

SECOND REGULAR SESSION

SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 834

102ND GENERAL ASSEMBLY

3270S.03C

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 subsection 3 or 4 of this

112 section, as applicable, the parties' rights and obligations
113 shall be governed by the provisions of subsection 3 or 4 of
114 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 subsection 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
225 also may appoint independent actuarial experts, the expense
226 of 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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