriting association pursuant to sections 3929.62 to 3929.70 of the Revised Code, may only be cancelled during the term of the policy for one of the following reasons: 602
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(1) Nonpayment of premiums; 607

(2) The hospital is not certified or accredited in accordance with Chapter 3727. of the Revised Code; 608
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(3) An injunction against the hospital has been granted under section 3727.05 of the Revised Code; 610
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(4) The insured's failure to meet minimum eligibility and underwriting standards; 612
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(5) 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 medical liability underwriting association reasonably should have foreseen the change or contemplated the risk in writing the policy; 614
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(6) Discovery of fraud or material misrepresentation in the procurement of insurance or with respect to any claim submitted thereunder. 620
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Sec. 3929.68. (A) 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 623
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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