

BILL ANALYSIS

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C.S.S.B. 1493
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State Affairs
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Over the past year the United States economy experienced massive economic upheaval. As banks failed and numerous corporations, such as AIG, were "bailed out" by the federal government, consumers contacted their insurance agents and demanded to know what guarantees existed that would protect their insurance and annuity policies.

Currently, the Texas Guaranty Association, created by the Texas Legislature in 1973, provides coverage for policy benefits of Texas resident policy holders, subject to certain limits, when there is a financial failure of an insurance company.

C.S.S.B. 1493 amends current law relating to certain amounts payable by and the operation of the Texas Life, Accident, Health, and Hospital Service Insurance Guaranty Association.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 463.153(c), Insurance Code, to prohibit the total amount of assessments on a member insurer for each account under Section 463.105 from exceeding two percent of the insurer's average annual premiums, rather than two percent of the insurer's premiums, on the policies covered by the account during the three calendar years preceding the year in which the insurer became an impaired or insolvent insurer.

SECTION 2. Amends Section 463.203(b), Insurance Code, to provide that this chapter does not provide coverage for a policy or contract providing any hospital, medical, prescription drug, or other health care benefits under Part C or Part D, Subchapter XVIII, Chapter 7, Title 42, United States Code (Medicare Part C or Part D) or any regulations issued under those parts.

SECTION 3. Amends Section 463.204, Insurance Code, as follows:

Sec. 463.204. OBLIGATIONS EXCLUDED. Provides that a contractual obligation does not include death benefits in an amount in excess of \$300,000 or a net cash surrender or net cash withdrawal value in an amount in excess of \$100,000 under one or more policies on a single life; an amount in excess of \$250,000, rather than \$100,000, in the present value under one or more annuity contracts issued with respect to a single life under individual annuity policies or group annuity policies; an amount in excess of \$250,000, rather than \$100,000, in present value annuity benefits, in the aggregate, including any net cash surrender and net cash withdrawal values, with respect to each individual participating in a governmental retirement benefit plan established under Section 401, 403(b), or 457, Internal Revenue Code of 1986 (26 U.S.C. Sections 401, 403(b), and 457), covered by an unallocated annuity contract or the beneficiary or beneficiaries of the individual if the individual is deceased; or an amount in excess of \$250,000, rather than \$100,000, in present value annuity benefits, in the aggregate, including any net cash surrender and net cash withdrawal values, with respect to each payee of a structured settlement annuity or the beneficiary or beneficiaries of the payee if the payee is deceased.

SECTION 4. Amends Section 463.263(b), Insurance Code, to entitle the Texas Life, Accident, Health, and Hospital Service Insurance Guaranty Association (association) to retain a portion of any amount paid to the association under this section equal to the percentage determined by dividing the aggregate amount of policy owners' claims related to that insolvency for which the association has provided statutory benefits by the aggregate amount of all policy owners' claims in this state related to that insolvency, and to require the association to remit to the domiciliary receiver the amount paid to the association less the amount retained under this section, rather than remit to the domiciliary receiver the amount paid to the association and retained under this section.

SECTION 5. Amends Chapter 463, Insurance Code, by adding Subchapter K, as follows:

SUBCHAPTER K. REINSURANCE

Sec. 463.501. DEFINITIONS. Defines "election date" and "order of liquidation."

Sec. 463.502. APPLICABILITY. (a) Provides that, except as otherwise provided by this subchapter, this subchapter does not alter or modify the terms and conditions of any reinsurance contract.

(b) Provides that this subchapter does not abrogate or limit any right of a reinsurer to claim that the reinsurer is entitled to rescind a reinsurance contract; give a policyholder or beneficiary an independent cause of action against a reinsurer that is not otherwise set forth in the reinsurance contract; limit or affect the association's rights as a creditor of the estate against the assets of the estate; or apply to reinsurance agreements covering property or casualty risks.

Sec. 463.503. ASSUMPTION BY ASSOCIATION OF RIGHTS AND OBLIGATIONS OF CEDING MEMBER INSURER. (a) Authorizes the association, not later than the 180th day after the date of the order of liquidation, to elect to succeed to the rights and obligations of the ceding member insurer that relate to policies or annuities covered wholly or partially by the association under one or more reinsurance contracts entered into by the insolvent insurer and the insolvent insurer's reinsurers and selected by the association. Provides that an assumption by the association under this subsection takes effect on the date of the order of liquidation.

(b) Provides that the election under Subsection (a) takes effect when the association, or the National Organization of Life and Health Insurance Guaranty Associations on behalf of the association, sends written notice, return receipt requested, to the affected reinsurers.

(c) Requires the receiver and each reinsurer of the ceding member insurer, to facilitate the earliest practicable decision about whether to assume any of the reinsurance contracts, and to protect the financial position of the estate, to make available on request to the association, or to the National Organization of Life and Health Insurance Guaranty Associations on the association's behalf, as soon as possible after the commencement of formal delinquency proceedings:

(1) copies of reinsurance contracts in force, and all related files and records relevant to the determination of whether those contracts should be assumed; and

(2) notices of any defaults under the reinsurance contracts, or any known event or condition that, with the passage of time, could become a default under the reinsurance contracts.

Sec. 463.504. ASSOCIATION OBLIGATIONS UNDER REINSURANCE CONTRACTS. (a) Provides that the association, with respect to the reinsurance contracts assumed by the association that relate to policies or annuities covered wholly or partially by the association, is responsible for all unpaid premiums due under the reinsurance contracts for periods both before and after the date of the order of liquidation,

and is required to be responsible for the performance of all other obligations to be performed after the date of the order of liquidation.

(b) Authorizes the association to charge a policy or annuity covered partially by the association, through reasonable allocation methods, the costs of reinsurance in excess of the association's obligations, and is required to provide notice and an accounting of those charges to the liquidator.

Sec. 463.505. LOSS PAYMENTS. (a) Entitles the association to any amount payable by the reinsurer under a reinsurance contract with respect to a loss or event that occurs after the date of the order of liquidation, and relates to a policy or annuity covered wholly or partially by the association.

(b) Entitles the association, on receipt of an amount described by Subsection (a), to pay to the beneficiary under the affected policy or annuity an amount equal to the lesser of the amount received by the association under Subsection (a), or the excess of the amount received by the association under Subsection (a) over the amount equal to the benefits paid by the association on account of the policy or annuity, less the retention of the insurer applicable to the loss or event.

Sec. 463.506. COMPUTATION OF NET BALANCE. (a) Requires the association and each reinsurer under a reinsurance contract assumed by the association, not later than the 30th day after the election date, to compute the net balance due to or from the association under the reinsurance contract, as of the election date, with respect to a policy or annuity covered wholly or partially by the association.

(b) Requires that the computation give full credit to all items paid by the insurer or the insurer's receiver or the reinsurer before the election date. Requires the reinsurer to pay the receiver any amounts due for losses or events before the date of the order of liquidation, subject to any set-off for premiums unpaid for periods before that date, and requires the association or reinsurer to pay any remaining balance due to the other. Requires that the payment be made not later than the fifth day after the date on which the computation is completed.

(c) Requires a dispute regarding the amounts due to the association or the reinsurer to be resolved by arbitration under the terms of the affected reinsurance contract or, if the contract does not contain an arbitration clause, as otherwise provided by law.

(d) Requires the receiver, if the receiver has received any amounts due to the association under Section 463.505(a), to remit those amounts to the association as promptly as practicable.

Sec. 463.507. PROHIBITED ACTS BY REINSURER. Prohibits the reinsurer, if the association or the receiver on the association's behalf pays, not later than the 60th day after the election date, the unpaid premiums due for periods before and after the election date that relate to policies or annuities covered wholly or partially by the association, from terminating a reinsurance contract for failure to pay premium to the extent that the reinsurance contract relates to a policy or annuity covered wholly or partially by the association, or setting off any unpaid amounts due under other contracts, or unpaid amounts due from parties other than the association, against amounts due to the association.

Sec. 463.508. RIGHTS AND OBLIGATIONS OF PARTIES. (a) Provides that during the period from the date of the order of liquidation until the election date, or, if the election date does not occur, until the 180th day after the date of the order of liquidation, the association and the reinsurer have no rights or obligations under a reinsurance contract that the association has the right to assume under Section 463.503, whether for periods before or after the date of the order of liquidation; and the reinsurer, the receiver, and the association are required, to the extent practicable, to provide to each other data and records reasonably requested.

(b) Provides that the parties rights and obligations, after the association has elected to assume a reinsurance contract, are governed by this subchapter.

(c) Provides that if the association does not elect to assume a reinsurance contract by the date described by Section 463.503(a), the association has no rights or obligations with respect to the reinsurance contract for periods before or after the date of the order of liquidation.

Sec. 463.509. TRANSFERS OF REINSURANCE CONTRACTS TO ASSUMING INSURERS. (a) Authorizes reinsurance on the policy or annuity, in the case of a contract assumed under Section 463.503, if a policy or annuity or a covered obligation with respect to the policy or annuity is transferred to an assuming insurer, to also be transferred by the association, subject to the requirements of this section.

(b) Prohibits the transferred reinsurance contract, unless the reinsurer and the assuming insurer otherwise agree, from covering any new insurance policy or annuity in addition to those transferred.

(c) Provides that the obligations described by this subchapter do not apply with respect to matters arising after the effective date of a transfer under this section.

(d) Requires the transferring party to give notice in writing, return receipt requested, to the affected reinsurer not later than the 30th day before the effective date of the transfer.

Sec. 463.510. EFFECT OF OTHER LAW OR CONTRACT PROVISION. (a) Provides that this subchapter supersedes the provisions of any law, or of any affected reinsurance contract that provides for or requires payment of reinsurance proceeds because of a loss or event that occurs after the date of the order of liquidation, to the receiver of the insolvent insurer, or any other person.

(b) Provides that the receiver remains entitled to any amounts payable by the reinsurer under the reinsurance contract with respect to a loss or event that occurs before the date of the order of liquidation, subject to any applicable set-off provisions.

SECTION 6. (a) Makes application of this Act, except as provided by Subsection (b), prospective.

(b) Provides that the change in law made by this Act to Section 463.153(c), Insurance code, as amended by this Act, applies to an assessment authorized on or after October 1, 2008, with respect to an insurer that first became impaired or insolvent on or after September 1, 2005.

SECTION 7. Effective date: September 1, 2009.