

Stricken language would be deleted from and underlined language would be added to present law.
Act 456 of the Regular Session

State of Arkansas
89th General Assembly
Regular Session, 2013

As Engrossed: S3/6/13
A Bill

SENATE BILL 464

By: Senator Rapert
By: Representative Wren

For An Act To Be Entitled

AN ACT TO AMEND THE ARKANSAS LIFE AND HEALTH
INSURANCE GUARANTY ASSOCIATION ACT; AND FOR OTHER
PURPOSES.

Subtitle

TO AMEND THE ARKANSAS LIFE AND HEALTH
INSURANCE GUARANTY ASSOCIATION ACT; AND
FOR OTHER PURPOSES.

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

SECTION 1. Arkansas Code § 23-96-104(T), concerning the definition of "resident" under the Arkansas Life and Health Insurance Guaranty Association Act, is amended to read as follows:

T. "Resident" means a person to whom a contractual obligation is owed and who resides in this state on the date of entry of a court order that determines a member insurer to be an impaired insurer or a court order that determines a member insurer to be an insolvent insurer, ~~whichever occurs first~~. A person may be a resident of only one (1) state, which in the case of a person other than a natural person shall be its principal place of business. Citizens of the United States that are either (i) residents of foreign countries, or (ii) residents of United States possessions, territories, or protectorates that do not have an association similar to the Association created by this chapter shall be deemed residents of the state of domicile of the insurer that issued the policies or contracts.



SECTION 2. Arkansas Code § 23-96-106(A), concerning coverage that is not provided by the Arkansas Life and Health Insurance Guaranty Association Act, is amended to add two (2) additional subdivisions to read as follows:

(13) 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. 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 this paragraph (A)(13), 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; and

(14) A policy or contract providing any hospital, medical, prescription drug, or other health care benefits pursuant to Part C or Part D of 42 U.S.C. §§ 1395--1395kkk-1, commonly known as Medicare Part C and D, or any regulations issued pursuant thereto.

SECTION 3. Arkansas Code § 23-96-107(B), concerning coverage for policies and contracts under the Arkansas Life and Health Insurance Guaranty Association Act, is amended to read as follows:

B. This chapter shall provide coverage to the persons specified in subsection (A) for direct, nongroup life, accident and health, or annuity policies or contracts, ~~and supplemental contracts to any of these,~~ for certificates under direct group policies and contracts, and for supplemental contracts to any of these, and for unallocated annuity contracts, in each case issued by member insurers, except as limited by 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.

SECTION 4. Arkansas Code § 23-96-110(F)-(L), concerning the reinsurance of life and health insurance contracts, is amended to read as follows:

F. ~~At any time within one (1) year after the date on which the Association becomes responsible for the obligations of a member insurer (the coverage date), the Association may elect to succeed to the rights and obligations of the member insurer, that accrue on or after the coverage date and that relate to contracts covered (in whole or in part) by the Association, under any one (1) or more indemnity reinsurance agreement(s) entered into by the member insurer as a ceding insurer and selected by the Association; provided, however, that the Association may not exercise any such election with respect to a reinsurance agreement if the receiver, rehabilitator, or liquidator of the member insurer has previously and expressly disaffirmed the reinsurance agreement. The election shall be effected by a notice to the receiver, rehabilitator, or liquidator and to the affected reinsurer(s). If the Association makes an election, paragraphs (1)-(4) of this subsection shall apply with respect to the agreements selected by the Association;~~

~~(1) The Association shall be responsible for all unpaid premiums due under the agreement(s) (for periods both before and after the coverage date), and shall be responsible for the performance of all other obligations to be performed after the coverage date, in each case which relate to contracts covered (in whole or in part) by the Association. The association may charge contracts covered in part by the Association through reasonable allocation methods, the costs for reinsurance in excess of the obligations of the Association;~~

~~(2) The Association shall be entitled to any amounts payable by the reinsurer under the agreement(s) with respect to losses or events that occur in periods after the coverage date and that relate to contracts covered by the Association (in whole or in part), provided that, upon receipt of any such amounts, the Association shall be obliged to pay to the beneficiary under the policy or contract on account of which the amounts were paid a portion of the amount equal to the excess of:~~

~~(a) The amount received by the Association; or~~

~~(b) The benefits paid by the Association on account of the policy or contract less the retention of the impaired or insolvent member insurer applicable to the loss or event;~~

~~(3) Within thirty (30) days following the Association's election, the Association and each indemnity reinsurer shall calculate the net balance due to or from the Association under each such reinsurance agreement(s) as of the date of the Association's election, which calculation shall give full credit to all items paid by either the member insurer (or its receiver, rehabilitator, or liquidator) or the indemnity reinsurer during the period between the coverage date and the date of the Association's election. Either the Association or indemnity reinsurer shall pay the net balance due the other within five (5) days of the completion of the aforementioned calculation. If the receiver, rehabilitator, or liquidator has received any amounts due the Association pursuant to paragraph (2) of this subsection, the receiver, rehabilitator, or liquidator shall remit the same to the Association as promptly as practicable.~~

~~(4) If the Association, within sixty (60) days of the election, pays the premiums due for the period both before and after the coverage date that relates to contracts covered by the Association (in whole or in part), the reinsurer shall not be entitled to terminate the reinsurance agreements(s) (insofar as the agreement(s) relate to contracts covered by the Association (in whole or in part)) and shall not be entitled to set off any unpaid premium due for periods prior to the coverage date against amounts due the Association.~~

~~G. In the event the Association transfers its obligations to another insurer, and if the Association and the other insurer agree, the other insurer shall succeed to the rights and obligations of the Association under subsection (F) of this section effective as of the date agreed upon by the Association and the other insurer and regardless of whether the Association has made the election referred to above in subsection (F) provided that:~~

~~(1) The indemnity reinsurance agreement(s) shall automatically terminate for new reinsurance unless the indemnity reinsurer and the other insurer agree to the contrary;~~

~~(2) The obligations described in the proviso to paragraph (F)(2) of this section shall no longer apply on and after the date the indemnity reinsurance agreement is transferred to the third party insurer; and~~

~~(3) This subsection (G) shall not apply if the Association has previously expressly determined in writing that it will not exercise the election referred to in subsection (F) of this section.~~ (1)(a) At any time within one hundred eighty (180) days of the date of the order of liquidation, the Association may elect to succeed to the rights and obligations of the ceding member insurer that relate to policies or annuities covered, in whole or in part, by the Association, in each case under any one or more reinsurance contracts entered into by the insolvent insurer and its reinsurers and selected by the Association. Any such assumption shall be effective as of the date of the order of liquidation. The election shall be effected by the Association or the National Organization of Life and Health Insurance Guaranty Associations on its behalf sending written notice, return receipt requested, to the affected reinsurers.

(b) To facilitate the earliest practicable decision about whether to assume any of the contracts of reinsurance, and in order to protect the financial position of the estate, the receiver and each reinsurer of the ceding member insurer shall make available upon request to the Association or to the National Organization of Life and Health Insurance Guaranty Associations on its behalf as soon as possible after commencement of formal delinquency proceedings (i) copies of in-force contracts of reinsurance and all related files and records relevant to the determination of whether such contracts should be assumed, and (ii) notices of any defaults under the reinsurance contracts or any known event or condition which with the passage of time could become a default under the reinsurance contracts.

(c) The following subparagraphs (i) through (iv) shall apply to reinsurance contracts so assumed by the Association:

(i) The Association shall be responsible for all unpaid premiums due under the reinsurance contracts for periods both before and after the date of the order of liquidation, and shall be responsible for the performance of all other obligations to be performed after the date of the order of liquidation, in each case which relate to policies or annuities covered, in whole or in part, by the Association. The Association may charge policies or annuities covered in part by the Association, through reasonable allocation methods, the costs for reinsurance in excess of the obligations of the Association and shall provide notice and an accounting of these charges to the liquidator;

(ii) The Association shall be entitled to any amounts payable by the reinsurer under the reinsurance contracts with respect to losses or events that occur in periods after the date of the order of liquidation and that relate to policies or annuities covered, in whole or in part, by the Association, provided that, upon receipt of any such amounts, the Association shall be obliged to pay to the beneficiary under the policy or annuity on account of which the amounts were paid a portion of the amount equal to the lesser of:

(A) The amount received by the Association;

and

(B) The excess of the amount received by the Association over the amount equal to the benefits paid by the Association on account of the policy or annuity less the retention of the insurer applicable to the loss or event;

(iii) Within thirty (30) days following the Association's election, the election date, the Association and each reinsurer under contracts assumed by the Association shall calculate the net balance due to or from the Association under each reinsurance contract as of the election date with respect to policies or annuities covered, in whole or in part, by the Association, which calculation shall give full credit to all items paid by either the insurer or its receiver or the reinsurer prior to the election date. The reinsurer shall pay the receiver any amounts due for losses or events prior to the date of the order of liquidation, subject to any set-off for premiums unpaid for periods prior to the date, and the Association or reinsurer shall pay any remaining balance due the other, in each case within five (5) days of the completion of the aforementioned calculation. Any disputes over the amounts due to either the Association or the reinsurer shall be resolved by arbitration pursuant to the terms of the affected reinsurance contracts or, if the contract contains no arbitration clause, as otherwise provided by law. If the receiver has received any amounts due the Association pursuant to subparagraph (c)(ii) of this paragraph (F)(1), the receiver shall remit the same to the Association as promptly as practicable; and

(iv) If the Association or receiver, on the Association's behalf, within sixty (60) days of the election date, pays the unpaid premiums due for periods both before and after the election date that

relate to policies or annuities covered, in whole or in part, by the Association, the reinsurer shall not be entitled to terminate the reinsurance contracts for failure to pay premium insofar as the reinsurance contracts relate to policies or annuities covered, in whole or in part, by the Association, and shall not be entitled to set off any unpaid amounts due under other contracts, or unpaid amounts due from parties other than the Association, against amounts due the Association.

(2)(a) During the period from the date of the order of liquidation until the election date or, if the election date does not occur, until one hundred eighty (180) days after the date of the order of liquidation:

(i) Neither the Association nor the reinsurer shall have any rights or obligations under reinsurance contracts that the Association has the right to assume under paragraph (F)(1) of this section, whether for periods prior to or after the date of the order of liquidation; and

(ii) The reinsurer, the receiver, and the Association shall, to the extent practicable, provide each other data and records reasonably requested.

(b) Provided that once the Association has elected to assume a reinsurance contract, the parties' rights and obligations shall be governed by paragraph (F)(1) of this section.

(3) If the Association does not elect to assume a reinsurance contract by the election date pursuant to paragraph (F)(1) of this section, the Association shall have no rights or obligations, in each case for periods both before and after the date of the order of liquidation, with respect to the reinsurance contract.

(4) When policies or annuities, or covered obligations with respect thereto, are transferred to an assuming insurer, reinsurance on the policies or annuities may also be transferred by the Association, in the case of contracts assumed under paragraph (F)(1) of this section, subject to the following:

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

(b) The obligations described in paragraph (F)(1) of this

section shall no longer apply with respect to matters arising after the effective date of the transfer; and

(c) Notice shall be given in writing, return receipt requested, by the transferring party to the affected reinsurer not less than thirty (30) days prior to the effective date of the transfer.

~~H.~~(5) The provisions of this subsection (F) ~~of this section~~ shall supersede the provisions of any law of this state or of any affected reinsurance agreement(s) that provide for or require any payment of reinsurance proceeds, on account of losses or events that occur in periods after the coverage date, to the receiver, liquidator, or rehabilitator of the insolvent member insurer. The receiver, rehabilitator, or liquidator shall remain entitled to any amounts payable by the reinsurer under the reinsurance agreement(s) with respect to losses or events that occur in periods prior to the coverage date (subject to applicable setoff provisions).

~~I.~~(6) Except as otherwise expressly provided above, nothing herein shall alter or modify the terms and conditions of the indemnity reinsurance agreements of the insolvent member insurer. Nothing herein shall abrogate or limit any rights of any reinsurer to claim that it is entitled to rescind a reinsurance agreement. Nothing herein shall give a policy owner or beneficiary an independent cause of action against an indemnity reinsurer that is not otherwise set forth in the indemnity reinsurance agreement. Nothing in this section shall give a policyholder or beneficiary an independent cause of action against a reinsurer that is not otherwise set forth in the reinsurance contract. Nothing in this section shall limit or affect the Association's rights as a creditor of the estate against the assets of the estate. Nothing in this section shall apply to reinsurance agreements covering property or casualty risks.

~~J.~~ G. The board of directors of the Association shall have discretion and may exercise reasonable business judgment to determine the means by which the Association is to provide the benefits of this chapter in an economical and efficient manner and may provide additional or alternative coverages and benefits in appropriate situations.

~~K.~~ H. Where the Association has arranged or offered to provide the benefits of this chapter to a covered person under a plan or arrangement that fulfills the Association's obligations under this chapter, the person shall not be entitled to benefits from the Association in addition to or other than

those provided under the plan or arrangement.

~~1.~~ I. Venue in a suit against the Association arising under this chapter shall be in Pulaski County. The Association shall not be required to give an appeal bond in an appeal that relates to a cause of action arising under this chapter.

SECTION 5. Arkansas Code § 23-96-114(A) and (B), concerning the Arkansas Life and Health Insurance Guaranty Association's liability for benefits, are amended to read as follows:

A. The benefits that the Association may become obligated to cover shall in no event exceed the lesser of:

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

(2)(a) With respect to any one (1) life, regardless of the number of policies or contracts:

(i) Three hundred thousand dollars (\$300,000) in life insurance death benefits or net cash surrender and net cash withdrawal values for life insurance;

(ii) ~~Three hundred thousand dollars (\$300,000)~~ Five hundred thousand dollars (\$500,000) in accident and health insurance benefits, including any net cash surrender and net cash withdrawal values, provided coverage for disability insurance benefits and long term care insurance benefits shall not exceed three hundred thousand dollars (\$300,000);

(iii) Three hundred thousand dollars (\$300,000) in 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 benefit plan established under section 401(k), section 403(b), or section 457, of the United States Internal Revenue Code covered by an unallocated annuity contract or the beneficiaries of each such individual if deceased, in the aggregate three hundred thousand dollars (\$300,000) in present value annuity benefits, including net cash surrender and net cash withdrawal values;

(c) ~~With respect to any one (1) contract holder, one million dollars (\$1,000,000) in unallocated annuity contract benefits,~~

irrespective of the number of contracts held by that contract holder each payee of a structured settlement annuity, or beneficiary or beneficiaries of the payee if deceased, three hundred thousand dollars (\$300,000) in present value annuity benefits, in the aggregate, including net cash surrender and net cash withdrawal values, if any.

B.(1) Provided, however, that in no event shall the Association be ~~liable to expend~~ obligated to cover more than ~~the~~ (i) three hundred thousand dollars (\$300,000) in benefits in the aggregate with respect to any one life under §§ 23-96-106, 23-96-107, and this section except with respect to benefits for basic hospital, medical and surgical insurance and major medical insurance under paragraph (A)(2)(a)(ii) of this section, in which case the aggregate liability of the Association shall not exceed five hundred thousand dollars (\$500,000) with respect to any one individual, or (ii) with respect to one owner of multiple non-group policies of life insurance, whether the policy owner is an individual, firm, corporation or other person, and whether the persons insured are officers, managers, employees or other persons, more than one million dollars (\$1,000,000) in benefits, regardless of the number of policies and contracts held by the owner;

(2) With respect to either (i) one (1) contract owner provided coverage under § 23-96-107 (A)(3)(b); or (ii) one (1) plan sponsor whose plans own directly or in trust one or more unallocated annuity contracts not included in paragraph (A)(2)(b) of this section, one million dollars (\$1,000,000) in benefits, irrespective of the number of contracts with respect to the contract owner or plan sponsor. However, in the case where one or more unallocated annuity contracts are covered contracts under this chapter and are owned by a trust or other entity for the benefit of two (2) or more plan sponsors, coverage shall be afforded by the Association if the largest interest in the trust or entity owning the contract or contracts is held by a plan sponsor whose principal place of business is in this state and in no event shall the Association be obligated to cover more than one million dollars (\$1,000,000) in benefits with respect to all of these unallocated contracts.

~~(2)(3)~~ The limitations set forth in this subsection (B) 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. 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.

~~(3)~~(4) In performing its obligations to provide coverage under § 23-96-111, the Association shall not be required to guarantee, assume, reinsure, or perform, or cause to be guaranteed, assumed, reinsured, or performed, the contractual obligations of the insolvent or impaired insurer under a covered policy or contract that do not materially affect the economic values or economic benefits of the covered policy or contract.

/s/Rapert

APPROVED: 03/21/2013

