

FIRST REGULAR SESSION

HOUSE BILL NO. 313

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE GATSCHENBERGER.

1058L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 376.717, RSMo, and to enact in lieu thereof one new section relating to the Missouri life and health insurance guaranty association act.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 376.717, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 376.717, to read as follows:

376.717. 1. Sections 376.715 to 376.758 shall provide coverage for the policies and contracts specified in subsection 2 of this section:

(1) To persons who, regardless of where they reside, except for nonresident certificate holders under group policies or contracts, are the beneficiaries, assignees or payees of the persons covered under subdivision (2) of this subsection; and

(2) To persons who are owners of or certificate holders under such policies or contracts, other than structured settlement annuities, who:

(a) Are residents of this state; or

(b) Are not residents, but only under all of the following conditions:

a. The insurers which issued such policies or contracts are domiciled in this state;

b. The persons are not eligible for coverage by an association in any other state due to the fact that the insurer was not licensed in such state at the time specified in such state's guaranty association law; and

c. The states in which the persons reside have associations similar to the association created by sections 376.715 to 376.758;

(3) For structured settlement annuities specified in subsection 2 of this section, subdivisions (1) and (2) of subsection 1 of this section shall not apply, and sections 376.715 to

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 376.758 shall, except as provided in subdivisions (4) and (5) of this subsection, provide coverage
19 to a person who is a payee under a structured settlement annuity, or beneficiary of a payee if the
20 payee is deceased, if the payee:

21 (a) Is a resident, regardless of where the contract owner resides; or

22 (b) Is not a resident, but only under both of the following conditions:

23 a. (i) The contract owner of the structured settlement annuity is a resident; or

24 (ii) The contract owner of the structure settlement annuity is not a resident, but:

25 i. The insurer that issued the structured settlement annuity is domiciled in this state; and

26 ii. The state in which the contract owner resides has an association similar to the
27 association created under sections 376.715 to 376.758; and

28 b. Neither the payee or beneficiary nor the contract owner is eligible for coverage by the
29 association of the state in which the payee or contract owner resides;

30 (4) Sections 376.715 to 376.758 shall not provide to a person who is a payee or
31 beneficiary of a contract owner resident of this state, if the payee or beneficiary is afforded any
32 coverage by such an association of another state;

33 (5) Sections 376.715 to 376.758 are intended to provide coverage to a person who is a
34 resident of this state and, in special circumstances, to a nonresident. In order to avoid duplicate
35 coverage, if a person who would otherwise receive coverage under sections 376.715 to 376.758
36 is provided coverage under the laws of any other state, the person shall not be provided coverage
37 under sections 376.715 to 376.758. In determining the application of the provisions of this
38 subdivision in situations where a person could be covered by such an association of more than
39 one state, whether as an owner, payee, beneficiary, or assignee, sections 376.715 to 376.758 shall
40 be construed in conjunction with the other state's laws to result in coverage by only one
41 association.

42 2. Sections 376.715 to 376.758 shall provide coverage to the persons specified in
43 subsection 1 of this section for direct, nongroup life, health, annuity policies or contracts, and
44 supplemental contracts to any such policies or contracts, and for certificates under direct group
45 policies and contracts, except as limited by the provisions of sections 376.715 to 376.758.
46 Annuity contracts and certificates under group annuity contracts include allocated funding
47 agreements, structured settlement annuities, and any immediate or deferred annuity contracts.

48 3. Sections 376.715 to 376.758 shall not provide coverage for:

49 (1) Any portion of a policy or contract not guaranteed by the insurer, or under which the
50 risk is borne by the policy or contract holder;

51 (2) Any policy or contract of reinsurance, unless assumption certificates have been
52 issued;

53 (3) Any portion of a policy or contract to the extent that the rate of interest on which it
54 is based, or the interest rate, crediting rate, or similar factor determined by use of an index or
55 other external reference stated in the policy or contract employed in calculating returns or
56 changes in value:

57 (a) Averaged over the period of four years prior to the date on which the association
58 becomes obligated with respect to such policy or contract, exceeds the rate of interest determined
59 by subtracting three percentage points from Moody's Corporate Bond Yield Average averaged
60 for that same four-year period or for such lesser period if the policy or contract was issued less
61 than four years before the association became obligated; and

62 (b) On and after the date on which the association becomes obligated with respect to
63 such policy or contract exceeds the rate of interest determined by subtracting three percentage
64 points from Moody's Corporate Bond Yield Average as most recently available;

65 (4) Any portion of a policy or contract issued to a plan or program of an employer,
66 association or other person to provide life, health, or annuity benefits to its employees or
67 members to the extent that such plan or program is self-funded or uninsured, including but not
68 limited to benefits payable by an employer, association or other person under:

69 (a) A multiple employer welfare arrangement as defined in 29 U.S.C. Section 1144, as
70 amended;

71 (b) A minimum premium group insurance plan;

72 (c) A stop-loss group insurance plan; or

73 (d) An administrative services only contract;

74 (5) Any portion of a policy or contract to the extent that it provides dividends or
75 experience rating credits, voting rights, or provides that any fees or allowances be paid to any
76 person, including the policy or contract holder, in connection with the service to or
77 administration of such policy or contract;

78 (6) Any policy or contract issued in this state by a member insurer at a time when it was
79 not licensed or did not have a certificate of authority to issue such policy or contract in this state;

80 (7) A portion of a policy or contract to the extent that the assessments required by section
81 376.735 with respect to the policy or contract are preempted by federal or state law;

82 (8) An obligation that does not arise under the express written terms of the policy or
83 contract issued by the insurer to the contract owner or policy owner, including without limitation:

84 (a) Claims based on marketing materials;

85 (b) Claims based on side letters, riders, or other documents that were issued by the
86 insurer without meeting applicable policy form filing or approval requirements;

87 (c) Misrepresentations of or regarding policy benefits;

88 (d) Extra-contractual claims;

89 (e) A claim for penalties or consequential or incidental damages;

90 (9) A contractual agreement that establishes the member insurer's obligations to provide
91 a book value accounting guaranty for defined contribution benefit plan participants by reference
92 to a portfolio of assets that is owned by the benefit plan or its trustee, which in each case is not
93 an affiliate of the member insurer;

94 (10) An unallocated annuity contract;

95 (11) A portion of a policy or contract to the extent it provides for interest or other
96 changes in value to be determined by the use of an index or other external reference stated in the
97 policy or contract, but which have not been credited to the policy or contract, or as to which the
98 policy or contract owner's rights are subject to forfeiture, as of the date the member insurer
99 becomes an impaired or insolvent insurer under sections 376.715 to 376.758, whichever is
100 earlier. If a policy's or contract's interest or changes in value are credited less frequently than
101 annually, for purposes of determining the value that have been credited and are not subject to
102 forfeiture under this subdivision, the interest or change in value determined by using the
103 procedures defined in the policy or contract will be credited as if the contractual date of crediting
104 interest or changing values was the date of impairment or insolvency, whichever is earlier, and
105 will not be subject to forfeiture;

106 (12) A policy or contract providing any hospital, medical, prescription drug or other
107 health care benefit under Part C or Part D of Subchapter XVIII, Chapter 7 of Title 42 of the
108 United States Code, Medicare [Part] **Parts C & D**, or any regulations issued thereunder.

109 4. The benefits for which the association may become liable, **with regard to a member**
110 **insurer that was first placed under an order of rehabilitation or under an order of**
111 **liquidation if no order of rehabilitation was entered prior to August 28, 2011**, shall in no
112 event exceed the lesser of:

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

115 (2) With respect to any one life, regardless of the number of policies or contracts:

116 (a) Three hundred thousand dollars in life insurance death benefits, but not more than
117 one hundred thousand dollars in net cash surrender and net cash withdrawal values for life
118 insurance;

119 (b) One hundred thousand dollars in health insurance benefits, including any net cash
120 surrender and net cash withdrawal values;

121 (c) One hundred thousand dollars in the present value of annuity benefits, including net
122 cash surrender and net cash withdrawal values. Provided, however, that in no event shall the
123 association be liable to expend more than three hundred thousand dollars in the aggregate with
124 respect to any one life under paragraphs (a), (b), and (c) of this subdivision.

125 5. Except as otherwise provided in subdivision (2) of this subsection, the benefits
126 for which the association may become liable with regard to a member insurer that was first
127 placed under an order of rehabilitation or under an order of liquidation if no order of
128 rehabilitation was entered prior to August 28, 2011, shall in no event exceed the lesser of:

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

131 (2) (a) With respect to any one life, regardless of the number of policies or
132 contracts:

133 a. Three hundred thousand dollars in life insurance death benefits, but not more
134 than one hundred thousand dollars in net cash surrender and net cash withdrawal values
135 for life insurance;

136 b. In health insurance benefits:

137 (i) One hundred thousand dollars of coverages other than disability insurance or
138 basic hospital, medical, and surgical insurance or major medical insurance, or long-term
139 care insurance, including any net cash surrender and net cash withdrawal values;

140 (ii) Three hundred thousand dollars for disability insurance and three hundred
141 thousand dollars for long-term care insurance;

142 (iii) Five hundred thousand dollars for basic hospital, medical, and surgical
143 insurance or major medical insurance;

144 c. Two hundred fifty thousand dollars in the present value of annuity benefits,
145 including net cash surrender and net cash withdrawal values; or

146 (b) With respect to each payee of a structured settlement annuity, or beneficiary
147 or beneficiaries of the payee if deceased, two hundred fifty thousand dollars in present
148 value annuity benefits, in the aggregate, including net cash surrender and net cash
149 withdrawal values, if any;

150 (c) Except that, in no event shall the association be obligated to cover more than:

151 a. An aggregate of three hundred thousand dollars in benefits with respect to any
152 one life under paragraphs (a) and (b) of this subdivision, except with respect to benefits for
153 basic hospital, medical, and surgical insurance and major medical insurance under item
154 (iii) of subparagraph b. of paragraph (a) of this subdivision, in which case the aggregate
155 liability of the association shall not exceed five hundred thousand dollars with respect to
156 any one individual; or

157 b. With respect to one owner of multiple nongroup policies of life insurance,
158 whether the policy owner is an individual, firm, corporation, or other person, and whether
159 the person insured are officers, managers, employees, or other persons, more than five

160 **million dollars in benefits, regardless of the number of policies and contracts held by the**
161 **owner.**

162 **6.** The limitations set forth in [subsection 4] **subsections 4 and 5** of this section are
163 limitations on the benefits for which the association is obligated before taking into account either
164 its subrogation and assignment rights or the extent to which such benefits could be provided out
165 of the assets of the impaired or insolvent insurer attributable to covered policies. The costs of
166 the association's obligations under sections 376.715 to 376.758 may be met by the use of assets
167 attributable to covered policies or reimbursed to the association under its subrogation and
168 assignment rights.

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