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4

As Engrossed: S3/6/13

A Bill

SENATE BILL 464

5 By: Senator Rapert
6 By: Representative Wren
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE ARKANSAS LIFE AND HEALTH
10 INSURANCE GUARANTY ASSOCIATION ACT; AND FOR OTHER
11 PURPOSES.
12
13

Subtitle

15 TO AMEND THE ARKANSAS LIFE AND HEALTH
16 INSURANCE GUARANTY ASSOCIATION ACT; AND
17 FOR OTHER PURPOSES.
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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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22 SECTION 1. Arkansas Code § 23-96-104(T), concerning the definition of
23 "resident" under the Arkansas Life and Health Insurance Guaranty Association
24 Act, is amended to read as follows:

25 T. "Resident" means a person to whom a contractual obligation is owed
26 and who resides in this state on the date of entry of a court order that
27 determines a member insurer to be an impaired insurer or a court order that
28 determines a member insurer to be an insolvent insurer, ~~whichever occurs~~
29 ~~first~~. A person may be a resident of only one (1) state, which in the case of
30 a person other than a natural person shall be its principal place of
31 business. Citizens of the United States that are either (i) residents of
32 foreign countries, or (ii) residents of United States possessions,
33 territories, or protectorates that do not have an association similar to the
34 Association created by this chapter shall be deemed residents of the state of
35 domicile of the insurer that issued the policies or contracts.
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2 SECTION 2. Arkansas Code § 23-96-106(A), concerning coverage that is
3 not provided by the Arkansas Life and Health Insurance Guaranty Association
4 Act, is amended to add two (2) additional subdivisions to read as follows:

5 (13) A portion of a policy or contract to the extent it provides
6 for interest or other changes in value to be determined by the use of an
7 index or other external reference stated in the policy or contract, but which
8 have not been credited to the policy or contract, or as to which the policy
9 or contract owner's rights are subject to forfeiture, as of the date the
10 member insurer becomes an impaired or insolvent insurer under this chapter,
11 whichever is earlier. If a policy's or contract's interest or changes in
12 value are credited less frequently than annually, then for purposes of
13 determining the values that have been credited and are not subject to
14 forfeiture under this paragraph (A)(13), the interest or change in value
15 determined by using the procedures defined in the policy or contract will be
16 credited as if the contractual date of crediting interest or changing values
17 was the date of impairment or insolvency, whichever is earlier, and will not
18 be subject to forfeiture; and

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

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

27 B. This chapter shall provide coverage to the persons specified in
28 subsection (A) for direct, nongroup life, accident and health, or annuity
29 policies or contracts, ~~and supplemental contracts to any of these,~~ for
30 certificates under direct group policies and contracts, and for supplemental
31 contracts to any of these, and for unallocated annuity contracts, in each
32 case issued by member insurers, except as limited by this chapter. Annuity
33 contracts and certificates under group annuity contracts include but are not
34 limited to guaranteed investment contracts, deposit administration contracts,
35 unallocated funding agreements, allocated funding agreements, structured
36 settlement annuities, annuities issued to or in connection with government

1 lotteries, and any immediate or deferred annuity contracts.

2
3 SECTION 4. Arkansas Code § 23-96-110(F)-(L), concerning the
4 reinsurance of life and health insurance contracts, is amended to read as
5 follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (A) The amount received by the Association;
10 and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 ~~I.~~(6) Except as otherwise expressly provided above, nothing
16 herein shall alter or modify the terms and conditions of the indemnity
17 reinsurance agreements of the insolvent member insurer. Nothing herein shall
18 abrogate or limit any rights of any reinsurer to claim that it is entitled to
19 rescind a reinsurance agreement. Nothing herein shall give a policy owner or
20 beneficiary an independent cause of action against an indemnity reinsurer
21 that is not otherwise set forth in the indemnity reinsurance agreement.

22 Nothing in this section shall give a policyholder or beneficiary an
23 independent cause of action against a reinsurer that is not otherwise set
24 forth in the reinsurance contract. Nothing in this section shall limit or
25 affect the Association's rights as a creditor of the estate against the
26 assets of the estate. Nothing in this section shall apply to reinsurance
27 agreements covering property or casualty risks.

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

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

1 those provided under the plan or arrangement.

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

6

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

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

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

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

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

19 (ii) ~~Three hundred thousand dollars (\$300,000)~~ Five
20 hundred thousand dollars (\$500,000) in accident and health insurance
21 benefits, including any net cash surrender and net cash withdrawal *values,*
22 *provided coverage for disability insurance benefits and long term care*
23 *insurance benefits shall not exceed three hundred thousand dollars*
24 *(\$300,000);*

25 (iii) Three hundred thousand dollars (\$300,000) in
26 the present value of annuity benefits, including net cash surrender and net
27 cash withdrawal values;

28 (b) With respect to each individual participating in a
29 governmental retirement benefit plan established under section 401(k),
30 section 403(b), or section 457, of the United States Internal Revenue Code
31 covered by an unallocated annuity contract or the beneficiaries of each such
32 individual if deceased, in the aggregate three hundred thousand dollars
33 (\$300,000) in present value annuity benefits, including net cash surrender
34 and net cash withdrawal values;

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

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

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

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

33 ~~(2)(3)~~ (3) The limitations set forth in this subsection (B) are
34 limitations on the benefits for which the Association is obligated before
35 taking into account either its subrogation and assignment rights or the
36 extent to which those benefits could be provided out of the assets of the

1 impaired or insolvent insurer attributable to covered policies. The costs of
2 the Association's obligations under this chapter may be met by the use of
3 assets attributable to covered policies or reimbursed to the Association
4 pursuant to its subrogation and assignment rights.

5 ~~(3)~~(4) In performing its obligations to provide coverage under §
6 23-96-111, the Association shall not be required to guarantee, assume,
7 reinsure, or perform, or cause to be guaranteed, assumed, reinsured, or
8 performed, the contractual obligations of the insolvent or impaired insurer
9 under a covered policy or contract that do not materially affect the economic
10 values or economic benefits of the covered policy or contract.

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