

CHAPTER 230

INSURANCE

HOUSE BILL 00-1093

BY REPRESENTATIVES Kester, Coleman, Taylor, and T. Williams;
also SENATOR Anderson.

AN ACT

CONCERNING INSURANCE INSOLVENCY COVERAGE FOR THE PROTECTION OF INSURED.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 10-20-103 (13), Colorado Revised Statutes, is amended, and the said 10-20-103 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

10-20-103. Definitions. As used in this article, unless the context otherwise requires:

(10.5) "OWNER" OF A POLICY OR CONTRACT FOR INSURANCE, OR "POLICY OWNER", OR "CONTRACT OWNER", MEANS THE PERSON WHO IS IDENTIFIED AS THE LEGAL OWNER UNDER THE TERMS OF THE POLICY OR CONTRACT FOR INSURANCE OR WHO IS OTHERWISE VESTED WITH LEGAL TITLE TO THE POLICY OR CONTRACT FOR INSURANCE THROUGH A VALID ASSIGNMENT COMPLETED IN ACCORDANCE WITH THE TERMS OF THE POLICY OR CONTRACT FOR INSURANCE AND PROPERLY RECORDED AS THE OWNER ON THE BOOKS OF THE INSURER. THE TERMS "OWNER", "CONTRACT OWNER", AND "POLICY OWNER" DO NOT INCLUDE PERSONS WITH A BENEFICIAL INTEREST IN A POLICY OR CONTRACT.

(13) "Resident" means any person TO WHOM A CONTRACTUAL OBLIGATION IS OWED AND who resides in this state ~~at the time~~ ON THE DATE OF ENTRY OF A COURT ORDER THAT DETERMINES a member insurer ~~is determined~~ to be an insolvent insurer. ~~and to whom a contractual obligation is owed.~~ A person may be a resident of only one state, which in the case of a person other than a natural person shall be its principal place of business. CITIZENS OF THE UNITED STATES WHO ARE RESIDENTS OF A FOREIGN COUNTRY, UNITED STATES POSSESSION, UNITED STATES TERRITORY, OR UNITED STATES PROTECTORATE, WHICH COUNTRY, POSSESSION, TERRITORY, OR

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

PROTECTORATE DOES NOT HAVE AN ASSOCIATION SIMILAR TO THE ASSOCIATION CREATED BY THIS ARTICLE, SHALL BE DEEMED RESIDENTS OF THE STATE OF DOMICILE OF THE INSURER THAT ISSUED THE POLICIES OR CONTRACTS.

(13.5) "STRUCTURED SETTLEMENT ANNUITY" MEANS AN ANNUITY PURCHASED IN ORDER TO FUND PERIODIC PAYMENTS FOR A PLAINTIFF OR OTHER CLAIMANT IN PAYMENT FOR OR WITH RESPECT TO PERSONAL INJURY SUFFERED BY THE PLAINTIFF OR OTHER CLAIMANT.

(15) "UNALLOCATED ANNUITY CONTRACT" MEANS AN ANNUITY CONTRACT OR GROUP ANNUITY CERTIFICATE THAT IS NOT ISSUED TO AND OWNED BY AN INDIVIDUAL, EXCEPT TO THE EXTENT OF ANY ANNUITY BENEFITS GUARANTEED TO AN INDIVIDUAL BY AN INSURER UNDER THE CONTRACT OR CERTIFICATE.

SECTION 2. The introductory portion to 10-20-104 (1) (a) and 10-20-104 (2) (b) (III), (2) (b) (VII), (2) (b) (XIII), (2) (b) (XIV), and (3) (b), Colorado Revised Statutes, are amended, and the said 10-20-104 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

10-20-104. Coverage and limitations - coordination of benefits. (1) This article shall provide coverage for the policies and contracts specified in subsection (2) of this section and to persons:

(a) Who are owners of or certificate holders under such policies or contracts, OTHER THAN STRUCTURED SETTLEMENT ANNUITIES, and who:

(1.3) SUBSECTION (1) OF THIS SECTION SHALL NOT APPLY TO STRUCTURED SETTLEMENT ANNUITIES. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTIONS (1.5) AND (1.7) OF THIS SECTION, THIS ARTICLE SHALL PROVIDE COVERAGE TO A PERSON WHO IS A PAYEE UNDER A STRUCTURED SETTLEMENT ANNUITY OR TO A BENEFICIARY OF A DECEASED PAYEE IF THE PAYEE:

(a) IS A RESIDENT, REGARDLESS OF WHERE THE CONTRACT OWNER RESIDES; OR

(b) IS NOT A RESIDENT, BUT ONLY UNDER BOTH OF THE FOLLOWING CONDITIONS:

(I) EITHER:

(A) THE CONTRACT OWNER OF THE STRUCTURED SETTLEMENT ANNUITY IS A RESIDENT; OR

(B) THE CONTRACT OWNER OF THE STRUCTURED SETTLEMENT ANNUITY IS NOT A RESIDENT, BUT THE INSURER THAT ISSUED THE STRUCTURED SETTLEMENT ANNUITY IS DOMICILED IN THIS STATE AND THE STATE IN WHICH THE CONTRACT OWNER RESIDES HAS AN ASSOCIATION SIMILAR TO THE ASSOCIATION CREATED BY THIS ARTICLE; AND

(II) NEITHER THE PAYEE, THE BENEFICIARY, NOR THE CONTRACT OWNER IS ELIGIBLE FOR COVERAGE BY THE ASSOCIATION OF THE STATE IN WHICH THE PAYEE OR CONTRACT OWNER RESIDES.

(1.5) THIS ARTICLE SHALL NOT PROVIDE COVERAGE TO A PERSON WHO IS A PAYEE

OR BENEFICIARY OF A CONTRACT OWNER WHO IS A RESIDENT OF THIS STATE IF THE PAYEE OR BENEFICIARY IS AFFORDED ANY COVERAGE BY THE ASSOCIATION OF ANOTHER STATE.

(1.7) THIS ARTICLE IS INTENDED TO PROVIDE COVERAGE TO A PERSON WHO IS A RESIDENT OF THIS STATE AND, IN SPECIAL CIRCUMSTANCES, TO A NONRESIDENT. IN ORDER TO AVOID DUPLICATE COVERAGE, IF A PERSON WHO WOULD OTHERWISE RECEIVE COVERAGE UNDER THIS ARTICLE IS PROVIDED COVERAGE UNDER THE LAWS OF ANY OTHER STATE, THE PERSON SHALL NOT BE PROVIDED COVERAGE UNDER THIS ARTICLE. IN DETERMINING THE APPLICATION OF THE PROVISIONS OF THIS SUBSECTION (1.7) IN SITUATIONS WHERE A PERSON COULD BE COVERED BY THE ASSOCIATION OF MORE THAN ONE STATE, WHETHER AS AN OWNER, PAYEE, BENEFICIARY, OR ASSIGNEE, THIS ARTICLE SHALL BE CONSTRUED IN CONJUNCTION WITH OTHER STATE LAWS TO RESULT IN COVERAGE BY ONLY ONE ASSOCIATION.

(2) (b) This article shall not provide coverage for:

(III) Any portion of a policy or contract TO THE EXTENT THAT THE RATE OF INTEREST ON WHICH IT IS BASED, OR THE INTEREST RATE, CREDITING RATE, OR OTHER FACTOR EMPLOYED IN CALCULATING RETURNS OR CHANGES IN VALUE WHICH MAY INCLUDE, WITHOUT LIMITATION, AN INDEX OR OTHER EXTERNAL REFERENCE STATED IN THE POLICY OR CONTRACT:

(A) ~~To the extent that the rate of interest on which it is based,~~ When averaged over the period of four years prior to the date ~~on which~~ THAT the association becomes obligated with respect to such policy or contract MEMBER INSURER BECOMES AN INSOLVENT INSURER UNDER THIS ARTICLE, exceeds a rate of interest determined by subtracting two percentage points from Moody's average, averaged for that same four-year period, or for such lesser period if the policy or contract was issued less than four years before the association became obligated MEMBER INSURER BECOMES AN INSOLVENT INSURER UNDER THIS ARTICLE; and

(B) ~~To the extent that the rate of interest on which it is based,~~ On and after the date ~~on which~~ THAT the association becomes obligated with respect to such policy or contract MEMBER INSURER BECOMES AN INSOLVENT INSURER UNDER THIS ARTICLE, exceeds the rate of interest determined by subtracting three percentage points from Moody's average as most recently available;

(VII) Any UNALLOCATED annuity contract; ~~or group annuity certificate which is not issued to and not owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under such contract or certificate;~~

(XIII) Any policy or contract covering persons who are not citizens ~~or permanent residents~~ of the United States;

(XIV) Any portion of a ~~financial guarantee, funding agreement, or guaranteed investment contract which contains no mortality guarantees and is not issued to or in connection with a specific employee benefit plan or a governmental lottery;~~ POLICY OR CONTRACT TO THE EXTENT IT PROVIDES FOR INTEREST OR OTHER CHANGES IN VALUE TO BE DETERMINED BY THE USE OF AN INDEX OR OTHER EXTERNAL REFERENCE STATED IN THE POLICY OR CONTRACT BUT SUCH CHANGES HAVE NOT BEEN CREDITED

TO THE POLICY OR CONTRACT, OR TO THE EXTENT THE POLICY OR CONTRACT OWNER'S RIGHTS ARE SUBJECT TO FORFEITURE, AS OF THE DATE THE MEMBER INSURER BECOMES AN INSOLVENT INSURER UNDER TO THIS ARTICLE. IF A POLICY'S OR CONTRACT'S INTEREST OR CHANGES IN VALUE ARE CREDITED LESS FREQUENTLY THAN ANNUALLY, THEN FOR PURPOSES OF DETERMINING THE VALUES THAT HAVE BEEN CREDITED AND ARE NOT SUBJECT TO FORFEITURE UNDER THIS SECTION, THE INTEREST OR CHANGE IN VALUE DETERMINED BY USING THE PROCEDURES DEFINED IN THE POLICY OR CONTRACT SHALL BE CREDITED AS IF THE CONTRACTUAL DATE OF CREDITING INTEREST OR CHANGING VALUES WAS THE DATE OF INSOLVENCY, AND SUCH INTEREST OR CHANGES SHALL NOT BE SUBJECT TO FORFEITURE.

(3) The benefits for which the association may become liable shall not exceed the lesser of:

(b) (I) With respect to any one life, regardless of the number of policies or contracts with that insurer:

(A) Three hundred thousand dollars in net life insurance death benefits, and no more than one hundred thousand dollars in net cash surrender and net cash withdrawal values for life insurance;

(B) ~~One hundred thousand dollars in~~ FOR health insurance benefits: ~~including net cash surrender and net cash withdrawal values~~ ONE HUNDRED THOUSAND DOLLARS FOR COVERAGES NOT DEFINED AS DISABILITY, BASIC HOSPITAL, MEDICAL AND SURGICAL, OR MAJOR MEDICAL INSURANCE, INCLUDING ANY NET CASH SURRENDER AND NET CASH WITHDRAWAL VALUES; THREE HUNDRED THOUSAND DOLLARS FOR DISABILITY INSURANCE; OR FIVE HUNDRED THOUSAND DOLLARS FOR BASIC HOSPITAL, MEDICAL AND SURGICAL, OR MAJOR MEDICAL INSURANCE;

(C) One hundred thousand dollars in the present value of annuity benefits, including net cash surrender and net cash withdrawal values; OR

(D) WITH RESPECT TO EACH PAYEE OF A STRUCTURED SETTLEMENT ANNUITY, ONE HUNDRED THOUSAND DOLLARS IN PRESENT VALUE ANNUITY BENEFITS, IN THE AGGREGATE, INCLUDING NET CASH SURRENDER AND NET CASH WITHDRAWAL VALUES.

(II) The association shall not be liable to expend more than three hundred thousand dollars, in the aggregate, with respect to any one life under sub-subparagraphs (A) ~~(B)~~, and ~~(C)~~ THROUGH (D) of subparagraph (I) of this paragraph (b); EXCEPT THAT, WITH RESPECT TO BENEFITS FOR BASIC HOSPITAL, MEDICAL AND SURGICAL, AND MAJOR MEDICAL INSURANCE UNDER SUB-SUBPARAGRAPH (B) OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (b), THE AGGREGATE LIABILITY OF THE ASSOCIATION SHALL NOT EXCEED FIVE HUNDRED THOUSAND DOLLARS WITH RESPECT TO ANY ONE INDIVIDUAL.

SECTION 3. 10-20-108 (10), (11), (12) (a), and (12) (c), Colorado Revised Statutes, are amended, and the said 10-20-108 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

10-20-108. Powers and duties of the association. (10) The association may render assistance and advice to the commissioner, upon ~~his~~ THE COMMISSIONER'S request, concerning payment of claims, continuance of coverage, ~~or~~ the performance

of other contractual obligations of any insolvent insurer, OR ANY MEMBER INSURER'S PERFORMANCE OF ITS CONTRACTUAL OBLIGATIONS.

(11) The association shall have standing to appear OR INTERVENE before any court OR AGENCY in this state which has jurisdiction over ~~an insolvent~~ A MEMBER insurer for which the association is or may become obligated under this article, OR WITH JURISDICTION OVER ANY PERSON OR PROPERTY AGAINST WHICH THE ASSOCIATION MAY HAVE RIGHTS THROUGH SUBROGATION OR OTHERWISE. Such standing shall extend to all matters germane to the powers and duties of the association, including but not limited to proposals for reinsuring, modifying, or guaranteeing the policies or contracts of the ~~insolvent~~ MEMBER insurer and the determination of the policies or contracts and contractual obligations. The association shall also have the right to appear or intervene before a court OR AGENCY in another state with jurisdiction over ~~an insolvent~~ A MEMBER insurer for which the association is or may become obligated or with jurisdiction over ~~a third party~~ ANY PERSON OR PROPERTY against whom the association may have rights through subrogation of ~~the insurer's policyholders~~ OR OTHERWISE.

(12) (a) Any person receiving benefits under this article shall be deemed to have assigned the rights under, and any causes of action AGAINST ANY PERSON FOR LOSSES ARISING UNDER, RESULTING FROM, OR OTHERWISE relating to, the covered policy or contract to the association to the extent of the benefits received because of this article, whether the benefits are payments of or on account of contractual obligations, continuation of coverage, or the provision of substitute or alternative coverage. The association may require an assignment to it of such rights and causes of action by any payee, policy, or contract owner, beneficiary, insured, or annuitant as a condition precedent to the receipt of any right or benefits conferred by this article upon such person.

(c) In addition to paragraphs (a) and (b) of this subsection (12), the association shall have all common-law rights of subrogation and any other equitable or legal remedy which would have been available to the insolvent insurer ~~or holder of the~~ OWNER, BENEFICIARY, OR PAYEE OF A policy or contract with respect to such policy or contract, INCLUDING WITHOUT LIMITATION, IN THE CASE OF A STRUCTURED SETTLEMENT ANNUITY, ANY RIGHTS OF THE OWNER, BENEFICIARY, OR PAYEE OF THE ANNUITY, TO THE EXTENT THE BENEFITS RECEIVED PURSUANT TO THIS ARTICLE AGAINST A PERSON ORIGINALLY OR BY SUCCESSION RESPONSIBLE FOR THE LOSSES ARISING FROM THE PERSONAL INJURY RELATING TO THE ANNUITY OR PAYMENT THEREFOR, EXCEPTING ANY SUCH PERSON RESPONSIBLE SOLELY BY REASON OF SERVING AS AN ASSIGNEE IN RESPECT OF A QUALIFIED ASSIGNMENT UNDER SECTION 130 OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED.

(20) WHERE THE ASSOCIATION HAS ARRANGED OR OFFERED TO PROVIDE THE BENEFITS OF THIS ARTICLE TO A COVERED PERSON UNDER A PLAN OR ARRANGEMENT THAT FULFILLS THE ASSOCIATION'S OBLIGATIONS UNDER THIS ARTICLE, THE PERSON SHALL NOT BE ENTITLED TO BENEFITS FROM THE ASSOCIATION IN ADDITION TO OR OTHER THAN THOSE PROVIDED UNDER THE PLAN OR ARRANGEMENT.

(21) VENUE IN A SUIT AGAINST THE ASSOCIATION ARISING UNDER THIS ARTICLE SHALL BE IN THE CITY AND COUNTY OF DENVER. THE ASSOCIATION SHALL NOT BE REQUIRED TO GIVE AN APPEAL BOND IN AN APPEAL THAT RELATES TO A CAUSE OF

ACTION ARISING UNDER THIS ARTICLE.

(22) IN CARRYING OUT ITS DUTIES IN CONNECTION WITH GUARANTEEING, ASSUMING, OR REINSURING POLICIES OR CONTRACTS UNDER THIS SECTION, THE ASSOCIATION MAY ISSUE SUBSTITUTE COVERAGE FOR A POLICY OR CONTRACT THAT PROVIDES FOR THE CALCULATION OF RETURNS OR CHANGES IN VALUE BY THE USE OF AN INTEREST RATE, CREDITING RATE, OR SIMILAR FACTOR DETERMINED BY USE OF AN INDEX OR OTHER EXTERNAL REFERENCE, BY ISSUING AN ALTERNATIVE POLICY OR CONTRACT IN ACCORDANCE WITH THE FOLLOWING PROVISIONS:

(A) IN LIEU OF THE INDEX OR OTHER EXTERNAL REFERENCE PROVIDED FOR IN THE ORIGINAL POLICY OR CONTRACT, THE ALTERNATIVE POLICY OR CONTRACT PROVIDES FOR A FIXED INTEREST RATE, PAYMENT OF DIVIDENDS WITH MINIMUM GUARANTEES, OR A DIFFERENT METHOD FOR CALCULATING INTEREST OR CHANGES IN VALUE;

(B) THERE IS NO REQUIREMENT FOR THE EVIDENCE OF INSURABILITY, A WAITING PERIOD, OR ANY OTHER EXCLUSION THAT WOULD NOT HAVE APPLIED UNDER THE REPLACED POLICY OR CONTACT;

(C) THE ALTERNATIVE POLICY OR CONTRACT IS SUBSTANTIALLY SIMILAR TO THE REPLACED POLICY OR CONTRACT IN ALL OTHER MATERIAL TERMS.

SECTION 4. 10-20-108 (13), Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS to read:

10-20-108. Powers and duties of the association. (13) The association may:

(g.5) REQUEST INFORMATION FROM PERSONS SEEKING COVERAGE FROM THE ASSOCIATION IN ORDER TO AID THE ASSOCIATION IN DETERMINING ITS OBLIGATIONS UNDER THIS ARTICLE WITH RESPECT TO THE PERSON; AND A PERSON RECEIVING SUCH REQUEST SHALL PROMPTLY COMPLY;

(g.7) TAKE OTHER NECESSARY OR APPROPRIATE ACTION TO EXERCISE ITS POWERS AND DISCHARGE ITS DUTIES AND OBLIGATIONS UNDER THIS ARTICLE;

SECTION 5. 10-20-109 (8), Colorado Revised Statutes, is amended to read:

10-20-109. Assessments. (8) The association shall issue to each insurer paying an assessment for the life and annuity accounts under this article, other than a class A assessment, a certificate of contribution from the association, in a form prescribed by the commissioner, for the amount of the assessment so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue. Such certificate of contribution may be shown by the insurer in its financial statement as an asset in such form and for such amount, if any, and period of time as the commissioner may approve; but the insurer shall, at its option, have the right in any event to show such certificate of contribution as an admitted asset at percentages of the original face amount of the assessment for calendar years as follows:

(a) ~~Seventy-five~~ ONE HUNDRED percent for the first year after issuance; and

(b) ~~Seventy-five~~ ONE HUNDRED percent less any amount already taken as an offset against premium tax liability pursuant to section 10-20-113 for the second and subsequent years after issuance.

SECTION 6. 10-20-112 (3), (4), (5), (6), and (7), Colorado Revised Statutes, are amended to read:

10-20-112. Prevention of insolvencies. (3) The board shall, upon ~~majority vote~~ REQUEST OF THE COMMISSIONER, report and make recommendations to the commissioner upon any matter germane to the solvency or liquidation of any member insurer or germane to the solvency of any company seeking to do an insurance business in this state. Such reports and recommendations shall NOT be considered public documents.

(4) ~~It shall be the duty of~~ The board ~~upon majority vote, to~~ SHALL notify the commissioner ~~of any information indicating that any member insurer may be insolvent~~ WHEN THE BOARD HAS ACTUAL KNOWLEDGE THAT AN INSURER MAY BE INSOLVENT.

(5) The board shall ~~upon majority vote,~~ request that the commissioner order an examination of any member insurer which the board in good faith believes may be insolvent. Within thirty days after the receipt of such request, the commissioner shall begin such examination. The examination may be conducted as an NAIC examination or may be conducted by such persons as the commissioner designates. The cost of such examination shall be paid by the association, and the examination report shall be treated confidentially. In no event shall such examination report be released to the board prior to its release to the public, but this shall not preclude the commissioner from complying with subsection (1) of this section. The commissioner shall notify the board when the examination is completed. The request for an examination shall be kept on file by the commissioner, but it shall not be open to public inspection prior to the release of the examination report to the public. For purposes of this subsection (5), a "request" is not a report or recommendation.

(6) The board ~~shall, upon majority vote,~~ MAY make recommendations to the commissioner for the detection and prevention of insurer insolvencies.

(7) The board ~~shall~~ MAY, at the conclusion of any insurer insolvency in which the association was obligated to pay covered claims, prepare a report to the commissioner containing such information as it may have in its possession bearing on the history and causes of such insolvency. The board ~~shall~~ MAY cooperate with the boards of directors of guaranty associations in other states in preparing a report on the history and causes of insolvency of a particular insurer and may adopt by reference any report prepared by such other associations.

SECTION 7. 10-20-113 (1) (a) and (1) (c), Colorado Revised Statutes, are amended to read:

10-20-113. Credits for assessments paid - tax offsets. (1) (a) A member insurer may offset against its premium tax liability to this state that amount of its class B assessment described in section 10-20-109 ~~which~~ THAT was assessed for the association's life and annuity accounts pursuant to section 10-20-106 to the ~~following~~

extent OF TWENTY PERCENT OF THE AMOUNT OF SUCH ASSESSMENT FOR EACH OF THE FIRST, SECOND, THIRD, FOURTH, AND FIFTH CALENDAR YEARS FOLLOWING THE YEAR IN WHICH SUCH ASSESSMENT WAS PAID.

~~(F) Twenty percent of the amount of such assessment for each of the first, second, and third calendar years following the year in which such assessment was paid; and~~

~~(H) Seven and one-half percent of the amount of such assessment for each of the fourth and fifth calendar years following the year in which such assessment was paid.~~

(c) In no event shall the total amount of all such offsets for all member insurers exceed ~~two~~ FOUR million dollars in any year. The association shall prorate the amount of such offset among all member insurers if the total amount of offset would otherwise exceed ~~two~~ FOUR million dollars in any such year and shall notify each insurer of the maximum amount of offset allowable for that year and the amount of the excess offset, if any, ~~which~~ THAT may be carried forward to future years.

SECTION 8. Effective date - applicability. This act shall take effect July 1, 2000, and shall apply to any insolvency of, assessment of, offset created for, or liquidation of any member insurer commenced on or after said date.

SECTION 9. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 26, 2000