

§ 7708. Powers and duties of the corporation. In addition to the powers and duties enumerated in other sections of this article, and subject to limitations and exclusions contained in this and other sections of this article:

(a) (1) If a domestic insurer is an impaired or insolvent insurer, the corporation shall, with the approval of the superintendent:

(A) guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the covered policies, or arrange for replacement by policies found by the superintendent to be substantially similar to such covered policies;

(B) assure payment of the contractual obligations of the impaired or insolvent insurer; and

(C) provide such moneys, pledges, notes, guarantees or other means as are reasonably necessary to discharge such duties.

(2) The aggregate liability of the corporation under this subsection shall not exceed five hundred thousand dollars for all benefits, including cash values, with respect to any one life or, to the extent benefits are not allocated pursuant to a covered policy to any one life, to any one covered policy; provided, however, that (A) the foregoing limitation shall not apply to any group or blanket accident or health insurance or accident and health insurance policy; and (B) the corporation shall be liable under this subsection in an amount not to exceed one million dollars for all benefits, including cash values, with respect to any group annuity contract (or portion of any such contract) that does not guarantee annuity benefits with respect to any specific individual identified in the contract and with respect to any funding agreement issued to fund benefits under any employee benefit plan.

(b) (1) If a foreign or alien insurer is an impaired or insolvent insurer, the corporation shall, with the approval of the superintendent:

(A) guarantee, assume, or reinsure or cause to be guaranteed, assumed, or reinsured the covered policies, or arrange for replacement by policies found by the superintendent to be substantially similar to such covered policies;

(B) assure payment of the contractual obligations of the insolvent insurer; and

(C) provide such moneys, pledges, notes, guarantees, or other means as are reasonably necessary to discharge such duties.

(2) The aggregate liability of the corporation under this subsection shall be the excess over any amount that the superintendent determines to be the statutory obligation of the guaranty corporation or association of the foreign or alien insurer's state of domicile or state of entry, but in no event shall the corporation's liability, when added to the amount so determined to be available from such other guaranty corporation or association, exceed five hundred thousand dollars for all benefits, including cash values, with respect to any one life, or, to the extent benefits are not allocated pursuant to a covered policy to any one life, to any one covered policy; provided, however, that the (A) foregoing five hundred thousand dollar limitation shall not apply to any group or blanket accident or health insurance or accident and health insurance policy; and (B) liability of all such guaranty corporations or associations may in the aggregate equal, but shall not exceed one million dollars for all benefits, including cash values, with respect to any group annuity contract (or portion of any such contract) that does not guarantee annuity benefits with respect to any specific individual identified in the contract and with respect to any funding agreement issued to fund benefits under any employee benefit plan.

(c) (1) The superintendent may, with the approval of the court, suspend cash surrender rights and policy loan rights under any covered policy for an initial period not to exceed one year and for additional successive periods, each not to exceed one year, all in addition to any contractual provision for deferral of cash or policy loan values, upon a finding that:

(A) The amounts which can be assessed under this article are less than the amounts needed to assure full and prompt performance of the impaired or insolvent insurer's contractual obligations, or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of policy or contract liens to be in the public interest, or

(B) Such suspension is necessary and proper to effectuate at a reasonable cost any guarantee, assumption or reinsurance agreement.

(2) The obligations of the corporation under subsection (a) or (b) of this section, whichever is applicable, with regard to maintaining in force any policy or contract of group life insurance or group health insurance shall be limited to one hundred eighty days from the date the

impaired or insolvent insurer was placed under an order of liquidation, rehabilitation or conservation under article seventy-four of this chapter, and the corporation shall have no obligation with regard to any claim incurred pursuant to any such policy or contract beyond one hundred eighty days from such date, provided (A) that the superintendent shall have discretion to extend the period of one hundred eighty days up to three hundred sixty-six days with regard to any policy or contract when he believes circumstances warrant, and

(B) that the superintendent and the corporation may make such further extensions of such period as they mutually agree are warranted.

(3) If the superintendent or the corporation shall find that at the time a covered annuity contract or funding agreement or a class thereof, other than an annuity contract, funding agreement or class thereof which funds a compromise or settlement contained in a judgment or order entered pursuant to the provisions of section twelve hundred seven of the civil practice law and rules, was issued by the impaired or insolvent insurer the interest rate guaranteed under such contract or agreement or class thereof was clearly excessive, the superintendent may petition the court having jurisdiction in this state, upon appropriate notice to and opportunity for submission of comments from the corporation and owners of contracts and agreements proposed to be affected, to limit the corporation's obligations under this article with respect to payment of interest to an interest rate which the court finds would have been appropriate and reasonable at the time the contract or agreement or class thereof was issued. Nothing in this subsection shall limit the rights of a holder of a contract or agreement so affected as against the impaired or insolvent insurer.

(4) Notwithstanding anything to the contrary in this article, under no circumstances shall the corporation have any obligation on account of an impaired or insolvent insurer either to, or which inures to the benefit of, any person or firm which at the time the policy, contract or agreement was issued or renewed or within ninety days of the date the insurer was determined to be impaired or insolvent, as the case may be, directly or indirectly owned ten percent or more of or controlled such impaired or insolvent insurer; provided, however, that nothing in this subsection shall relieve the corporation of responsibility with regard to contractual obligations of such insurer under certificates of

insurance issued to, and insuring solely to the benefit of, the employees of such person or firm.

(d) If the corporation fails to act within a reasonable period of time as provided in subsection (a) or (b) of this section, whichever is applicable, the superintendent shall have the powers and duties of the corporation under this article with respect to any impaired or insolvent insurer.

(e) The corporation may render assistance and advice to the superintendent, upon his request, concerning rehabilitation, payment of claims, continuance of coverage, or the performance of other contractual obligations of any impaired or insolvent insurer.

(f) When any person receives benefits under this article, the corporation shall possess all of the rights under the covered policy that such person had immediately before such receipt to the extent of the benefits received because of this article whether the benefits are payments of contractual obligations or continuation of coverage; provided, however, that the corporation shall not have any greater priority against the assets of an impaired or insolvent insurer by reason of this subsection than is expressly given by section seven thousand four hundred thirty-five of this chapter. The corporation may require an assignment to it, or the execution of any other instrument evidencing the corporation's possession, of such rights by any payee, policy or contract owner, beneficiary, insured or annuitant. The receipt of such assignment or other instrument, and its validity and enforceability by the corporation in accordance with its terms under the laws of the insurer's state of domicile or state of entry, shall be a condition precedent to the receipt of any rights or benefits conferred by this article upon such person.

(g) The contractual obligations of the impaired or insolvent insurer for which the corporation becomes or may become liable shall be no greater than the contractual obligations of the impaired or insolvent insurer would have been in the absence of an impairment or insolvency.

(h) The corporation may:

(1) enter into such contracts as are necessary or proper to carry out the provisions and purposes of this article;

(2) sue or be sued, including taking any legal actions necessary or proper for recovery of any unpaid assessments under section seven

thousand seven hundred nine of this article;

(3) borrow money to effect the purposes of this article, provided, however, that the corporation may agree, as a condition of any borrowing, that the lender will be subrogated to the rights of the corporation against the impaired or insolvent insurer to the extent of the amount borrowed and interest accruing thereon, and provided further that any note or other evidence of indebtedness of the corporation not in default shall be a legal investment for domestic insurers and may be carried as admitted assets;

(4) employ or retain such persons as are necessary or proper to handle the financial transactions of the corporation, and to perform such other functions as become necessary or proper under this article;

(5) with the approval of the superintendent, negotiate and contract with any liquidator, rehabilitator, conservator or ancillary receiver to carry out the powers and duties of the corporation;

(6) take such legal action as may be necessary to avoid payment of improper claims;

(7) exercise, for the purposes of this article and to the extent approved by the superintendent, the powers of a domestic life, health, or property/casualty insurance company, but in no case may the corporation issue insurance policies or contracts or annuity contracts other than those issued to perform the contractual obligations of the impaired or insolvent insurer;

(8) fund a resolution facility established pursuant to section seven thousand seven hundred nineteen of this article; and

(9) exercise all powers necessary or convenient for the purposes of this article.