

By: Smithee

H.B. No. 4477

A BILL TO BE ENTITLED

AN ACT

1
2 relating to assessments, coverage, deposits, and reinsurance of the
3 Texas Life, Accident, Health, and Hospital Service Insurance
4 Guaranty Association.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Chapter 463, Section 463.153(c), Insurance Code,
7 is amended to read as follows:

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

24 SECTION 2. Chapter 463, Section 463.203(b), Insurance Code,

1 is amended by adding a new subsection (13) to read as follows:

2 (13) A policy or contract providing any hospital,
3 medical, prescription drug or other health care benefits pursuant
4 to Part C or Part D of Subchapter XVIII, Chapter 7 of Title 42 of the
5 United States Code (commonly known as Medicare Part C & D) or any
6 regulations issued pursuant thereto.

7 SECTION 3. Chapter 463, Section 463.204, Insurance Code, is
8 amended to read as follows:

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

11 (1) death benefits in an amount in excess of \$300,000
12 or a net cash surrender or net cash withdrawal value in an amount in
13 excess of \$100,000 under one or more policies on a single life;

14 (2) (A) \$250,000 [~~\$100,000~~] in the present value under
15 one or more annuity contracts issued with respect to a single life
16 under individual annuity policies or group annuity policies; or

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

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

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

27 (B) \$300,000 for disability and long-term care

1 insurance, as those terms are defined by this code or rules adopted
2 by the commissioner; or

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

6 (4) an amount in excess of \$250,000 [~~\$100,000~~] in
7 present value annuity benefits, in the aggregate, including any net
8 cash surrender and net cash withdrawal values, with respect to each
9 individual participating in a governmental retirement benefit plan
10 established under Section 401, 403(b), or 457, Internal Revenue
11 Code of 1986 (26 U.S.C. Sections 401, 403(b) and 457), covered by an
12 unallocated annuity contract or the beneficiary or beneficiaries of
13 the individual if the individual is deceased;

14 (5) an amount in excess of \$250,000 [~~\$100,000~~] in
15 present value annuity benefits, in the aggregate, including any net
16 cash surrender and net cash withdrawal values, with respect to each
17 payee of a structured settlement annuity or the beneficiary or
18 beneficiaries of the payee if the payee is deceased;

19 (6) aggregate benefits in an amount in excess of
20 \$300,000 with respect to a single life, except with respect to:

21 (A) benefits paid under basic hospital, medical-
22 surgical, or major medical insurance policies, described by
23 Subdivision (3)(A), in which case the aggregate benefits are
24 \$500,000; and

25 (B) benefits paid to one owner of multiple
26 nongroup policies of life insurance, whether the policy owner is an
27 individual, firm, corporation, or other person, and whether the

1 persons insured are officers, managers, employees, or other
2 persons, in which case the maximum benefits are \$5 million
3 regardless of the number of policies and contracts held by the
4 owner;

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

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

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

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

27 (B) imposed by a court.

1 SECTION 4. Chapter 463, Section 463.263(b), Insurance Code,
2 is amended to read as follows:

3 (b) The association is entitled to retain a portion of any
4 amount paid to the association under this section equal to the
5 percentage determined by dividing the aggregate amount of policy
6 owners' claims related to that insolvency for which the association
7 has provided statutory benefits by the aggregate amount of all
8 policy owners' claims in this state related to that insolvency and
9 shall remit to the domiciliary receiver the amount paid to the
10 association less the amount ~~and~~ retained under this section.

11 SECTION 5. Chapter 463, Insurance Code is amended by adding
12 new section 463.264 to read as follows:

13 §463.264. REINSURANCE

14 (a) At any time within 180 days of the date of the order of
15 liquidation, the Association may elect to succeed to the rights and
16 obligations of the ceding member insurer that relate to policies or
17 annuities covered, in whole or in part, by the Association, in each
18 case under any one or more contracts entered into by the insolvent
19 insurer and its reinsurers and selected by the Association. Any
20 such assumption shall be effective as of the date of the order of
21 liquidation. The election shall be effected by the Association or
22 the National Organization of Life and Health Insurance Guaranty
23 Associations (NOLHGA) on its behalf sending written notice, return
24 receipt requested, to the affected reinsurers.

25 (b) To facilitate the earliest practicable decision about
26 whether to assume any of the contracts of reinsurance, and in order
27 to protect the financial position of the estate, the receiver and

1 each reinsurer of the ceding member insurer shall make available
2 upon request to the Association or to NOLHGA on its behalf as soon
3 as possible after commencement of formal delinquency proceedings

4 (1) copies of in-force contracts of reinsurance and
5 all related files and records relevant to the determination of
6 whether such contracts should be assumed; and

7 (2) notices of any defaults under the reinsurance
8 contracts or any known event or condition which with the passage of
9 time could become a default under the reinsurance contracts.

10 (c) The following Subsections (1) through (4) below shall
11 apply with respect to the agreements selected to reinsurance
12 contracts assumed by the Association:

13 (1) The Association shall be responsible for all
14 unpaid premiums due under the reinsurance contracts for periods
15 both before and after the date of the order of liquidation, and
16 shall be responsible for the performance of all other obligations
17 to be performed after the date of the order of liquidation, in each
18 case which relate to policies or annuities covered, in whole or in
19 part, by the Association. The Association may charge policies or
20 annuities covered in part by the Association, through reasonable
21 allocation methods, the costs for reinsurance in excess of the
22 obligations of the Association and shall provide notice and an
23 accounting of these charges to the liquidator;

24 (2) The Association shall be entitled to any amounts
25 payable by the reinsurer under the reinsurance contracts with
26 respect to losses or events that occur in periods after the date of
27 the order of liquidation and that relate to policies or annuities

1 covered, in whole or in part, by the Association, provided that,
2 upon receipt of any such amounts, the Association shall be obliged
3 to pay to the beneficiary under the policy or annuity on account of
4 which the amounts were paid a portion of the amount equal to the
5 lesser of:

6 (A) The amount received by the Association; and
7 (B) The excess of the amount received by the
8 Association over the amount equal to the benefits paid by the
9 Association on account of the policy or annuity less the retention
10 of the insurer applicable to the loss or event.

11 (3) Within 30 days following the Association's
12 election (the "election date"), the Association and each reinsurer
13 under contracts assumed by the Association shall calculate the net
14 balance due to or from the Association under each reinsurance
15 contract as of the election date with respect to policies or
16 annuities covered, in whole or in part, by the Association, which
17 calculation shall give full credit to all items paid by either the
18 insurer or its receiver or the reinsurer prior to the election date.
19 The reinsurer shall pay the receiver any amounts due for losses or
20 events prior to the date of the order of liquidation, subject to any
21 set-off for premiums unpaid for periods prior to the date, and the
22 Association or reinsurer shall pay any remaining balance due the
23 other, in each case within 5 days of the completion of the
24 aforementioned calculation. Any disputes over the amounts due to
25 either the Association or the reinsurer shall be resolved by
26 arbitration pursuant to the terms of the affected reinsurance
27 contracts or, if the contract contains no arbitration clause, as

1 otherwise provided by law. If the receiver has received any amounts
2 due the Association pursuant to Subsection 463.264(c)(2), the
3 receiver shall remit the same to the Association as promptly as
4 practicable.

5 (4) If the Association or receiver, on the
6 Association's behalf, within 60 days of the election date, pays the
7 unpaid premiums due for periods both before and after the election
8 date that relate to policies or annuities covered, in whole or in
9 part, by the Association, the reinsurer shall not be entitled to
10 terminate the reinsurance contracts for failure to pay premium
11 insofar as the reinsurance contracts relate to policies or
12 annuities covered, in whole or in part, by the Association, and
13 shall not be entitled to set off any unpaid amounts due under other
14 contracts, or unpaid amounts due from parties other than the
15 Association, against amounts due the Association.

16 (d) During the period from the date of the order of
17 liquidation until the election date (or, if the election date does
18 not occur, until 180 days after the date of the order of
19 liquidation),

20 (1) Neither the Association nor the reinsurer shall
21 have any rights or obligations under reinsurance contracts that the
22 Association has the right to assume under Subsection 463.264(a),
23 whether for periods prior to or after the date of the order of
24 liquidation; and

25 (2) The reinsurer, the receiver and the Association
26 shall, to the extent practicable, provide each other data and
27 records reasonably requested;

1 (3) Provided that once the Association has elected to
2 assume a reinsurance contract, the parties' rights and obligations
3 shall be governed by Section 463.264.

4 (e) If the Association does not elect to assume a
5 reinsurance contract by the election date pursuant to Subsection
6 463.264(a), the Association shall have no rights or obligations, in
7 each case for periods both before and after the date of the order of
8 liquidation, with respect to the reinsurance contract.

9 (f) When policies or annuities, or covered obligations with
10 respect thereto, are transferred to an assuming insurer,
11 reinsurance on the policies or annuities may also be transferred by
12 the Association, in the case of contracts assumed under Subsection
13 463.264(a), subject to the following:

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

18 (2) The obligations described in this Subsection
19 463.264 shall no longer apply with respect to matters arising after
20 the effective date of the transfer; and

21 (3) Notice shall be given in writing, return receipt
22 requested, by the transferring party to the affected reinsurer not
23 less than 30 days prior to the effective date of the transfer.

24 (g) The provisions of Subsection 463.264 shall supersede
25 the provisions of any law or of any affected reinsurance contract
26 that provides for or requires any payment of reinsurance proceeds,
27 on account of losses or events that occur in periods after the date

1 of the order of liquidation, to the receiver of the insolvent
2 insurer or any other person. The receiver shall remain entitled to
3 any amounts payable by the reinsurer under the reinsurance
4 contracts with respect to losses or events that occur in periods
5 prior to the date of the order of liquidation, subject to applicable
6 setoff provisions.

7 (h) Except as otherwise provided in this section, nothing in
8 Subsection 463.264 shall alter or modify the terms and conditions
9 of any reinsurance contract. Nothing in this section shall
10 abrogate or limit any rights of any reinsurer to claim that it is
11 entitled to rescind a reinsurance contract. Nothing in this
12 section shall give a policyholder or beneficiary an independent
13 cause of action against a reinsurer that is not otherwise set forth
14 in the reinsurance contract. Nothing in this section shall limit or
15 affect the Association's rights as a creditor of the estate against
16 the assets of the estate. Nothing in this section shall apply to
17 reinsurance agreements covering property or casualty risks.

18 SECTION 6. The change in law made by this Act to section
19 463.153(c) applies to assessments authorized on or after October 1,
20 2008 with respect to an insurer that first became impaired or
21 insolvent after September 1, 2005; all other changes in law made by
22 this Act apply only to an insurer that first becomes an impaired or
23 insolvent insurer on or after the effective date of this Act. An
24 insurer that becomes an impaired or insolvent insurer before the
25 effective date of this Act is governed by the law as it existed
26 immediately before that date, and that law is continued in effect
27 for that purpose.

1 SECTION 7. This Act takes effect September 1, 2009.