

FIRST REGULAR SESSION

HOUSE BILL NO. 459

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES LIESE, LUETKEMEYER (Co-sponsors) AND WARD.

Read 1st time January 22, 2001, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

1208L.011

AN ACT

To repeal sections 375.1202 and 375.1220, RSMo 2000, relating to insurance liquidation, and to enact in lieu thereof two new sections relating to the same subject.

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

Section A. Sections 375.1202 and 375.1220, RSMo 2000, are repealed and two new
2 sections enacted in lieu thereof, to be known as sections 375.1202 and 375.1220, to read as
3 follows:

375.1202. The amount recoverable by the liquidator from reinsurers shall [not be
2 reduced as a result of the delinquency proceedings, regardless of any provision in the reinsurance
3 contract or other agreement] **be payable under a contract or contracts reinsured by the**
4 **assuming insurer on the basis of reported claims allowed by the liquidation court, without**
5 **diminution because of the insolvency of the ceding insurer.** Payment shall be made directly
6 to [an insured or other creditor shall not diminish the reinsurer's obligation to the insurer's estate]
7 **the liquidator except where: (1) the contract or other written agreement specifically**
8 **provides for another payee in the event of the ceding insurer's insolvency, or (2) the**
9 **assuming insurer, with the consent of the direct insured or insureds, has directly assumed**
10 **the ceding insurer's policy obligations to the payees under such policies in substitution for**
11 **the ceding insurer's obligations to such payees.**

375.1220. 1. The liquidator shall review all claims duly filed in the liquidation and shall
2 make such further investigation as the liquidator shall deem necessary. The liquidator may
3 compound, compromise or in any other manner negotiate the amount for which claims will be
4 allowed, under the supervision of the court, except where the liquidator is required by law to

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

5 accept claims as settled by any person or organization. Unresolved disputes shall be determined
6 pursuant to section 375.1214. No claim under a policy of insurance shall be allowed for any
7 amount in excess of the applicable policy limits or without regard to policy deductibles.

8 2. If the fixing or liquidation of any claim or claims would unduly delay the
9 administration of the liquidation or if the administrative expense of processing and adjudication
10 of a claim or group of claims of a similar type would be unduly excessive when compared with
11 the moneys which are estimated to be available for distribution with respect to such claim or
12 group of claims, the determination and allowance of such claim or claims may be made by an
13 estimate. Any such estimate shall be based upon an actuarial evaluation made with reasonable
14 actuarial certainty or upon another accepted method of valuing claims with reasonable certainty.

15 3. The estimation of contingent liabilities permitted by subsection 2 of this section or any
16 other section of this chapter may be used for the purpose of fixing a creditor's claim in the estate,
17 and for determining the percentage of partial or final divided payments to be paid to creditors
18 with reported allowed claims. However, nothing in subsection 2 of this section or any other
19 section in this chapter shall be construed as authorizing the receiver, or any other entity, to
20 compel payment from a reinsurer on the basis of estimated incurred but not reported losses and,
21 except with respect to claims made pursuant to section 375.1212, outstanding reserves. Nothing
22 in this subsection shall be construed to impair any obligation arising pursuant to any insurance
23 agreement.

24 4. Notwithstanding the provisions of this section or any other section of this chapter to
25 the contrary, the liquidator may negotiate a voluntary commutation and release of all obligations
26 arising from reinsurance contracts or other agreements.

27 5. The provisions of this section shall not apply to and have no force and effect regarding
28 any formal delinquency proceeding in which, [prior to the effective date of this act] **before**
29 **August 28, 1999**, the court in which such proceeding was or is pending issued any order or
30 decree construing or applying the provisions.

31 6. Subsections 3, 4 and 5 of this section **shall become effective on August 28, 2001,**
32 **and shall terminate on December 31, [2000] 2005.**