

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 834

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 one new section, to be known as section 375.1183, to read as follows:

375.1183. 1. Contracts reinsuring policies of life or health insurance or annuities referred to in section 375.1178 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 and conditions of each contract and the provisions of this section.

2. Contracts reinsuring policies of life or health insurance or annuities referred to in section 375.1178 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 pursuant to their terms prior to the date of the order of liquidation; or

(2) The contracts were terminated pursuant to 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 date of the order of liquidation, a guaranty association covering policies of life or health insurance 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 under any one or more reinsurance contracts between the ceding insurer and its reinsurers. Any such assumption shall be effective as of the date of the order of liquidation. The election shall be made by the guaranty association or the national organization of life and health insurance guaranty associations on its behalf by sending written notice, return receipt requested, to the affected reinsurers.

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

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

(b) 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.

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

(a) The guaranty 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.

(b) The guaranty 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 on or after the date of the order of liquidation.

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

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

4. If a receiver continues policies of life or health insurance or annuities referred to in section 375.1178 in force following an order of liquidation, and the policies or annuities are not covered in whole or in part by one or more guaranty associations, the receiver may, within one hundred eighty days of the date of the order of liquidation, elect to assume the rights and obligations of the ceding insurer under any one or more of the reinsurance contracts that

relate to the policies or annuities, provided the contracts have not been terminated as set forth in subsection 2 of this section. The election shall be made by sending written notice, return receipt requested, to the affected reinsurers. In that event, payment of premiums on the reinsurance contracts for the policies and annuities, for periods both before and after the date of the order of liquidation, shall be chargeable against the estate as a class 1 administrative expense. Amounts paid by the reinsurer on account of losses on the policies and annuities shall be to the estate of the ceding insurer.

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

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

(2) Where the guaranty association covering policies of life or health insurance or annuities referred to in section 375.1178 or the receiver, as the case may be, does not timely elect to assume a reinsurance contract pursuant to subsections 3 or 4 of this section, as applicable, the reinsurance contract shall be terminated retroactively

effective on the date of the order of liquidation and subsection 9 of this section shall apply.

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

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

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

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

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

sections 375.1150 to 375.1246 including applicable setoff provisions.

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

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

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

(3) If the parties are unable to reach agreement within ninety days following the submission of materials required in subdivision (2) of this subsection, either party may initiate arbitration proceedings as provided in the reinsurance contract. In the event that the reinsurance

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

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

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

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

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

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

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

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

10. Except as otherwise provided in this section, nothing in this section shall alter or modify the terms and conditions of any reinsurance contract. Nothing in this section shall abrogate or limit any rights of any reinsurer

to claim that it is entitled to rescind a reinsurance contract. 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 any guaranty association's rights as a creditor of the estate against the assets of the estate. Nothing in this section shall apply to reinsurance contracts covering property or casualty risks.

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