

# Hall of the House of Representatives

83rd General Assembly - Regular Session, 2001

## Amendment Form

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### Subtitle of House Bill No. 2475

"AN ACT TO ADOPT THE NAIC INSURERS REHABILITATION AND LIQUIDATION  
MODEL ACT."

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### Amendment No. 2 to House Bill No. 2475.

Amend House Bill No. 2475 as engrossed H3/19/01:

Page 6, delete lines 30 through 36, and page 7, delete lines 1 through 10, and substitute the following:

"(k) 'General assets' includes all property, real, personal or otherwise, not specifically mortgaged, pledged, deposited or otherwise encumbered for the security or benefit of specified persons or classes of persons. As to specifically encumbered property, "general assets" includes all such property or its proceeds in excess of the amount necessary to discharge the sum or sums secured thereby. Assets held in trust and in deposit for the security or benefit of all policyholders or all policyholders and creditors, in more than a single state, shall be treated as general assets."

AND

Page 12, line 31, insert the following:

"(g) Except as provided at § 23-68-105(c)(1), and except as to claims filed against the estate pursuant to § 23-68-139, nothing in this Chapter shall deprive a person of any contractual right to pursue arbitration of any dispute under any law."

AND

On Page 13, delete lines 25 through 36, and page 14, delete line 1, and substitute "and their insurers."

AND

Page 14, delete lines 35 through 36, and page 15, delete lines 1 and 2, and substitute the following:

"(4) All matters involving the interpretation or operation of this section shall remain within the jurisdiction of the domiciliary receivership court."

AND

Page 19, delete lines 24 through 28 and substitute the following:

"Every proceeding commenced under the laws in effect before the effective date of this act shall be deemed to have commenced under this act for the purpose of conducting the proceeding henceforth, except that in the discretion of the commissioner the proceeding may be continued as it would have been continued had this act not been enacted."

AND

Page 39, delete lines 4 through 16 and substitute the following:

"(f) The rehabilitator shall have the power under §§ 23-68-129 and 23-68-131 to avoid fraudulent transfers, and may exercise any of the powers under § 23-68-124, as necessary or appropriate, except that in the case of a life insurer, the rehabilitator of an insurer may, as part of a court approved plan of rehabilitation, modify or restructure, the policies of insurance. In the event the rehabilitator proposes to modify or restructure the policies of insurance, the rehabilitator may, with the concurrence of the court, approve payment of certain expenses incurred by an advisory committee appointed pursuant to § 23-68-118(a), the expenses to be limited to the reasonable and necessary expenses incurred in obtaining an expert evaluation of the effect upon policyholders of any proposed modification or restructuring of policies of insurance."

AND

Page 43, delete lines 10 through 12 and substitute the following:

"(c) Original books, records, documents and papers, or certified copies thereof, when received in evidence shall be evidence of the facts disclosed."

AND

Page 47, delete lines 24 through 26 and substitute the following:

"(13) To enter into such contracts as are necessary to carry out the order to liquidate, and to affirm or disaffirm any executory contract or unexpired lease to which the insurer is a party. This subsection shall not apply to an insurance policy or reinsurance contract whether or not it is executory."

AND

Page 50, delete lines 12 through 18 and substitute the following:

"(4) By first class mail to all persons or entities known or reasonably expected to have claims against the insurer, including all policyholders, at their last known address as indicated by the records of the insurer;

(5) By first-class mail to all known reinsurers of the insurer at their last known address as indicated by the records of the insurer; and

(6) By publication in a newspaper of general circulation in the county in which the insurer has its principal place of business and in such other locations as the liquidator deems appropriate."

AND

Page 55, delete lines 8 through 14 and substitute the following:

"Unless the otherwise applicable stay provisions or injunctive"

AND

Page 58, delete lines 31 through 34 and substitute the following:

"(d) In the event a reinsurance transaction is avoided under subsection (c):

(1) The receiver shall tender to the reinsurer the value of any consideration transferred to the insurer in connection with such transaction less the amount of matured and liquidated liabilities owing by the reinsurer to the estate; and

(2) The parties shall be returned to their relative positions prior to the implementation of the transaction avoided.

(e) Every person receiving any property from the insurer or any benefit thereof, which is a fraudulent transfer under subsection (a), shall be personally liable therefor and shall be bound to account to the liquidator."

AND

Page 63, line 31 delete "or" and substitute "and"

AND

Page 69, delete lines 25 through 36, and delete page 70, and page 71, delete lines 1 through 3, and substitute the following:

"(a) Mutual debts or mutual credits whether arising out of one or more contracts between an insurer that is subject to a receivership proceeding under this Chapter and another person shall be setoff and the balance only shall be allowed or paid except as provided in subsection (b) of this section and in § 23-96-110(f)(4).

(b) No setoff shall be allowed in favor of any person when:

(1) The obligation of the insurer to the person would not at the date of the filing of a petition for receivership entitle the person to share as a claimant in the assets of the insurer;

(2) The obligation of the insurer to the person was purchased by or transferred to the person with a view to its being used as a setoff;

(3) The obligation of the insurer is owed to an affiliate of such person or any other entity or association other than the person;

(4) The obligation of the person is owed to an affiliate of the insurer or any other entity or association other than the insurer;

(5) The obligation of the person is to pay an assessment levied against the members or subscribers of the insurer, is to pay a balance upon a subscription to the capital stock of the insurer, or is in any other way in the nature of a capital contribution; or

(6) The obligations between the person and the insurer arise out of transactions by which either the person or the insurer has assumed risks and obligations from the other party and then has ceded back to that party substantially the same risks and obligations. Notwithstanding the provisions

of this subsection, the receiver may permit setoffs if in his or her discretion a setoff is appropriate because of specific circumstances relating to a transaction.

(c) The provisions of subdivision (b)(6) of this section shall apply to all contracts entered into, renewed, extended, or amended on or after the effective date of this act, and to debts or credits arising from any business written after such date pursuant to any such contract. For purposes of this subsection, any change in the terms of or consideration for any such contract shall be deemed an amendment of the contract."

AND

Page 72, delete lines 20 through 36, and page 73, delete lines 1 through 21, and substitute the following:

"(b) Reinsurance shall be payable under a contract or contracts reinsured by the assuming insurer on the basis of reported claims allowed by the liquidation court, without diminution because of the insolvency of the ceding insurer. Such payments shall be made directly to the ceding insurer or to its domiciliary liquidator except:

(1) Where the contract or other written agreement specifically provides another payee of such reinsurance in the event of the insolvency of the ceding insurer; or

(2) Where the assuming insurer, with the consent of the direct insured or insureds, has assumed such policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under such policies and in substitution for the obligations of the ceding insurer to such payees.

(c) Notwithstanding subsection (b), in the event that a life and health insurance guaranty association has made the election to succeed to the rights and obligations of the insolvent insurer under the contract of reinsurance, then the reinsurer's liability to pay covered reinsured claims shall continue under the contract of reinsurance, subject to the payment to the reinsurer of the reinsurance premiums for such coverage. Payment for such reinsured claims shall only be made by the reinsurer pursuant to the direction of the guaranty association or its designated successor. Any payment made at the direction of the guaranty association or its designated successor by the reinsurer will discharge the reinsurer of all further liability to any other party for said claim payment."

AND

Page 80, delete lines 22 through 25 and substitute the following:

(4) If the claim was immature as of the date established under §23-68-120, it shall be discounted at the higher of the legal rate of interest accruing on judgments or the rate of interest available on United States Treasury securities of approximately the same maturity."

AND

Page 104, line 3 delete "~~(2)~~(1)" and substitute "(2)"

AND

Page 104, line 6 delete "(3)(2)" and substitute "(3)"

AND

Page 104, line 18 delete "~~(2)(1)~~" and substitute "(2)"

AND

Page 104, line 27 delete "(3)(2)" and substitute "(3)"

AND

Page 106, delete "§ 23-86-116(f)" and substitute t"§ 23-68-116(f)"

AND

Page 106, delete line 31 and substitute "68-116(f)."

AND

Page 107, line 1, insert the following:

"SECTION 56. Emergency Clause: It is found and determined by the 83<sup>rd</sup> General Assembly that this act is necessary in order to promote more uniformity, certainty and efficiency in the conservation, rehabilitation and liquidation of insolvent insurers. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

The Amendment was read \_\_\_\_\_  
By: Representative Napper  
LH/RRS - 032420011406  
RRS785 \_\_\_\_\_  
Chief Clerk