

FIRST REGULAR SESSION

[PERFECTED]

HOUSE BILL NO. 525

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MOLENDORP.

1509L.01P

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 375, RSMo, by adding thereto one new section relating to life and health 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 one new section, to be
2 known as section 375.1183, to read as follows:

375.1183. 1. **Contracts reinsuring insurance policies or annuities referred to in**
2 **section 375.1178 and issued by a ceding insurer that has been placed in conservation or**
3 **rehabilitation proceedings under sections 375.1150 to 375.1246 shall be continued or**
4 **terminated under the terms or conditions of each contract and the provisions of this**
5 **section.**

6 2. **Contracts reinsuring insurance policies or annuities referred to in section**
7 **375.1178 and issued by a ceding insurer that has been placed into liquidation under**
8 **sections 375.1150 to 375.1246 shall be continued, subject to the provisions of this section,**
9 **unless:**

10 (1) **The contracts were terminated under their terms prior to the date of the order**
11 **of liquidation, hereinafter "the coverage date"; or**

12 (2) **The contracts were terminated under the order of liquidation, in which case the**
13 **provisions of subsection 9 of this section shall apply.**

14 3. (1) **At any time within one hundred eighty days of the coverage date, a guaranty**
15 **association covering insurance policies or annuities referred to in section 375.1178, in**

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.

16 whole or in part, may elect to assume the rights and obligations of the ceding insurer that
17 relate to the policies or annuities covered, in whole or in part, by the guaranty association,
18 in each case under any one or more reinsurance contracts between the insolvent insurer
19 and its reinsurers selected by the guaranty association. Any such assumption shall be
20 effective as of the coverage date. The election shall be effected by the applicable guaranty
21 association or foreign guaranty association sending written notice, return receipt
22 requested, to the affected reinsurers.

23 (2) To facilitate the earliest practicable decision about whether to assume any of the
24 contracts of reinsurance, and in order to protect the financial position of the estate, the
25 receiver and each reinsurer of the ceding insurer shall make available upon request to
26 affected guaranty associations or to foreign guaranty associations as soon as possible after
27 commencement of formal delinquency proceedings:

28 (a) Copies of in-force contracts of reinsurance and all related files and records
29 relevant to the determination of whether such contracts should be assumed; and

30 (b) Notices of any defaults under the reinsurance contracts or any known event or
31 condition which with the passage of time could become a default under the reinsurance
32 contracts.

33 (3) Paragraphs (a) to (d) of this subdivision shall apply to reinsurance contracts so
34 assumed by a guaranty association:

35 (a) The guaranty association shall be responsible for all unpaid premiums due
36 under the reinsurance contracts, for periods both before and after the coverage date, and
37 shall be responsible for the performance of all other obligations to be performed after the
38 coverage date, in each case that relates to insurance policies or annuities referred to in
39 section 375.1178 covered, in whole or in part, by the guaranty associations. The guaranty
40 association may charge policies of insurance or annuities covered in part by the guaranty
41 association, through reasonable allocation methods, the costs for reinsurance in excess of
42 the obligations of the guaranty association and shall provide notice and an accounting of
43 such charges to the liquidator;

44 (b) The guaranty association shall be entitled to any amounts payable by the
45 reinsurer under the reinsurance contracts with respect to losses or events that occur in
46 periods on or after the coverage date and that relate to insurance policies or annuities
47 referred to in section 375.1178 covered, in whole or in part, by the association; provided
48 that, upon receipt of the amounts, the guaranty association shall be obliged to pay to the
49 beneficiary under the insurance policy or annuity on account of which the amounts were
50 paid a portion of the amount equal to the lesser of:

51 a. The amount received by the guaranty association; and

52 **b. The excess of the amount received by the guaranty association over the amount**
53 **equal to the benefits paid by the guaranty association on account of the policy or annuity**
54 **less the retention of the insurer applicable to the loss or event;**

55 **(c) Within thirty days following the guaranty association's election (the "election**
56 **date"), the guaranty association and each reinsurer under reinsurance contracts assumed**
57 **by the guaranty association shall calculate the net balance due to or from the guaranty**
58 **association under each reinsurance contract as of the election date with respect to policies**
59 **or annuities covered, in whole or in part, by the guaranty association, which calculation**
60 **shall give full credit to all items paid by either the insurer or its receiver or the reinsurer**
61 **prior to the election date. The reinsurer shall pay the receiver any amounts due for losses**
62 **or events prior to the coverage date, subject to any setoff for premiums unpaid for periods**
63 **prior to the date, and the guaranty association or reinsurer shall pay any remaining**
64 **balance due the other, in each case within five days of the completion of the**
65 **aforementioned calculation. Any disputes over the amounts due to either the guaranty**
66 **association or the reinsurer shall be resolved by arbitration under the terms of affected**
67 **reinsurance contracts or, if the contract contains no arbitration clause, under the**
68 **provisions of subdivision (4) of subsection 9 of this section. If the receiver has received any**
69 **amounts due the guaranty association under paragraph (b) of this subdivision, the receiver**
70 **shall remit the same to the guaranty association as promptly as practicable;**

71 **(d) If the guaranty association or receiver, on the guaranty association's behalf,**
72 **within sixty days of the election date, pays the unpaid premiums due for periods both**
73 **before and after the election date that relate to insurance policies or annuities referred to**
74 **in section 375.1178 covered, in whole or in part, by the guaranty association, the reinsurer**
75 **shall not be entitled to terminate the reinsurance contracts for failure to pay premiums,**
76 **insofar as the reinsurance contracts relate to insurance policies or annuities referred to in**
77 **section 375.1178 covered, in whole or in part, by the guaranty association, and shall not be**
78 **entitled to set off any unpaid amounts due under other contracts, or unpaid amounts due**
79 **from parties other than the guaranty association, against amounts due the guaranty**
80 **association.**

81 **4. If a receiver continues insurance policies or annuities referred to in section**
82 **375.1178 in force following an order of liquidation, and the policies of insurance are not**
83 **covered in whole or in part by one or more guaranty associations, the receiver may, within**
84 **one hundred eighty days of the coverage date, elect to assume the rights and obligations of**
85 **the ceding insurer under any one or more of the reinsurance contracts that relate to the**
86 **policies or annuities, provided the contracts have not been terminated as set forth in**
87 **subsection 2 of this section. The election shall be effected by sending written notice, return**

88 receipt requested, to the affected reinsurers. In such event, payment of premiums on the
89 reinsurance contracts for the policies and annuities, for periods both before and after the
90 coverage date, shall be chargeable against the estate as a class 1 administrative expense.
91 Amounts paid by the reinsurer on account of losses on the policies and annuities shall be
92 to the estate of the insolvent insurer.

93 **5. During the period from the coverage date until the election date:**

94 **(1) (a) Neither the guaranty association nor the reinsurer shall have any rights or**
95 **obligations under reinsurance contracts that the guaranty association has the right to**
96 **assume under subsection 3 of this section, whether for periods prior to or after the**
97 **coverage date;**

98 **(b) Neither the receiver nor the reinsurer shall have any rights or obligations under**
99 **reinsurance contracts that the receiver has the right to assume under subsection 4 of this**
100 **section with respect to the period after the coverage date, but their respective rights and**
101 **obligations for the period prior to the coverage date shall remain unchanged; and**

102 **(c) The reinsurer, the receiver, and the guaranty associations shall, to the extent**
103 **practicable, provide each other data and records reasonably requested; and**

104 **(2) Provided that once the guaranty association or the receiver, as the case may be,**
105 **has elected or declined to elect to assume a reinsurance contract, the parties' rights and**
106 **obligations shall be governed by subsection 3, 4, or 9 of this section, as applicable.**

107 **6. (1) If a guaranty association does not elect to assume a reinsurance contract by**
108 **the election date under subsection 3 of this section, the guaranty association shall have no**
109 **rights or obligations, in each case for periods both before and after the coverage date, with**
110 **respect to the reinsurance contract.**

111 **(2) If a receiver does not elect to assume a reinsurance contract by the election date**
112 **under subsection 4 of this section, the receiver and the reinsurer shall retain their**
113 **respective rights and obligations with respect to the reinsurance contract for the period**
114 **before the coverage date, but shall have no rights or obligations to each other for the period**
115 **after the coverage date, except as provided in subsection 9 of this section.**

116 **(3) Where a guaranty association or the receiver, as the case may be, does not elect**
117 **to assume a reinsurance contract covering insurance policies or annuities referred to in**
118 **section 375.1178 by the election date, the reinsurance contract shall be terminated**
119 **retroactively effective on the coverage date and subsection 9 of this section shall apply.**

120 **7. When insurance policies or annuities referred to in section 375.1178, or guaranty**
121 **association obligations with respect thereto, are transferred to an assuming insurer,**
122 **reinsurance on the policies or annuities may be transferred by the guaranty association,**
123 **in the case of contracts assumed under subsection 3 of this section, or the receiver, in the**

124 case of contracts assumed under subsection 4 of this section, as the case may be, subject to
125 the following:

126 (1) Unless the reinsurer and the assuming insurer agree otherwise, the reinsurance
127 contract transferred shall not cover any new policies of insurance or annuities in addition
128 to those transferred;

129 (2) The obligations described in subsections 3 and 4 of this section shall no longer
130 apply with respect to matters arising after the effective date of the transfer; and

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

134 8. The provisions of this section shall, to the extent provided in sections 375.1150
135 to 375.1246, supersede the provisions of any law or any affected reinsurance contract that
136 provides for or requires any payment of reinsurance proceeds, on account of losses or
137 events that occur in periods after the coverage date, to the receiver of the insolvent insurer
138 or any other person. The receiver shall remain entitled to any amounts payable by the
139 reinsurer under the reinsurance contracts with respect to losses or events that occur in
140 periods prior to the coverage date, subject to the provisions of sections 375.1150 to
141 375.1246 including applicable setoff provisions.

142 9. When a contract reinsuring insurance policies or annuities referred to in section
143 375.1178 is terminated under sections 375.1150 to 375.1246, the following procedures set
144 forth in this subsection shall apply:

145 (1) The reinsurer and the receiver shall, upon written notice to the other party to
146 the reinsurance contract no later than thirty days after the receipt by the reinsurer of
147 notice of termination, commence a mandatory negotiation and arbitration procedure in
148 accordance with this subsection;

149 (2) Each party shall appoint an actuary to determine an estimated sum due as a
150 result of the termination of the reinsurance contract calculated in a way expected to make
151 the parties economically indifferent as to whether the reinsurance contract continues or
152 terminates, giving due regard to the economic effects of the insolvency. The sum shall take
153 into account the present value of future cash flows expected under the reinsurance contract
154 and be based on a gross premium valuation of net liability using current assumptions that
155 reflect post-insolvency experience expectations, with no additional margins, net of any
156 amounts payable and receivable, with a market value adjustment to reflect premature sale
157 of assets to fund the settlement;

158 (3) Within ninety days of the written request under subdivision (1) of this
159 subsection, each party shall provide the other party with its estimate of the sum due as a

160 result of the termination of the reinsurance contract, together with all relevant documents
161 and other information supporting the estimate. The parties shall make a good faith effort
162 to reach agreement on the sum due;

163 (4) If the parties are unable to reach agreement within ninety days following the
164 submission of materials required in subdivision (3) of this subsection, either party may
165 initiate arbitration proceedings as provided in the reinsurance contract. In the event that
166 the reinsurance contract does not contain an arbitration clause, either party may initiate
167 arbitration under this subdivision by providing the other party with a written demand for
168 arbitration. The arbitration shall be conducted under the following procedures:

169 (a) Venue for the arbitration shall be within the county of the court's jurisdiction
170 or another location agreed to by the parties;

171 (b) Within thirty days of the responding party's receipt of the arbitration demand,
172 each party shall appoint an arbitrator who is a disinterested active or retired officer or
173 executive of a life insurance or reinsurance company, or other professional with no less
174 than ten years' experience in or relating to the field of life insurance or life reinsurance.
175 The two arbitrators shall appoint an independent, impartial, disinterested umpire who is
176 an active or retired officer or executive of a life insurance or reinsurance company, or
177 other professional with no less than ten years' experience in the field of life insurance or
178 life reinsurance. If the arbitrators are unable to agree on an umpire, each arbitrator shall
179 provide the other with the names of three qualified individuals, each arbitrator shall strike
180 two names from the other's list and the umpire shall be chosen by drawing lots from the
181 remaining individuals;

182 (c) Within sixty days following the appointment of the umpire, the parties shall,
183 unless otherwise ordered by the panel, submit to the arbitration panel their estimates of
184 the sum due as a result of the termination of the reinsurance contract, together with all
185 relevant documents and other information supporting the estimate;

186 (d) The time periods set forth in paragraphs (a) to (c) of this subdivision may be
187 extended upon mutual agreement of the parties;

188 (e) The panel shall have all powers necessary to conduct the arbitration
189 proceedings in a fair and appropriate manner, including the power to request additional
190 information from the parties, authorize discovery, hold hearings, and hear testimony. The
191 panel also may, if it deems necessary, appoint independent actuarial experts, the expense
192 of which shall be shared equally between the parties;

193 (5) An arbitration panel considering the matters set forth in this subsection shall
194 apply the standards set forth in subdivision (2) of this subsection and shall issue a written
195 award specifying a net settlement amount due from one party or the other as a result of the

196 **termination of the reinsurance contract. The supervising court shall confirm that award**
197 **absent proof of statutory grounds for vacating or modifying arbitration awards under the**
198 **Federal Arbitration Act; and**

199 **(6) If the net settlement amount agreed or awarded under this subsection is payable**
200 **by the reinsurer, the reinsurer shall pay the amount due to the estate subject to any**
201 **applicable setoff under section 375.1198. If the net settlement amount agreed or awarded**
202 **under this subsection is payable by the insurer, the reinsurer shall be deemed to have a**
203 **timely filed claim against the estate for that amount, which claim shall be paid under the**
204 **priority established in subsection 6 of section 375.1218. The guaranty associations shall**
205 **not be entitled to receive the net settlement amount, except to the extent they are entitled**
206 **to share in the estate assets as creditors of the estate, and shall have no responsibility for**
207 **the net settlement amount.**

208 **10. Except as otherwise provided in this section, nothing in this section shall:**

209 **(1) Alter or modify the terms and conditions of any reinsurance contract;**

210 **(2) Abrogate or limit any rights of any reinsurer to claim that it is entitled to**
211 **rescind a reinsurance contract;**

212 **(3) Give a policyholder or beneficiary an independent cause of action against a**
213 **reinsurer that is not otherwise set forth in the reinsurance contract;**

214 **(4) Limit or affect any guaranty association's rights as a creditor of the estate**
215 **against the assets of the estate; and**

216 **(5) Apply to reinsurance agreements covering property or casualty risks.**