

Amend CSHB 2752 by adding the following appropriately numbered SECTIONS and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Subsection (c), Section 463.153, Insurance Code, is amended to read as follows:

(c) The total amount of assessments on a member insurer for each account under Section 463.105 may not exceed two percent of the insurer's average annual 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. If two or more assessments are authorized in a calendar year with respect to insurers that become impaired or insolvent in different calendar years, the average annual premiums for purposes of the aggregate assessment percentage limitation described by this subsection shall be equal to the higher of the three-year average annual premiums for the applicable subaccount or account as computed in accordance with this section. If the maximum assessment and the other assets of the association do not provide in a year an amount sufficient to carry out the association's responsibilities, the association shall make necessary additional assessments as soon as this chapter permits.

SECTION _____. Subsection (b), Section 463.203, Insurance Code, is amended to read as follows:

(b) This chapter does not provide coverage for:

(1) any part of a policy or contract not guaranteed by the insurer or under which the risk is borne by the policy or contract owner;

(2) a policy or contract of reinsurance, unless an assumption certificate has been issued;

(3) any part of a policy or contract to the extent that the rate of interest on which that part is based:

(A) as averaged over the period of four years before the date the member insurer becomes impaired or insolvent under this chapter, whichever is earlier, exceeds a rate of interest determined by subtracting two percentage points from Moody's Corporate Bond Yield Average averaged for the same four-year period or for a lesser period if the policy or contract

was issued less than four years before the date the member insurer becomes impaired or insolvent under this chapter, whichever is earlier; and

(B) on and after the date the member insurer becomes impaired or insolvent under this chapter, whichever is earlier, exceeds the rate of interest determined by subtracting three percentage points from Moody's Corporate Bond Yield Average as most recently available;

(4) a portion of a policy or contract issued to a plan or program of an employer, association, similar entity, or other person to provide life, health, or annuity benefits to the entity's employees, members, or others, to the extent that the plan or program is self-funded or uninsured, including benefits payable by an employer, association, or similar entity under:

(A) a multiple employer welfare arrangement as defined by Section 3, Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1002);

(B) a minimum premium group insurance plan;

(C) a stop-loss group insurance plan; or

(D) an administrative services-only contract;

(5) any part of a policy or contract to the extent that the part provides dividends, experience rating credits, or voting rights, or provides that fees or allowances be paid to any person, including the policy or contract owner, in connection with the service to or administration of the policy or contract;

(6) a policy or contract issued in this state by a member insurer at a time the insurer was not authorized to issue the policy or contract in this state;

(7) an unallocated annuity contract issued to or in connection with a benefit plan protected under the federal Pension Benefit Guaranty Corporation, regardless of whether the Pension Benefit Guaranty Corporation has not yet become liable to make any payments with respect to the benefit plan;

(8) any part of an unallocated annuity contract that is not issued to or in connection with a specific employee, a benefit plan for a union or association of individuals, or a governmental lottery;

(9) any part of a financial guarantee, funding agreement, or guaranteed investment contract that:

(A) does not contain a mortality guarantee; and

(B) is not issued to or in connection with a specific employee, a benefit plan, or a governmental lottery;

(10) a part of a policy or contract to the extent that the assessments required by Subchapter D with respect to the policy or contract are preempted by federal or state law;

(11) a contractual agreement that established the member insurer's obligations to provide a book value accounting guaranty for defined contribution benefit plan participants by reference to a portfolio of assets that is owned by the benefit plan or the plan's trustee in a case in which neither the benefit plan sponsor nor its trustee is an affiliate of the member insurer; ~~[or]~~

(12) a part of a policy or contract to the extent the policy or contract provides for interest or other changes in value that are to be determined by the use of an index or external reference stated in the policy or contract, but that have not been credited to the policy or contract, or as to which the policy or contract owner's rights are subject to forfeiture, as of the date the member insurer becomes an impaired or insolvent insurer under this chapter, whichever date is earlier, subject to Subsection (c); or

(13) 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 _____. Section 463.204, Insurance Code, is amended to read as follows:

Sec. 463.204. OBLIGATIONS EXCLUDED. A contractual obligation does not include:

(1) 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;

(2) an amount in excess of:

(A) \$250,000 ~~[\$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; or

(B) \$5 million in unallocated annuity contract benefits with respect to a single contract owner regardless of the number of those contracts;

(3) an amount in excess of the following amounts, including any net cash surrender or cash withdrawal values, under one or more accident, health, accident and health, or long-term care insurance policies on a single life:

(A) \$500,000 for basic hospital, medical-surgical, or major medical insurance, as those terms are defined by this code or rules adopted by the commissioner;

(B) \$300,000 for disability and long-term care insurance, as those terms are defined by this code or rules adopted by the commissioner; or

(C) \$200,000 for coverages that are not defined as basic hospital, medical-surgical, major medical, disability, or long-term care insurance;

(4) an amount in excess of \$250,000 [~~\$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;

(5) an amount in excess of \$250,000 [~~\$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;

(6) aggregate benefits in an amount in excess of \$300,000 with respect to a single life, except with respect to:

(A) benefits paid under basic hospital, medical-surgical, or major medical insurance policies, described by Subdivision (3)(A), in which case the aggregate benefits are

\$500,000; and

(B) benefits paid to one owner of multiple nongroup policies of life insurance, whether the policy owner is an individual, firm, corporation, or other person, and whether the persons insured are officers, managers, employees, or other persons, in which case the maximum benefits are \$5 million regardless of the number of policies and contracts held by the owner;

(7) an amount in excess of \$5 million in benefits, with respect to either one plan sponsor whose plans own directly or in trust one or more unallocated annuity contracts not included in Subdivision (4) irrespective of the number of contracts with respect to the contract owner or plan sponsor or one contract owner provided coverage under Section 463.201(a)(3)(B), except that, if one or more unallocated annuity contracts are covered contracts under this chapter and are owned by a trust or other entity for the benefit of two or more plan sponsors, coverage shall be afforded by the association if the largest interest in the trust or entity owning the contract or contracts is held by a plan sponsor whose principal place of business is in this state, and in no event shall the association be obligated to cover more than \$5 million in benefits with respect to all these unallocated contracts;

(8) any contractual obligations of the insolvent or impaired insurer under a covered policy or contract that do not materially affect the economic value of economic benefits of the covered policy or contract; or

(9) punitive, exemplary, extracontractual, or bad faith damages, regardless of whether the damages are:

(A) agreed to or assumed by an insurer or insured; or

(B) imposed by a court.

SECTION _____. Subsection (b), Section 463.263, Insurance Code, is amended to read as follows:

(b) The association is entitled 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 shall remit to the domiciliary receiver the amount paid to the association less the amount ~~[and]~~ retained under this section.

SECTION _____. Chapter 463, Insurance Code, is amended by adding Subchapter K to read as follows:

SUBCHAPTER K. REINSURANCE

Sec. 463.501. DEFINITIONS. In this subchapter:

(1) "Election date" means the date on which the association elects to make an assumption under Section 463.503.

(2) "Order of liquidation" means an order described by Section 443.151.

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

(b) This subchapter does not:

(1) abrogate or limit any right of a reinsurer to claim that the reinsurer is entitled to rescind a reinsurance contract;

(2) give a policyholder or beneficiary an independent cause of action against a reinsurer that is not otherwise set forth in the reinsurance contract;

(3) limit or affect the association's rights as a creditor of the estate against the assets of the estate; or

(4) apply to reinsurance agreements covering property or casualty risks.

Sec. 463.503. ASSUMPTION BY ASSOCIATION OF RIGHTS AND OBLIGATIONS OF CEDING MEMBER INSURER. (a) Not later than the 180th day after the date of the order of liquidation, the association may 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. An assumption by the association under this subsection takes effect on the date of the order of liquidation.

(b) 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) To facilitate the earliest practicable decision about whether to assume any of the reinsurance contracts, and to protect the financial position of the estate, the receiver and each reinsurer of the ceding member insurer shall 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:

(A) any defaults under the reinsurance contracts; or

(B) 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) With respect to the reinsurance contracts assumed by the association that relate to policies or annuities covered wholly or partially by the association, 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 shall be responsible for the performance of all other obligations to be performed after the date of the order of liquidation.

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

Sec. 463.505. LOSS PAYMENTS. (a) The association is entitled to any amount payable by the reinsurer under a reinsurance contract with respect to a loss or event that:

(1) occurs after the date of the order of liquidation;
and

(2) relates to a policy or annuity covered wholly or partially by the association.

(b) On receipt of an amount described by Subsection (a), the association is obliged to pay to the beneficiary under the affected policy or annuity an amount equal to the lesser of:

(1) the amount received by the association under Subsection (a); or

(2) 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) Not later than the 30th day after the election date, the association and each reinsurer under a reinsurance contract assumed by the association shall 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) The computation must give full credit to all items paid by the insurer or the insurer's receiver or the reinsurer before the election date. The reinsurer shall 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 the association or reinsurer shall pay any remaining balance due to the other. The payment must be made not later than the fifth day after the date on which the computation is completed.

(c) A dispute regarding the amounts due to the association or the reinsurer shall 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) If the receiver has received any amounts due to the association under Section 463.505(a), the receiver shall remit those amounts to the association as promptly as practicable.

Sec. 463.507. PROHIBITED ACTS BY 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, the reinsurer may not:

(1) terminate 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

(2) set 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) 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:

(1) 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

(2) the reinsurer, the receiver, and the association shall, to the extent practicable, provide to each other data and records reasonably requested.

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

(c) 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) 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, reinsurance on the policy or annuity may also be transferred by the association, subject to the requirements of this section.

(b) Unless the reinsurer and the assuming insurer otherwise agree, the transferred reinsurance contract may not cover any new insurance policy or annuity in addition to those transferred.

(c) 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) The transferring party must 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) 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:

(1) the receiver of the insolvent insurer; or

(2) any other person.

(b) 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 _____. (a) Except as provided by Subsection (b) of this section, the change in law made by this Act applies only to an insurer that first becomes an impaired or insolvent insurer on or after the effective date of this Act. An insurer that becomes an impaired or insolvent insurer before the effective date of this Act is governed by the law as it existed immediately before that date, and that law is continued in effect for that purpose.

(b) The change in law made by this Act to Subsection (c), Section 463.153, 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.