

FIRST REGULAR SESSION

SENATE BILL NO. 304

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR RUPP.

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TERRY L. SPIELER, Secretary.

1623S.011

AN ACT

To amend chapter 375, RSMo, by adding thereto one new section relating to life and health reinsurance contracts.

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 known as section 375.1183, to read as follows:

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

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

(1) The contracts were terminated under their terms prior to the date of the order of liquidation, hereinafter "the coverage date"; or

(2) The contracts were terminated under the order of liquidation, in which case the provisions of subsection 9 of this section shall apply.

3. (1) At any time within one hundred eighty days of the coverage date, a guaranty association covering insurance policies or annuities referred to in section 375.1178, in whole or in part, may elect to assume the rights and obligations of the ceding insurer that relate to the policies or annuities covered, in whole or in part, by the guaranty association, in each case under any one or more reinsurance contracts between the insolvent insurer and its reinsurers selected by

22 the guaranty association. Any such assumption shall be effective as of
23 the coverage date. The election shall be effected by the applicable
24 guaranty association or foreign guaranty association sending written
25 notice, return receipt requested, to the affected reinsurers.

26 (2) To facilitate the earliest practicable decision about whether
27 to assume any of the contracts of reinsurance, and in order to protect
28 the financial position of the estate, the receiver and each reinsurer of
29 the ceding insurer shall make available upon request to affected
30 guaranty associations or to foreign guaranty associations as soon as
31 possible after commencement of formal delinquency proceedings:

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

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

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

40 (a) The guaranty association shall be responsible for all unpaid
41 premiums due under the reinsurance contracts, for periods both before
42 and after the coverage date, and shall be responsible for the
43 performance of all other obligations to be performed after the coverage
44 date, in each case that relates to insurance policies or annuities
45 referred to in section 375.1178 covered, in whole or in part, by the
46 guaranty associations. The guaranty association may charge policies
47 of insurance or annuities covered in part by the guaranty association,
48 through reasonable allocation methods, the costs for reinsurance in
49 excess of the obligations of the guaranty association and shall provide
50 notice and an accounting of such charges to the liquidator;

51 (b) The guaranty association shall be entitled to any amounts
52 payable by the reinsurer under the reinsurance contracts with respect
53 to losses or events that occur in periods on or after the coverage date
54 and that relate to insurance policies or annuities referred to in section
55 375.1178 covered, in whole or in part, by the association; provided that,
56 upon receipt of the amounts, the guaranty association shall be obliged
57 to pay to the beneficiary under the insurance policy or annuity on
58 account of which the amounts were paid a portion of the amount equal

59 to the lesser of:

60 a. The amount received by the guaranty association; and

61 b. The excess of the amount received by the guaranty association
62 over the amount equal to the benefits paid by the guaranty association
63 on account of the policy or annuity less the retention of the insurer
64 applicable to the loss or event;

65 (c) Within thirty days following the guaranty association's
66 election (the "election date"), the guaranty association and each
67 reinsurer under reinsurance contracts assumed by the guaranty
68 association shall calculate the net balance due to or from the guaranty
69 association under each reinsurance contract as of the election date
70 with respect to policies or annuities covered, in whole or in part, by the
71 guaranty association, which calculation shall give full credit to all
72 items paid by either the insurer or its receiver or the reinsurer prior
73 to the election date. The reinsurer shall pay the receiver any amounts
74 due for losses or events prior to the coverage date, subject to any setoff
75 for premiums unpaid for periods prior to the date, and the guaranty
76 association or reinsurer shall pay any remaining balance due the other,
77 in each case within five days of the completion of the aforementioned
78 calculation. Any disputes over the amounts due to either the guaranty
79 association or the reinsurer shall be resolved by arbitration under the
80 terms of affected reinsurance contracts or, if the contract contains no
81 arbitration clause, under the provisions of subdivision (4) of subsection
82 9 of this section. If the receiver has received any amounts due the
83 guaranty association under paragraph (b) of this subdivision, the
84 receiver shall remit the same to the guaranty association as promptly
85 as practicable;

86 (d) If the guaranty association or receiver, on the guaranty
87 association's behalf, within sixty days of the election date, pays the
88 unpaid premiums due for periods both before and after the election
89 date that relate to insurance policies or annuities referred to in section
90 375.1178 covered, in whole or in part, by the guaranty association, the
91 reinsurer shall not be entitled to terminate the reinsurance contracts
92 for failure to pay premiums, insofar as the reinsurance contracts relate
93 to insurance policies or annuities referred to in section 375.1178
94 covered, in whole or in part, by the guaranty association, and shall not
95 be entitled to set off any unpaid amounts due under other contracts, or

96 unpaid amounts due from parties other than the guaranty association,
97 against amounts due the guaranty association.

98 4. If a receiver continues insurance policies or annuities referred
99 to in section 375.1178 in force following an order of liquidation, and the
100 policies of insurance are not covered in whole or in part by one or
101 more guaranty associations, the receiver may, within one hundred
102 eighty days of the coverage date, elect to assume the rights and
103 obligations of the ceding insurer under any one or more of the
104 reinsurance contracts that relate to the policies or annuities, provided
105 the contracts have not been terminated as set forth in subsection 2 of
106 this section. The election shall be effected by sending written notice,
107 return receipt requested, to the affected reinsurers. In such event,
108 payment of premiums on the reinsurance contracts for the policies and
109 annuities, for periods both before and after the coverage date, shall be
110 chargeable against the estate as a class 1 administrative
111 expense. Amounts paid by the reinsurer on account of losses on the
112 policies and annuities shall be to the estate of the insolvent insurer.

113 5. During the period from the coverage date until the election
114 date:

115 (1) (a) Neither the guaranty association nor the reinsurer shall
116 have any rights or obligations under reinsurance contracts that the
117 guaranty association has the right to assume under subsection 3 of this
118 section, whether for periods prior to or after the coverage date;

119 (b) Neither the receiver nor the reinsurer shall have any rights
120 or obligations under reinsurance contracts that the receiver has the
121 right to assume under subsection 4 of this section with respect to the
122 period after the coverage date, but their respective rights and
123 obligations for the period prior to the coverage date shall remain
124 unchanged; and

125 (c) The reinsurer, the receiver, and the guaranty associations
126 shall, to the extent practicable, provide each other data and records
127 reasonably requested; and

128 (2) Provided that once the guaranty association or the receiver,
129 as the case may be, has elected or declined to elect to assume a
130 reinsurance contract, the parties' rights and obligations shall be
131 governed by subsection 3, 4, or 9 of this section, as applicable.

132 6. (1) If a guaranty association does not elect to assume a

133 reinsurance contract by the election date under subsection 3 of this
134 section, the guaranty association shall have no rights or obligations, in
135 each case for periods both before and after the coverage date, with
136 respect to the reinsurance contract.

137 (2) If a receiver does not elect to assume a reinsurance contract
138 by the election date under subsection 4 of this section, the receiver and
139 the reinsurer shall retain their respective rights and obligations with
140 respect to the reinsurance contract for the period before the coverage
141 date, but shall have no rights or obligations to each other for the period
142 after the coverage date, except as provided in subsection 9 of this
143 section.

144 (3) Where a guaranty association or the receiver, as the case may
145 be, does not elect to assume a reinsurance contract covering insurance
146 policies or annuities referred to in section 375.1178 by the election
147 date, the reinsurance contract shall be terminated retroactively
148 effective on the coverage date and subsection 9 of this section shall
149 apply.

150 7. When insurance policies or annuities referred to in section
151 375.1178, or guaranty association obligations with respect thereto, are
152 transferred to an assuming insurer, reinsurance on the policies or
153 annuities may be transferred by the guaranty association, in the case
154 of contracts assumed under subsection 3 of this section, or the receiver,
155 in the case of contracts assumed under subsection 4 of this section, as
156 the case may be, subject to the following:

157 (1) Unless the reinsurer and the assuming insurer agree
158 otherwise, the reinsurance contract transferred shall not cover any new
159 policies of insurance or annuities in addition to those transferred;

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

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

166 8. The provisions of this section shall, to the extent provided in
167 sections 375.1150 to 375.1246, supersede the provisions of any law or
168 any affected reinsurance contract that provides for or requires any
169 payment of reinsurance proceeds, on account of losses or events that

170 occur in periods after the coverage date, to the receiver of the
171 insolvent insurer or any other person. The receiver shall remain
172 entitled to any amounts payable by the reinsurer under the reinsurance
173 contracts with respect to losses or events that occur in periods prior to
174 the coverage date, subject to the provisions of sections 375.1150 to
175 375.1246 including applicable setoff provisions.

176 9. When a contract reinsuring insurance policies or annuities
177 referred to in section 375.1178 is terminated under sections 375.1150 to
178 375.1246, the following procedures set forth in this subsection shall
179 apply:

180 (1) The reinsurer and the receiver shall, upon written notice to
181 the other party to the reinsurance contract no later than thirty days
182 after the receipt by the reinsurer of notice of termination, commence
183 a mandatory negotiation and arbitration procedure in accordance with
184 this subsection;

185 (2) Each party shall appoint an actuary to determine an
186 estimated sum due as a result of the termination of the reinsurance
187 contract calculated in a way expected to make the parties economically
188 indifferent as to whether the reinsurance contract continues or
189 terminates, giving due regard to the economic effects of the
190 insolvency. The sum shall take into account the present value of future
191 cash flows expected under the reinsurance contract and be based on a
192 gross premium valuation of net liability using current assumptions that
193 reflect post-insolvency experience expectations, with no additional
194 margins, net of any amounts payable and receivable, with a market
195 value adjustment to reflect premature sale of assets to fund the
196 settlement;

197 (3) Within ninety days of the written request under subdivision
198 (1) of this subsection, each party shall provide the other party with its
199 estimate of the sum due as a result of the termination of the
200 reinsurance contract, together with all relevant documents and other
201 information supporting the estimate. The parties shall make a good
202 faith effort to reach agreement on the sum due;

203 (4) If the parties are unable to reach agreement within ninety
204 days following the submission of materials required in subdivision (3)
205 of this subsection, either party may initiate arbitration proceedings as
206 provided in the reinsurance contract. In the event that the reinsurance

207 contract does not contain an arbitration clause, either party may
208 initiate arbitration under this subdivision by providing the other party
209 with a written demand for arbitration. The arbitration shall be
210 conducted under the following procedures:

211 (a) Venue for the arbitration shall be within the county of the
212 court's jurisdiction or another location agreed to by the parties;

213 (b) Within thirty days of the responding party's receipt of the
214 arbitration demand, each party shall appoint an arbitrator who is a
215 disinterested active or retired officer or executive of a life insurance
216 or reinsurance company, or other professional with no less than ten
217 years experience in or relating to the field of life insurance or life
218 reinsurance. The two arbitrators shall appoint an independent,
219 impartial, disinterested umpire who is an active or retired officer or
220 executive of a life insurance or reinsurance company, or other
221 professional with no less than ten years experience in the field of life
222 insurance or life reinsurance. If the arbitrators are unable to agree on
223 an umpire, each arbitrator shall provide the other with the names of
224 three qualified individuals, each arbitrator shall strike two names from
225 the other's list and the umpire shall be chosen by drawing lots from the
226 remaining individuals;

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

232 (d) The time periods set forth in paragraphs (a) to (c) of this
233 subdivision may be extended upon mutual agreement of the parties;

234 (e) The panel shall have all powers necessary to conduct the
235 arbitration proceedings in a fair and appropriate manner, including the
236 power to request additional information from the parties, authorize
237 discovery, hold hearings, and hear testimony. The panel also may, if it
238 deems necessary, appoint independent actuarial experts, the expense
239 of which shall be shared equally between the parties;

240 (5) An arbitration panel considering the matters set forth in this
241 subsection shall apply the standards set forth in subdivision (2) of this
242 subsection and shall issue a written award specifying a net settlement
243 amount due from one party or the other as a result of the termination

244 of the reinsurance contract. The supervising court shall confirm that
245 award absent proof of statutory grounds for vacating or modifying
246 arbitration awards under the Federal Arbitration Act; and

247 (6) If the net settlement amount agreed or awarded under this
248 subsection is payable by the reinsurer, the reinsurer shall pay the
249 amount due to the estate subject to any applicable setoff under section
250 375.1198. If the net settlement amount agreed or awarded under this
251 subsection is payable by the insurer, the reinsurer shall be deemed to
252 have a timely filed claim against the estate for that amount, which
253 claim shall be paid under the priority established in subsection 6 of
254 section 375.1218. The guaranty associations shall not be entitled to
255 receive the net settlement amount, except to the extent they are
256 entitled to share in the estate assets as creditors of the estate, and shall
257 have no responsibility for the net settlement amount.

258 10. Except as otherwise provided in this section, nothing in this
259 section shall:

260 (1) Alter or modify the terms and conditions of any reinsurance
261 contract;

262 (2) Abrogate or limit any rights of any reinsurer to claim that it
263 is entitled to rescind a reinsurance contract;

264 (3) Give a policyholder or beneficiary an independent cause of
265 action against a reinsurer that is not otherwise set forth in the
266 reinsurance contract;

267 (4) Limit or affect any guaranty association's rights as a creditor
268 of the estate against the assets of the estate; and

269 (5) Apply to reinsurance agreements covering property or
270 casualty risks.

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