

# SENATE BILL NO. 834

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR CRAWFORD.

3270S.02I

KRISTINA MARTIN, Secretary

## AN ACT

To amend chapter 375, RSMo, by adding thereto one new section relating to the disposition of certain 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  
2 one new section, to be known as section 375.1183, to read as  
3 follows:

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

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

13 (1) The contracts were terminated pursuant to their  
14 terms prior to the date of the order of liquidation; or

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

18           3. (1) At any time within one hundred eighty days of  
19 the date of the order of liquidation, a guaranty association  
20 covering policies of life or health insurance or annuities  
21 referred to in section 375.1178, in whole or in part, may  
22 elect to assume the rights and obligations of the ceding  
23 insurer that relate to the policies or annuities under any  
24 one or more reinsurance contracts between the ceding insurer  
25 and its reinsurers. Any such assumption shall be effective  
26 as of the date of the order of liquidation. The election  
27 shall be made by the guaranty association or the national  
28 organization of life and health insurance guaranty  
29 associations on its behalf by sending written notice, return  
30 receipt requested, to the affected reinsurers.

31           (2) To facilitate the decision, the receiver and each  
32 affected reinsurer shall make available upon request to the  
33 guaranty association or to the national organization of life  
34 and health insurance guaranty associations on its behalf:

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

38           (b) Notices of any defaults under the reinsurance  
39 contracts or any known event or condition which with the  
40 passage of time could become a default under the reinsurance  
41 contracts.

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

45           (a) The guaranty association shall be responsible for  
46 all unpaid premiums due under the reinsurance contracts, for  
47 periods both before and after the date of the order of  
48 liquidation, and shall be responsible for the performance of

49 all other obligations to be performed after the date of the  
50 order of liquidation.

51 (b) The guaranty association shall be entitled to any  
52 amounts payable by the reinsurer under the reinsurance  
53 contracts with respect to losses or events that occur in  
54 periods on or after the date of the order of liquidation.

55 (c) Within thirty days following the date of the  
56 guaranty association's election to assume a reinsurance  
57 contract, the guaranty association and the reinsurer shall  
58 calculate the balance due to or from the guaranty  
59 association under each reinsurance contract as of the date  
60 of such election, and the guaranty association or reinsurer  
61 shall pay any remaining balance due the other within thirty  
62 five days of the date of such election. Any disputes over  
63 the amounts due to either the guaranty association or the  
64 reinsurer shall be resolved by arbitration pursuant to the  
65 terms of the affected reinsurance contract or, if the  
66 contract contains no arbitration clause, pursuant to the  
67 provisions of subdivision (3) of subsection 9 of this  
68 section.

69 (d) If the guaranty association, or receiver on behalf  
70 of such guaranty association, within sixty days of the date  
71 of the guaranty association's election to assume a  
72 reinsurance contract, pays the unpaid premiums due for  
73 periods both before and after the date of such election that  
74 are due pursuant to the reinsurance contract, the reinsurer  
75 shall not be entitled to terminate the reinsurance contract  
76 for failure to pay premiums, and shall not be entitled to  
77 set off any unpaid amounts due under other contracts, or  
78 unpaid amounts due from parties other than the guaranty  
79 association, against amounts due such guaranty association.

80           4. If a receiver continues policies of life or health  
81 insurance or annuities referred to in section 375.1178 in  
82 force following an order of liquidation, and the policies or  
83 annuities are not covered in whole or in part by one or more  
84 guaranty associations, the receiver may, within one hundred  
85 eighty days of the date of the order of liquidation, elect  
86 to assume the rights and obligations of the ceding insurer  
87 under any one or more of the reinsurance contracts that  
88 relate to the policies or annuities, provided the contracts  
89 have not been terminated as set forth in subsection 2 of  
90 this section. The election shall be made by sending written  
91 notice, return receipt requested, to the affected  
92 reinsurers. In that event, payment of premiums on the  
93 reinsurance contracts for the policies and annuities, for  
94 periods both before and after the date of the order of  
95 liquidation, shall be chargeable against the estate as a  
96 class 1 administrative expense. Amounts paid by the  
97 reinsurer on account of losses on the policies and annuities  
98 shall be to the estate of the ceding insurer.

99           5. During the period from the date of the order of  
100 liquidation until the date the guaranty association or the  
101 receiver elects to assume the rights and obligations of the  
102 ceding insurer under any one or more of the reinsurance  
103 contracts that relate to the policies or annuities as  
104 provided for in subsection 3 or 4 of this section, the  
105 guaranty association, the receiver, and the reinsurer shall  
106 not have any rights or obligations under any reinsurance  
107 contract that is eligible for assumption by such association  
108 or the receiver.

109           6. (1) If the guaranty association or the receiver,  
110 as the case may be, has timely elected to assume a  
111 reinsurance contract pursuant to subsections 3 or 4 of this

112 section, as applicable, the parties' rights and obligations  
113 shall be governed by the provisions of subsections 3, 4, or  
114 9 of this section, as applicable.

115 (2) Where the guaranty association covering policies  
116 of life or health insurance or annuities referred to in  
117 section 375.1178 or the receiver, as the case may be, does  
118 not timely elect to assume a reinsurance contract pursuant  
119 to subsections 3 or 4 of this section, as applicable, the  
120 reinsurance contract shall be terminated retroactively  
121 effective on the date of the order of liquidation and  
122 subsection 9 of this section shall apply.

123 7. When policies of life or health insurance or  
124 annuities referred to in section 375.1178, or the  
125 obligations of the guaranty association with respect  
126 thereto, are transferred to an assuming insurer, reinsurance  
127 on the policies or annuities may also be transferred by the  
128 guaranty association, in the case of contracts assumed under  
129 subsection 3 of this section, or the receiver, in the case  
130 of contracts assumed under subsection 4 of this section,  
131 subject to the following:

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

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

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

143           8. The provisions of this section shall, to the extent  
144 provided in sections 375.1150 to 375.1246, supersede the  
145 provisions of any law or of any affected reinsurance  
146 contract that provides for or requires any payment of  
147 reinsurance proceeds, on account of losses or events that  
148 occur in periods after the date of the order of liquidation,  
149 to the receiver of the ceding insurer or any other person.  
150 The receiver shall remain entitled to any amounts payable by  
151 the reinsurer under the reinsurance contracts with respect  
152 to losses or events that occur in periods prior to the date  
153 of the order of liquidation, subject to provisions of  
154 sections 375.1150 to 375.1246 including applicable setoff  
155 provisions.

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

160           (1) No later than thirty days after the date of  
161 termination, each party shall appoint an actuary to  
162 determine an estimated sum due as a result of the  
163 termination of the reinsurance contract calculated in a way  
164 expected to make the parties economically indifferent as to  
165 whether the reinsurance contract continues or terminates,  
166 giving due regard to the economic effects of the  
167 insolvency. The sum shall take into account the present  
168 value of future cash flows expected under the reinsurance  
169 contract and be based on a gross premium valuation of net  
170 liability using current assumptions that reflect post-  
171 insolvency experience expectations, with no additional  
172 margins, net of any amounts payable and receivable, with a  
173 market value adjustment to reflect premature sale of assets  
174 to fund the settlement;

175           (2) Within ninety days of the date of termination,  
176 each party shall provide the other party with its estimate  
177 of the sum due as a result of the termination of the  
178 reinsurance contract, together with all relevant documents  
179 and other information supporting the estimate. The parties  
180 shall make a good faith effort to reach agreement on the sum  
181 due;

182           (3) If the parties are unable to reach agreement  
183 within ninety days following the submission of materials  
184 required in subdivision (2) of this subsection, either party  
185 may initiate arbitration proceedings as provided in the  
186 reinsurance contract. In the event that the reinsurance  
187 contract does not contain an arbitration clause, either  
188 party may initiate arbitration pursuant to this subdivision  
189 by providing the other party with a written demand for  
190 arbitration. The arbitration shall be conducted pursuant to  
191 the following procedures:

192           (a) Venue for the arbitration shall be within the  
193 county of the court's jurisdiction pursuant to section  
194 375.1154, or another location agreed to by the parties;

195           (b) Within thirty days of the responding party's  
196 receipt of the arbitration demand, each party shall appoint  
197 an arbitrator who is a disinterested active or retired  
198 officer or executive of a life or health insurance or  
199 reinsurance company, or other professional with no less than  
200 ten years' experience in or relating to the field of life or  
201 health insurance or reinsurance. The two arbitrators shall  
202 appoint an independent, impartial, disinterested umpire who  
203 is an active or retired officer or executive of a life or  
204 health insurance or reinsurance company, or other  
205 professional with no less than ten years' experience in the  
206 field of life or health insurance or reinsurance. If the

207 arbitrators are unable to agree on an umpire, each  
208 arbitrator shall provide the other with the names of three  
209 qualified individuals, each arbitrator shall strike two  
210 names from the other's list and the umpire shall be chosen  
211 by drawing lots from the remaining individuals;

212 (c) Within sixty days following the appointment of the  
213 umpire, the parties shall, unless otherwise ordered by the  
214 panel, submit to the arbitration panel their estimates of  
215 the sum due as a result of the termination of the  
216 reinsurance contract, together with all relevant documents  
217 and other information supporting the estimate;

218 (d) The time periods set forth in these paragraphs may  
219 be extended upon mutual agreement of the parties;

220 (e) The panel shall have all powers necessary to  
221 conduct the arbitration proceedings in a fair and  
222 appropriate manner, including the power to request  
223 additional information from the parties, authorize  
224 discovery, hold hearings and hear testimony. The panel also  
225 may appoint independent actuarial experts, the expense of  
226 which shall be shared equally between the parties;

227 (4) An arbitration panel considering the matters set  
228 forth in this subsection shall apply the standards set forth  
229 in this subsection and shall issue a written award  
230 specifying a net settlement amount due from one party or the  
231 other as a result of the termination of the reinsurance  
232 contract. The receivership court shall confirm that award  
233 absent proof of statutory grounds for vacating or modifying  
234 arbitration awards under the Federal Arbitration Act;

235 (5) If the net settlement amount agreed or awarded  
236 pursuant to this subsection is payable by the reinsurer, the  
237 reinsurer shall pay the amount due to the estate subject to  
238 any applicable set-off under section 375.1198. If the net



239 settlement amount agreed or awarded pursuant to this  
240 subsection is payable by the ceding insurer, the reinsurer  
241 shall be deemed to have a timely filed claim against the  
242 estate for that amount, which claim shall be paid pursuant  
243 to the priority established in subsection 5 of section  
244 375.1218. The affected guaranty associations shall not be  
245 entitled to receive the net settlement amount, except to the  
246 extent they are entitled to share in the estate assets as  
247 creditors of the estate, and shall have no responsibility  
248 for the net settlement amount.

249 10. Except as otherwise provided in this section,  
250 nothing in this section shall alter or modify the terms and  
251 conditions of any reinsurance contract. Nothing in this  
252 section shall abrogate or limit any rights of any reinsurer  
253 to claim that it is entitled to rescind a reinsurance  
254 contract. Nothing in this section shall give a policyholder  
255 or beneficiary an independent cause of action against a  
256 reinsurer that is not otherwise set forth in the reinsurance  
257 contract. Nothing in this section shall limit or affect any  
258 guaranty association's rights as a creditor of the estate  
259 against the assets of the estate. Nothing in this section  
260 shall apply to reinsurance contracts covering property or  
261 casualty risks.

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

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