

SECOND REGULAR SESSION

# HOUSE BILL NO. 2440

102ND GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE CHRISTOFANELLI.

4230H.011

DANA RADEMAN MILLER, Chief Clerk

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## AN ACT

To amend chapter 375, RSMo, by adding thereto one new section relating to the disposition of certain reinsurance contracts.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Chapter 375, RSMo, is amended by adding thereto one new section, to be  
2 known as section 375.1183, to read as follows:

**375.1183. 1. Contracts reinsuring policies of life or health insurance or annuities**  
2 **referred to in section 375.1178 issued by a ceding insurer that has been placed in**  
3 **conservation or rehabilitation proceedings under sections 375.1150 to 375.1246 shall be**  
4 **continued or terminated under the terms and conditions of each contract and the**  
5 **provisions of this section.**

6 **2. Contracts reinsuring policies of life or health insurance or annuities referred**  
7 **to in section 375.1178 issued by a ceding insurer that has been placed into liquidation**  
8 **under sections 375.1150 to 375.1246 shall be continued, subject to the provisions of this**  
9 **section, unless:**

10 **(1) The contracts were terminated pursuant to their terms prior to the date of**  
11 **the order of liquidation; or**

12 **(2) The contracts were terminated pursuant to the order of liquidation, in which**  
13 **case the provisions of subsection 9 of this section shall apply.**

14 **3. (1) At any time within one hundred eighty days of the date of the order of**  
15 **liquidation, a guaranty association covering policies of life or health insurance or**  
16 **annuities referred to in section 375.1178, in whole or in part, may elect to assume the**  
17 **rights and obligations of the ceding insurer that relate to the policies or annuities under**

EXPLANATION — Matter enclosed in bold-faced brackets ~~thus~~ in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 any one or more reinsurance contracts between the ceding insurer and its reinsurers.  
19 Any such assumption shall be effective as of the date of the order of liquidation. The  
20 election shall be made by the guaranty association or the National Organization of Life  
21 and Health Insurance Guaranty Associations on its behalf by sending written notice,  
22 return receipt requested, to the affected reinsurers.

23 (2) To facilitate the decision, the receiver and each affected reinsurer shall make  
24 available upon request to the guaranty association or to the National Organization of  
25 Life and Health Insurance Guaranty Associations on its behalf:

26 (a) Copies of in-force reinsurance contracts and all related files and records  
27 relevant to the determination of whether such contracts should be assumed; and

28 (b) Notices of any defaults under the reinsurance contracts or any known event  
29 or condition which with the passage of time could become a default under the  
30 reinsurance contracts.

31 (3) Paragraphs (a) through (d) of this subdivision shall apply to reinsurance  
32 contracts so assumed by a guaranty association:

33 (a) The guaranty association shall be responsible for all unpaid premiums due  
34 under the reinsurance contracts, for periods both before and after the date of the order  
35 of liquidation, and shall be responsible for the performance of all other obligations to be  
36 performed after the date of the order of liquidation;

37 (b) The guaranty association shall be entitled to any amounts payable by the  
38 reinsurer under the reinsurance contracts with respect to losses or events that occur in  
39 periods on or after the date of the order of liquidation;

40 (c) Within thirty days following the date of the guaranty association's election to  
41 assume a reinsurance contract, the guaranty association and the reinsurer shall  
42 calculate the balance due to or from the guaranty association under each reinsurance  
43 contract as of the date of such election, and the guaranty association or reinsurer shall  
44 pay any remaining balance due the other within thirty five days of the date of such  
45 election. Any disputes over the amounts due to either the guaranty association or the  
46 reinsurer shall be resolved by arbitration pursuant to the terms of the affected  
47 reinsurance contract or, if the contract contains no arbitration clause, pursuant to the  
48 provisions of subdivision (3) of subsection 9 of this section; and

49 (d) If the guaranty association, or receiver on behalf of such guaranty  
50 association, within sixty days of the date of the guaranty association's election to assume  
51 a reinsurance contract, pays the unpaid premiums due for periods both before and after  
52 the date of such election that are due pursuant to the reinsurance contract, the reinsurer  
53 shall not be entitled to terminate the reinsurance contract for failure to pay premiums,  
54 and shall not be entitled to set off any unpaid amounts due under other contracts, or

55 unpaid amounts due from parties other than the guaranty association, against amounts  
56 due such guaranty association.

57         4. If a receiver continues policies of life or health insurance or annuities referred  
58 to in section 375.1178 in force following an order of liquidation, and the policies or  
59 annuities are not covered in whole or in part by one or more guaranty associations, the  
60 receiver may, within one hundred eighty days of the date of the order of liquidation,  
61 elect to assume the rights and obligations of the ceding insurer under any one or more of  
62 the reinsurance contracts that relate to the policies or annuities, provided the contracts  
63 have not been terminated as set forth in subsection 2 of this section. The election shall  
64 be made by sending written notice, return receipt requested, to the affected reinsurers.  
65 In that event, payment of premiums on the reinsurance contracts for the policies and  
66 annuities, for periods both before and after the date of the order of liquidation, shall be  
67 chargeable against the estate as a class 1 administrative expense. Amounts paid by the  
68 reinsurer on account of losses on the policies and annuities shall be to the estate of the  
69 ceding insurer.

70         5. During the period from the date of the order of liquidation until the date the  
71 guaranty association or the receiver elects to assume the rights and obligations of the  
72 ceding insurer under any one or more of the reinsurance contracts that relate to the  
73 policies or annuities as provided for in subsection 3 or 4 of this section, the guaranty  
74 association, the receiver, and the reinsurer shall not have any rights or obligations under  
75 any reinsurance contract that is eligible for assumption by such association or the  
76 receiver.

77         6. (1) If the guaranty association or the receiver, as the case may be, has timely  
78 elected to assume a reinsurance contract pursuant to subsections 3 or 4 of this section, as  
79 applicable, the parties' rights and obligations shall be governed by the provisions of  
80 subsections 3, 4, or 9 of this section, as applicable.

81         (2) Where the guaranty association covering policies of life or health insurance  
82 or annuities referred to in section 375.1178 or the receiver, as the case may be, does not  
83 timely elect to assume a reinsurance contract pursuant to subsections 3 or 4 of this  
84 section, as applicable, the reinsurance contract shall be terminated retroactively  
85 effective on the date of the order of liquidation and subsection 9 of this section shall  
86 apply.

87         7. When policies of life or health insurance or annuities referred to in section  
88 375.1178, or the obligations of the guaranty association with respect thereto, are  
89 transferred to an assuming insurer, reinsurance on the policies or annuities may also be  
90 transferred by the guaranty association, in the case of contracts assumed under

91 subsection 3 of this section, or the receiver, in the case of contracts assumed under  
92 subsection 4 of this section, subject to the following:

93 (1) Unless the reinsurer and the assuming insurer agree otherwise, the  
94 reinsurance contract transferred shall not cover any new policies or annuities in  
95 addition to those transferred;

96 (2) The obligations described in subsections 3 and 4 of this section shall no  
97 longer apply with respect to matters arising after the effective date of the transfer; and

98 (3) Notice shall be given in writing, return receipt requested, by the transferring  
99 party to the affected reinsurer not less than thirty days prior to the effective date of the  
100 transfer.

101 8. The provisions of this section shall, to the extent provided in sections 375.1150  
102 to 375.1246, supersede the provisions of any law or of any affected reinsurance contract  
103 that provides for or requires any payment of reinsurance proceeds, on account of losses  
104 or events that occur in periods after the date of the order of liquidation, to the receiver  
105 of the ceding insurer or any other person. The receiver shall remain entitled to any  
106 amounts payable by the reinsurer under the reinsurance contracts with respect to losses  
107 or events that occur in periods prior to the date of the order of liquidation, subject to  
108 provisions of sections 375.1150 to 375.1246 including applicable setoff provisions.

109 9. When a reinsurance contract is terminated pursuant to sections 375.1150 to  
110 375.1246, the reinsurer and the receiver shall commence a mandatory negotiation  
111 procedure in accordance with this subsection:

112 (1) No later than thirty days after the date of termination, each party shall  
113 appoint an actuary to determine an estimated sum due as a result of the termination of  
114 the reinsurance contract calculated in a way expected to make the parties economically  
115 indifferent as to whether the reinsurance contract continues or terminates, giving due  
116 regard to the economic effects of the insolvency. The sum shall take into account the  
117 present value of future cash flows expected under the reinsurance contract and be based  
118 on a gross premium valuation of net liability using current assumptions that reflect post-  
119 insolvency experience expectations, with no additional margins, net of any amounts  
120 payable and receivable, with a market value adjustment to reflect premature sale of  
121 assets to fund the settlement;

122 (2) Within ninety days of the date of termination, each party shall provide the  
123 other party with its estimate of the sum due as a result of the termination of the  
124 reinsurance contract, together with all relevant documents and other information  
125 supporting the estimate. The parties shall make a good faith effort to reach agreement  
126 on the sum due;

127           **(3) If the parties are unable to reach agreement within ninety days following the**  
128 **submission of materials required in subdivision (2) of this subsection, either party may**  
129 **initiate arbitration proceedings as provided in the reinsurance contract. In the event**  
130 **that the reinsurance contract does not contain an arbitration clause, either party may**  
131 **initiate arbitration pursuant to this subdivision by providing the other party with a**  
132 **written demand for arbitration. The arbitration shall be conducted pursuant to the**  
133 **following procedures:**

134           **(a) Venue for the arbitration shall be within the county of the court's jurisdiction**  
135 **pursuant to section 375.1154, or another location agreed to by the parties;**

136           **(b) Within thirty days of the responding party's receipt of the arbitration**  
137 **demand, each party shall appoint an arbitrator who is a disinterested active or retired**  
138 **officer or executive of a life or health insurance or reinsurance company, or other**  
139 **professional with no less than ten years' experience in or relating to the field of life or**  
140 **health insurance or reinsurance. The two arbitrators shall appoint an independent,**  
141 **impartial, disinterested umpire who is an active or retired officer or executive of a life or**  
142 **health insurance or reinsurance company, or other professional with no less than ten**  
143 **years' experience in the field of life or health insurance or reinsurance. If the**  
144 **arbitrators are unable to agree on an umpire, each arbitrator shall provide the other**  
145 **with the names of three qualified individuals, each arbitrator shall strike two names**  
146 **from the other's list, and the umpire shall be chosen by drawing lots from the remaining**  
147 **individuals;**

148           **(c) Within sixty days following the appointment of the umpire, the parties shall,**  
149 **unless otherwise ordered by the panel, submit to the arbitration panel their estimates of**  
150 **the sum due as a result of the termination of the reinsurance contract, together with all**  
151 **relevant documents and other information supporting the estimate;**

152           **(d) The time periods set forth in these paragraphs may be extended upon mutual**  
153 **agreement of the parties; and**

154           **(e) The panel shall have all powers necessary to conduct the arbitration**  
155 **proceedings in a fair and appropriate manner, including the power to request additional**  
156 **information from the parties, authorize discovery, hold hearings, and hear testimony.**  
157 **The panel also may appoint independent actuarial experts, the expense of which shall be**  
158 **shared equally between the parties;**

159           **(4) An arbitration panel considering the matters set forth in this subsection shall**  
160 **apply the standards set forth in this subsection and shall issue a written award**  
161 **specifying a net settlement amount due from one party or the other as a result of the**  
162 **termination of the reinsurance contract. The receivership court shall confirm that**

163 award absent proof of statutory grounds for vacating or modifying arbitration awards  
164 under the Federal Arbitration Act; and

165 (5) If the net settlement amount agreed or awarded pursuant to this subsection is  
166 payable by the reinsurer, the reinsurer shall pay the amount due to the estate subject to  
167 any applicable set-off under section 375.1198. If the net settlement amount agreed or  
168 awarded pursuant to this subsection is payable by the ceding insurer, the reinsurer shall  
169 be deemed to have a timely filed claim against the estate for that amount, which claim  
170 shall be paid pursuant to the priority established in subsection 5 of section 375.1218.  
171 The affected guaranty associations shall not be entitled to receive the net settlement  
172 amount, except to the extent they are entitled to share in the estate assets as creditors of  
173 the estate, and shall have no responsibility for the net settlement amount.

174 10. Except as otherwise provided in this section, nothing in this section shall alter  
175 or modify the terms and conditions of any reinsurance contract. Nothing in this section  
176 shall abrogate or limit any rights of any reinsurer to claim that it is entitled to rescind a  
177 reinsurance contract. Nothing in this section shall give a policyholder or beneficiary an  
178 independent cause of action against a reinsurer that is not otherwise set forth in the  
179 reinsurance contract. Nothing in this section shall limit or affect any guaranty  
180 association's rights as a creditor of the estate against the assets of the estate. Nothing in  
181 this section shall apply to reinsurance contracts covering property or casualty risks.

182 11. This section and subdivision (10) of subsection 1 of section 376.734 shall be  
183 construed together in a manner that is consistent with each other and with the purpose  
184 provided for in section 376.715.

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