



## Ohio Revised Code

### Section 3956.04 Association coverage and liability.

Effective: September 13, 2022

Legislation: Senate Bill 273

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(A) This chapter provides coverage, by the Ohio life and health insurance guaranty association, for the policies and contracts specified in division (C) of this section to all of the following persons:

(1) Persons, regardless of where they reside, except for nonresident certificate holders or enrollees under group policies or contracts, who are the beneficiaries, assignees, or payees, including health care providers rendering services covered under health insurance policies or certificates, of the persons covered under division (A)(2) of this section;

(2) Persons who are owners of or certificate holders or enrollees under the policies or contracts other than structured settlement annuities and unallocated annuity contracts 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 member insurer that issued the policies or contracts is domiciled in this state.

(ii) The persons are not eligible for coverage by an association in any other state due to the fact that the insurer or health insuring corporation did not hold a license or certificate of authority in the states in which the persons reside at the time specified in the state's guaranty association laws.

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

(3) Persons who are the owners of unallocated annuity contracts specified in division (C) of this section when those contracts meet either of the following criteria:



- (a) The contracts are issued to or in connection with a specific benefit plan whose plan sponsor has its principal place of business in this state.
- (b) The contracts are issued to or in connection with government lotteries if the owners are residents of this state.
- (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 a resident of this state, regardless of where the contract owner resides;
- (5) 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:
- (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.
- (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.

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, enrollee, beneficiary, or assignee, this chapter shall be construed in conjunction with other state laws to result in coverage by only one association.

(B) This chapter shall not provide coverage to any of the following:

- (1) A person who is a payee, or beneficiary, of a contract owner resident of this state, if the payee or beneficiary is afforded any coverage by the association of another state;



(2) A person covered under division (A)(3) of this section, if any coverage is provided by the association of another state to the person;

(3) A person who acquires rights to receive payments through a structured settlement factoring transaction as defined in 26 U.S.C. 5891(c)(3)(A), regardless of whether the transaction occurred before or after such section became effective.

(C)(1) This chapter provides coverage to the persons specified in division (A) of this section for direct, nongroup life insurance, health insurance, which for the purposes of this chapter includes sickness and accident insurance policies and contracts, and health insuring corporation subscriber policies, contracts, certificates, and agreements, or annuities, for certificates under direct group policies and contracts, for supplemental contracts to any of the preceding, and for unallocated annuity contracts, in each case issued by member insurers, except as otherwise limited in this chapter. Annuity contracts and certificates under group annuity contracts include, but are not limited to, guaranteed investment contracts, deposit administration contracts, unallocated funding agreements, allocated funding agreements, structured settlement annuities, annuities issued to or in connection with government lotteries, and any immediate or deferred annuity contracts.

(2) Except as provided in division (C)(3) of this section, this chapter does not provide coverage for any of the following:

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

(b) Any policy or contract of reinsurance, unless assumption certificates have been issued pursuant to the reinsurance policy or contract;

(c) Any portion of a policy or contract to the extent that the rate of interest on which it is based, or the interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value:

(i) Averaged over the period of four years prior to the date on which the association becomes



obligated with respect to the policy or contract or if the policy or contract has been issued for a lesser period averaged over that period, exceeds the rate of interest determined by subtracting two percentage points from the monthly average-corporates as published by Moody's investors service, inc., or any successor to that service, averaged for the same period;

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

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

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

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

(ii) A minimum premium group insurance plan;

(iii) A stop-loss group insurance plan;

(iv) An administrative services only contract.

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

(f) Any policy or contract issued in this state by a member insurer at a time when it was not licensed



or did not have a certificate of authority to issue the policy or contract in this state;

(g) Any unallocated annuity contract issued to an employee benefit plan protected under the federal pension benefit guaranty corporation, regardless of whether the federal pension benefit guaranty corporation has yet become liable to make any payments with respect to the benefit plan;

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

(i) Any portion of a policy or contract to the extent that the assessments required by section 3956.09 of the Revised Code with respect to the policy or contract are preempted by federal or state law;

(j) Any obligation that does not arise under the express written terms of the policy or contract issued by the member insurer to the enrollee, certificate holder, contract owner, or policy owner, including all of the following:

(i) Claims based on marketing materials;

(ii) Claims based on side letters, riders, or other documents that were issued by the member insurer without meeting applicable policy or contract form filing or approval requirements;

(iii) Misrepresentations of or regarding policy or contract benefits;

(iv) Extra-contractual claims;

(v) A claim for penalties or consequential or incidental damages.

(k) A contractual agreement that establishes the member insurer's obligations to provide a book value accounting guaranty for defined contribution benefit plan participants by reference to a portfolio of assets that is owned by the benefit plan or its trustee, which in each case is not an affiliate of the member insurer;



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

(m) Structured settlement annuity benefits to which a payee or the beneficiary of a payee, if the payee is deceased, has transferred his or her rights in a structured settlement factoring transaction as defined in 26 U.S.C. 5891(c)(3)(A), regardless of whether the transaction occurred before or after such section became effective;

(n)(i) A portion of a policy or contract to the extent it provides for interest or other changes in value to be determined by the use of an index or other external reference stated in the policy or contract, but which have not been credited to the policy or contract, or as to which the policy or contract owner's rights are subject to forfeiture, as of the date the member insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier.

(ii) If a policy's or contract's interest or changes in value are credited less frequently than annually, then for purposes of determining the values that have been credited and are not subject to forfeiture under division (C)(2)(n) of this section, the interest or change in value determined by using the procedures defined in the policy or contract will be credited as if the contractual date of crediting interest or changing values was the date of impairment or insolvency, whichever is earlier, and will not be subject to forfeiture.

(3) The exclusion from coverage referenced in division (C)(2)(c) of this section shall not apply to any portion of a policy or contract, including a rider, that provides long-term care or any other health insurance benefits.

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

(1) The contractual obligations for which the member insurer is liable or would have been liable if it were not an impaired or insolvent insurer;

(2)(a) With respect to any one life, regardless of the number of policies or contracts:



- (i) Three hundred thousand dollars for life insurance death benefits, but not more than one hundred thousand dollars in net cash surrender and net cash withdrawal values for life insurance;
  - (ii) One hundred thousand dollars for health insurance benefits other than health benefit plan coverage, disability income insurance, or long-term care insurance, including any net cash surrender and net cash withdrawal values;
  - (iii) Three hundred thousand dollars for disability income insurance;
  - (iv) Three hundred thousand dollars for long-term care insurance;
  - (v) Five hundred thousand dollars for health benefit plan coverage;
  - (vi) Two hundred fifty thousand dollars for the present value of annuity benefits, including net cash surrender and net cash withdrawal values.
- (b) With respect to each individual participating in a governmental retirement plan established under section 401, 403(b), or 457 of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended, and covered by an unallocated annuity contract, or the beneficiaries of each such individual if deceased, in the aggregate, two hundred fifty thousand dollars in present value annuity benefits, including net cash surrender and net cash withdrawal values.

The association is not liable to expend more than three hundred thousand dollars in the aggregate with respect to any one individual under divisions (D)(2)(a), (b), and (d) of this section combined, except with respect to benefits for health benefit plan coverage under division (D)(2)(a)(v) of this section, in which case the aggregate liability of the association shall not exceed five hundred thousand dollars with respect to any one individual.

(c) With respect to any one contract holder, covered by any unallocated annuity contract not included in division (D)(2)(b) of this section, five million dollars in benefits, irrespective of the number of contracts held by that contract holder.



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

(e)(i) The limitations set forth in this division are limitations on the benefits for which the association is obligated before taking into account either its subrogation and assignment rights or the extent to which those benefits could be provided out of the assets of the impaired or insolvent insurer attributable to covered policies.

(ii) The costs of the association's obligations under this chapter may be met by the use of assets attributable to covered policies or reimbursed to the association pursuant to its subrogation and assignment rights.

(E) The liability of the association is limited strictly by the express terms of the policies or contracts and by this chapter, and is not affected by the contents of any brochures, illustrations, advertisements in the print or electronic media, or other advertising material used in connection with the sale of the policies or contracts, or by oral statements made by agents or other sales representatives in connection with the sale of the policies or contracts. The association is not liable for extra-contractual damages, punitive damages, attorney's fees, or interest other than as provided for by the terms of the policies or contracts as limited by this chapter, that might be awarded by any court or governmental agency in connection with the policies or contracts.

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

(G) For purposes of this chapter, benefits provided by a long-term care rider to a life insurance policy or annuity contract shall be considered the same type of benefits as the base life insurance policy or annuity contract to which it relates.

(H) In performing its obligations to provide coverage under section 3956.08 of the Revised Code, the association shall not be required to guarantee, assume, reinsure, reissue, or perform, or cause to be guaranteed, assumed, reinsured, reissued, or performed, the contractual obligations of the insolvent





or impaired insurer under a covered policy that do not materially affect the economic values or economic benefits of the covered policy.