

As Introduced

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Regular Session

2015-2016

H. B. No. 368

Representative Sears

Cosponsor: Representative Hackett

A BILL

To amend sections 3956.01 and 3956.04 of the 1
Revised Code to make changes to the health 2
coverage benefit limits and coverage exclusions 3
for life and health insurance guaranty 4
associations. 5

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

Section 1. That sections 3956.01 and 3956.04 of the 6
Revised Code be amended to read as follows: 7

Sec. 3956.01. As used in this chapter: 8

(A) "Account" means either of the two accounts created 9
under section 3956.06 of the Revised Code. 10

(B) "Contractual obligation" means any obligation under a 11
policy, contract, or certificate under a group policy or 12
contract, or portion of the policy or contract, for which 13
coverage is provided under section 3956.04 of the Revised Code. 14

(C) "Covered policy or contract" means any policy, 15
contract, or group certificate within the scope of section 16
3956.04 of the Revised Code. 17

(D) "Impaired insurer" means a member insurer that, after 18
November 20, 1989, is not an insolvent insurer, and ~~to which~~ 19
~~either of the following applies:~~ 20

~~(1) The insurer is considered by the superintendent to be~~ 21
~~potentially unable to fulfill its contractual obligations;~~ 22

~~(2) The insurer is placed under an order of rehabilitation~~ 23
or conservation by a court of competent jurisdiction. 24

(E) "Insolvent insurer" means a member insurer that, after 25
November 20, 1989, is placed under an order of liquidation by a 26
court of competent jurisdiction with a finding of insolvency. 27

(F) (1) "Member insurer" means any insurer that holds a 28
certificate of authority or is licensed to transact in this 29
state any kind of insurance for which coverage is provided under 30
section 3956.04 of the Revised Code, and includes any insurer 31
whose certificate of authority or license in this state may have 32
been suspended, revoked, not renewed, or voluntarily withdrawn 33
after November 20, 1989. 34

(2) "Member insurer" does not include any of the 35
following: 36

(a) A health insuring corporation; 37

(b) A fraternal benefit society; 38

(c) A self-insurance or joint self-insurance pool or plan 39
of the state or any political subdivision of the state; 40

(d) A mutual protective association; 41

(e) An insurance exchange; 42

(f) Any person who qualifies as a "member insurer" under 43
section 3955.01 of the Revised Code and who does not receive 44

premiums on covered policies or contracts; 45

(g) Any entity similar to any of those described in 46
divisions (F) (2) (a) to (f) of this section. 47

(3) "Member insurer" includes any insurer that operates 48
any of the entities described in division (F) (2) of this section 49
as a line of business, and not as a separate, affiliated legal 50
entity, and otherwise qualifies as a member insurer. 51

(G) "Premiums" means amounts received on covered policies 52
or contracts, less premiums, considerations, and deposits 53
returned on the policies or contracts, and less dividends and 54
experience credits on the policies and contracts. "Premiums" 55
does not include either of the following: 56

(1) Any amounts in excess of one million dollars received 57
on any unallocated annuity contract not issued under a 58
governmental retirement plan established under Section 401, 59
403(b), or 457 of the "Internal Revenue Code of 1986," 100 Stat. 60
2085, 26 U.S.C.A. 1, as amended; 61

(2) Any amounts received for any policies or contracts or 62
for the portions of any policies or contracts for which coverage 63
is not provided under section 3956.04 of the Revised Code. 64
Division (G) (2) of this section shall not be construed to 65
require the exclusion, from assessable premiums, of premiums 66
paid for coverages in excess of the interest limitations 67
specified in division (B) (2) (c) of section 3956.04 of the 68
Revised Code or of premiums paid for coverages in excess of the 69
limitations with respect to any one individual, any one 70
participant, or any one contract holder specified in division 71
(C) (2) of section 3956.04 of the Revised Code. 72

(H) "Resident" means any person who resides in this state 73

at the time a member insurer is determined to be an impaired or 74
insolvent insurer and to whom a contractual obligation is owed. 75
A person may be a resident of only one state, which, in the case 76
of a person other than a natural person, shall be its principal 77
place of business. Citizens of the United States who are either 78
residents of a foreign country or residents of a United States 79
possession, territory, or protectorate that does not have an 80
association similar to the association created by this chapter 81
shall be considered residents of the state of domicile of the 82
insurer that issued the policy or contract. 83

(I) "Structured settlement annuity" means an annuity 84
purchased in order to fund periodic payments for a plaintiff or 85
other claimant in payment for or with respect to personal injury 86
suffered by the plaintiff or other claimant. 87

(J) "Subaccount" means any of the three subaccounts 88
created under division (A) of section 3956.06 of the Revised 89
Code. 90

~~(J)~~(K) "Supplemental contract" means any agreement 91
entered into for the distribution of policy or contract 92
proceeds. 93

~~(K)~~(L) "Unallocated annuity contract" means any annuity 94
contract or group annuity certificate that is not issued to and 95
owned by an individual, except to the extent of any annuity 96
benefits guaranteed to an individual by an insurer under that 97
contract or certificate. 98

Sec. 3956.04. (A) This chapter provides coverage, by the 99
Ohio life and health insurance guaranty association, for the 100
policies and contracts specified in division (B) of this section 101
to all of the following persons: 102

(1) Persons who are the beneficiaries, assignees, or payees of the persons covered under division (A) (2) of this section, regardless of where they reside, except for nonresident certificate holders under group policies or contracts;

(2) Persons who are owners of or certificate holders under the policies or contracts other than structured settlement annuities, or, in the case of unallocated annuity contracts, the persons who are the contract holders, if either of the following applies:

(a) The persons are residents of this state;

(b) The persons are not residents of this state and all of the following conditions apply:

(i) The insurers that issued the policies or contracts are domiciled in this state;

(ii) At the time the policies or contracts were issued, the insurers did not hold a license or certificate of authority in the states in which the persons reside;

(iii) The states have associations similar to the association created by section 3956.06 of the Revised Code;

(iv) The persons are not eligible for coverage by those associations.

(3) Persons who are payees, or the beneficiary of a payee if the payee is deceased, under a structured settlement annuity if the payee is a resident of this state, regardless of where the contract owner resides.

(4) Persons who are payees, or the beneficiary of a payee if the payee is deceased, under a structured settlement annuity if the payee is not a resident of this state, but both of the

following are true: 131

(a) The contract owner of the structured settlement annuity is a resident of this state or, if the contract owner of the structured settlement annuity is not a resident of this state, the insurer that issued the structured settlement annuity is domiciled in this state and the state in which the contract owner resides has an association similar to the association created by this chapter. 132
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(b) The payee, the beneficiary, and the contract owner are not eligible for coverage by the association of the state in which the payee or contract owner resides. 139
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(5) Persons who are payees or beneficiaries of a contract owner resident of this state to the extent coverage is provided under division (A) (4) of this section, unless the payee or beneficiary is afforded any coverage by the association of another state. 142
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This chapter is intended to provide coverage to a person who is a resident of this state and, in special circumstances, to a nonresident. To avoid duplicate coverage, if a person who would otherwise receive coverage under this chapter receives coverage under the laws of another state, the person shall not be provided coverage under this chapter. In determining the application of the provisions of this chapter in situations in which a person could be covered by the association of more than one state, whether as an owner, payee, beneficiary, or assignee, this chapter shall be construed in conjunction with other state laws to result in coverage by only one association. 147
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(B) (1) This chapter provides coverage to the persons specified in division (A) of this section for direct, nongroup 158
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life, health, ~~or annuity, and supplemental~~ policies or 160
contracts, for certificates under direct group policies and 161
contracts, for supplemental contracts to any of the preceding, 162
and for unallocated annuity contracts, in each case issued by 163
member insurers, except as otherwise limited in this chapter. 164
Annuity contracts and certificates under group annuity contracts 165
include, but are not limited to, guaranteed investment 166
contracts, deposit administration contracts, unallocated funding 167
agreements, allocated funding agreements, structured settlement 168
~~agreements, lottery contracts~~ annuities, annuities issued to or 169
in connection with government lotteries, and any immediate or 170
deferred annuity contracts. 171

(2) This chapter does not provide coverage for any of the 172
following: 173

(a) Any portion of a policy or contract not guaranteed by 174
the insurer, or under which the risk is borne by the policy or 175
contract holder; 176

(b) Any policy or contract of reinsurance, unless 177
assumption certificates have been issued; 178

(c) Any portion of a policy or contract to the extent that 179
the rate of interest on which it is based: 180

(i) Averaged over the period of four years prior to the 181
date on which the association becomes obligated with respect to 182
the policy or contract or if the policy or contract has been 183
issued for a lesser period averaged over that period, exceeds 184
the rate of interest determined by subtracting two percentage 185
points from the monthly average-corporates as published by 186
Moody's investors service, inc., or any successor to that 187
service, averaged for the same period; 188

(ii) On and after the date on which the association 189
becomes obligated with respect to the policy or contract, 190
exceeds the rate of interest determined by subtracting three 191
percentage points from the monthly average-corporates as 192
published by Moody's investors service, inc., or any successor 193
to that service, as most recently available. 194

If the monthly average-corporates is no longer published, 195
the superintendent, by rule, shall establish a substantially 196
similar average. 197

(d) Any plan or program of an employer, association, or 198
similar entity to provide life, health, or annuity benefits to 199
its employees or members to the extent that the plan or program 200
is self-funded or uninsured, including but not limited to 201
benefits payable by an employer, association, or similar entity 202
under any of the following: 203

(i) A multiple employer welfare arrangement as defined in 204
section ~~514-3(40)~~ of the "Employee Retirement Income Security 205
Act of 1974," 88 Stat. 833, 29 U.S.C.A. ~~1001~~1002(40), as 206
amended; 207

(ii) A minimum premium group insurance plan; 208

(iii) A stop-loss group insurance plan; 209

(iv) An administrative services only contract. 210

(e) Any portion of a policy or contract to the extent that 211
it provides dividends or experience rating credits, or provides 212
that any fees or allowances be paid to any person, including the 213
policy or contract holder, in connection with the service to or 214
administration of the policy or contract; 215

(f) Any policy or contract issued in this state by a 216

member insurer at a time when it was not licensed or did not 217
have a certificate of authority to issue the policy or contract 218
in this state; 219

(g) Any unallocated annuity contract issued to an employee 220
benefit plan protected under the federal pension benefit 221
guaranty corporation; 222

(h) Any portion of any unallocated annuity contract that 223
is not issued to or in connection with a governmental lottery or 224
a benefit plan of a specific employee, union, or association of 225
natural persons; 226

(i) Any policy or contract issued to or for the benefit of 227
a past or present director or officer within one year of the 228
filing of the successful complaint that the insurer was impaired 229
or insolvent; 230

(j) Any policy or contract issued by any entity described 231
in division (F) (2) of section 3956.01 of the Revised Code; 232

(k) Any policy or contract issued by a member insurer if 233
the member insurer is carrying on as a line of business, and not 234
as a separate legal entity, the activities of any entity 235
described in division (F) (2) of section 3956.01 of the Revised 236
Code, and the policy or contract is issued as a product of those 237
activities; 238

(l) Any policy or contract providing hospital, medical, 239
prescription drug, or other health care benefits pursuant to 42 240
U.S.C. Chapter 7, Title XVIII, Parts C and D and any 241
corresponding regulations. 242

(C) The benefits for which the association may become 243
liable shall not exceed the lesser of either of the following: 244

(1) The contractual obligations for which the insurer is	245
liable or would have been liable if it were not an impaired or	246
insolvent insurer;	247
(2) (a) With respect to any one life, regardless of the	248
number of policies or contracts:	249
(i) Three hundred thousand dollars in life insurance death	250
benefits, but not more than one hundred thousand dollars in net	251
cash surrender and net cash withdrawal values for life	252
insurance;	253
(ii) One hundred thousand dollars in health insurance	254
benefits <u>other than basic hospital, medical, and surgical</u>	255
<u>insurance, major medical insurance, disability insurance, or</u>	256
<u>long-term care insurance</u> , including any net cash surrender and	257
net cash withdrawal values;	258
(iii) <u>Three hundred thousand dollars in disability</u>	259
<u>insurance;</u>	260
(iv) <u>Three hundred thousand dollars in long-term care</u>	261
<u>insurance;</u>	262
(v) <u>Five hundred thousand dollars in basic hospital,</u>	263
<u>medical, and surgical insurance or major medical insurance;</u>	264
(vi) <u>Two hundred fifty thousand dollars in the present</u>	265
value of annuity benefits, including net cash surrender and net	266
cash withdrawal values.	267
(b) With respect to each individual participating in a	268
governmental retirement plan established under section 401,	269
403(b), or 457 of the "Internal Revenue Code of 1986," 100 Stat.	270
2085, 26 U.S.C.A. 1, as amended, and covered by an unallocated	271
annuity contract, or the beneficiaries of each such individual	272

if deceased, in the aggregate, two hundred fifty thousand 273
dollars in present value annuity benefits, including net cash 274
surrender and net cash withdrawal values. 275

The association is not liable to expend more than three 276
hundred thousand dollars in the aggregate with respect to any 277
one individual under divisions (C) (2) (a) ~~and~~, (b), and (d) of 278
this section combined, except with respect to benefits for basic 279
hospital, medical, and surgical insurance and major medical 280
insurance under division (C) (2) (a) (v) of this section, in which 281
case the aggregate liability of the association shall not exceed 282
five hundred thousand dollars with respect to any one 283
individual. 284

(c) With respect to any one contract holder, covered by 285
any unallocated annuity contract not included in division (C) (2) 286
(b) of this section, one million dollars in benefits, 287
irrespective of the number of those contracts held by that 288
contract holder. 289

(d) With respect to each payee of a structured settlement 290
annuity, or the beneficiary or beneficiaries of the payee if the 291
payee is deceased, two hundred fifty thousand dollars in present 292
value of annuity benefits, in the aggregate, including net cash 293
surrender and net cash withdrawal values, if any. 294

(D) The liability of the association is limited strictly 295
by the express terms of the policies or contracts and by this 296
chapter, and is not affected by the contents of any brochures, 297
illustrations, advertisements in the print or electronic media, 298
or other advertising material used in connection with the sale 299
of the policies or contracts, or by oral statements made by 300
agents or other sales representatives in connection with the 301
sale of the policies or contracts. The association is not liable 302

for extra-contractual damages, punitive damages, attorney's 303
fees, or interest other than as provided for by the terms of the 304
policies or contracts as limited by this chapter, that might be 305
awarded by any court or governmental agency in connection with 306
the policies or contracts. 307

(E) The protection provided by this chapter does not apply 308
where any guaranty protection is provided to residents of this 309
state by the laws of the domiciliary state or jurisdiction of 310
the impaired or insolvent insurer other than this state. 311

Section 2. That existing sections 3956.01 and 3956.04 of 312
the Revised Code are hereby repealed. 313