

HOUSE _____ **AMENDMENT NO.** _____

Offered By

AMEND House Committee Substitute for Senate Bill No. 90, Section 192.300, Page 4, Line 30,
by inserting the following after all of said Line:

“376.717. 1. Sections 376.715 to 376.758 shall provide coverage for the policies and
contracts specified in subsection 2 of this section:

(1) To persons who, regardless of where they reside, except for nonresident certificate
holders under group policies or contracts, are the beneficiaries, assignees or payees of the persons
covered under subdivision (2) of this subsection; and

(2) To persons who are owners of or certificate holders under such policies or contracts,
other than structured settlement annuities, who:

(a) Are residents of this state; or

(b) Are not residents, but only under all of the following conditions:

a. The insurers which issued such policies or contracts are domiciled in this state;

b. The persons are not eligible for coverage by an association in any other state due to the
fact that the insurer was not licensed in such state at the time specified in such state's guaranty
association law; and

c. The states in which the persons reside have associations similar to the association
created by sections 376.715 to 376.758;

(3) For structured settlement annuities specified in subsection 2 of this section,
subdivisions (1) and (2) of subsection 1 of this section shall not apply, and sections 376.715 to
376.758 shall, except as provided in subdivisions (4) and (5) of this subsection, provide coverage
to a person who is a payee under a structured settlement annuity, or beneficiary of a payee if the
payee is deceased, 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:

a. (i) The contract owner of the structured settlement annuity is a resident; or

(ii) The contract owner of the structure settlement annuity is not a resident, but:

i. The insurer that issued the structured settlement annuity is domiciled in this state; and

ii. The state in which the contract owner resides has an association similar to the

1 association created under sections 376.715 to 376.758; and

2 b. Neither the payee or beneficiary nor the contract owner is eligible for coverage by the
3 association of the state in which the payee or contract owner resides;

4 (4) Sections 376.715 to 376.758 shall not provide to a person who is a payee or
5 beneficiary of a contract owner resident of this state, if the payee or beneficiary is afforded any
6 coverage by such an association of another state;

7 (5) Sections 376.715 to 376.758 are intended to provide coverage to a person who is a
8 resident of this state and, in special circumstances, to a nonresident. In order to avoid duplicate
9 coverage, if a person who would otherwise receive coverage under sections 376.715 to 376.758 is
10 provided coverage under the laws of any other state, the person shall not be provided coverage
11 under sections 376.715 to 376.758. In determining the application of the provisions of this
12 subdivision in situations where a person could be covered by such an association of more than one
13 state, whether as an owner, payee, beneficiary, or assignee, sections 376.715 to 376.758 shall be
14 construed in conjunction with the other state's laws to result in coverage by only one association.

15 2. Sections 376.715 to 376.758 shall provide coverage to the persons specified in
16 subsection 1 of this section for direct, nongroup life, health, annuity policies or contracts, and
17 supplemental contracts to any such policies or contracts, and for certificates under direct group
18 policies and contracts, except as limited by the provisions of sections 376.715 to 376.758.
19 Annuity contracts and certificates under group annuity contracts include allocated funding
20 agreements, structured settlement annuities, and any immediate or deferred annuity contracts.

21 3. Sections 376.715 to 376.758 shall not provide coverage for:

22 (1) Any portion of a policy or contract not guaranteed by the insurer, or under which the
23 risk is borne by the policy or contract holder;

24 (2) Any policy or contract of reinsurance, unless assumption certificates have been issued;

25 (3) Any portion of a policy or contract to the extent that the rate of interest on which it is
26 based, or the interest rate, crediting rate, or similar factor determined by use of an index or other
27 external reference stated in the policy or contract employed in calculating returns or changes in
28 value:

29 (a) Averaged over the period of four years prior to the date on which the association
30 becomes obligated with respect to such policy or contract, exceeds the rate of interest determined
31 by subtracting three percentage points from Moody's Corporate Bond Yield Average averaged for
32 that same four-year period or for such lesser period if the policy or contract was issued less than
33 four years before the association became obligated; and

34 (b) On and after the date on which the association becomes obligated with respect to such
35 policy or contract exceeds the rate of interest determined by subtracting three percentage points
36 from Moody's Corporate Bond Yield Average as most recently available;

(4) Any portion of a policy or contract issued to a plan or program of an employer, association or other person to provide life, health, or annuity benefits to its employees or members to the extent that such plan or program is self-funded or uninsured, including but not limited to benefits payable by an employer, association or other person under:

(a) A multiple employer welfare arrangement as defined in 29 U.S.C. Section 1144, as amended;

(b) A minimum premium group insurance plan;

(c) A stop-loss group insurance plan; or

(d) An administrative services only contract;

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

(6) Any policy or contract issued in this state by a member insurer at a time when it was not licensed or did not have a certificate of authority to issue such policy or contract in this state;

(7) A portion of a policy or contract to the extent that the assessments required by section 376.735 with respect to the policy or contract are preempted by federal or state law;

(8) An obligation that does not arise under the express written terms of the policy or contract issued by the insurer to the contract owner or policy owner, including without limitation:

(a) Claims based on marketing materials;

(b) Claims based on side letters, riders, or other documents that were issued by the insurer without meeting applicable policy form filing or approval requirements;

(c) Misrepresentations of or regarding policy benefits;

(d) Extra-contractual claims;

(e) A claim for penalties or consequential or incidental damages;

(9) A contractual agreement that establishes 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 its trustee, which in each case is not an affiliate of the member insurer;

(10) An unallocated annuity contract;

(11) A portion of a 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 which 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 sections 376.715 to 376.758, whichever is earlier. If a policy's or contract's interest or changes in value are credited less frequently than annually, for purposes of

determining the value that have been credited and are not subject to forfeiture under this subdivision, the interest or change in value determined by using the procedures defined in the policy or contract will be credited as if the contractual date of crediting interest or changing values was the date of impairment or insolvency, whichever is earlier, and will not be subject to forfeiture;

(12) A policy or contract providing any hospital, medical, prescription drug or other health care benefit under Part C or Part D of Subchapter XVIII, Chapter 7 of Title 42 of the United States Code, Medicare [Part] Parts C & D, or any regulations issued thereunder.

4. The benefits for which the association may become liable, with regard to a member insurer that was first placed under an order of rehabilitation or under an order of liquidation if no order of rehabilitation was entered prior to August 28, 2011, shall in no event exceed the lesser of:

(1) The contractual obligations for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer; or

(2) With respect to any one life, regardless of the number of policies or contracts:

(a) Three hundred thousand dollars in life insurance death benefits, but not more than one hundred thousand dollars in net cash surrender and net cash withdrawal values for life insurance;

(b) One hundred thousand dollars in health insurance benefits, including any net cash surrender and net cash withdrawal values;

(c) One hundred thousand dollars in the present value of annuity benefits, including net cash surrender and net cash withdrawal values. Provided, however, that in no event shall the association be liable to expend more than three hundred thousand dollars in the aggregate with respect to any one life under paragraphs (a), (b), and (c) of this subdivision.

5. Except as otherwise provided in subdivision (2) of this subsection, the benefits for which the association may become liable with regard to a member insurer that was first placed under an order of rehabilitation or under an order of liquidation if no order of rehabilitation was entered on or after August 28, 2011, shall in no event exceed the lesser of:

(1) The contractual obligations for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer; or

(2) (a) With respect to any one life, regardless of the number of policies or contracts:

a. Three hundred thousand dollars in life insurance death benefits, but not more than one hundred thousand dollars in net cash surrender and net cash withdrawal values for life insurance;

b. In health insurance benefits:

(i) One hundred thousand dollars of coverages other than disability insurance or basic hospital, medical, and surgical insurance or major medical insurance, or long-term care insurance, including any net cash surrender and net cash withdrawal values;

(ii) Three hundred thousand dollars for disability insurance and three hundred thousand

1 dollars for long-term care insurance;
2 (iii) Five hundred thousand dollars for basic hospital, medical, and surgical insurance or
3 major medical insurance;
4 c. Two hundred fifty thousand dollars in the present value of annuity benefits, including
5 net cash surrender and net cash withdrawal values; or
6 (b) With respect to each payee of a structured settlement annuity, or beneficiary or
7 beneficiaries of the payee if deceased, two hundred fifty thousand dollars in present value annuity
8 benefits, in the aggregate, including net cash surrender and net cash withdrawal values, if any;
9 (c) Except that, in no event shall the association be obligated to cover more than:
10 a. An aggregate of three hundred thousand dollars in benefits with respect to any one life
11 under paragraphs (a) and (b) of this subdivision, except with respect to benefits for basic hospital,
12 medical, and surgical insurance and major medical insurance under item (iii) of subparagraph b.
13 of paragraph (a) of this subdivision, in which case the aggregate liability of the association shall
14 not exceed five hundred thousand dollars with respect to any one individual; or
15 b. With respect to one owner of multiple nongroup policies of life insurance, whether the
16 policy owner is an individual, firm, corporation, or other person, and whether the person insured
17 are officers, managers, employees, or other persons, more than five million dollars in benefits,
18 regardless of the number of policies and contracts held by the owner.
19 6. The limitations set forth in [subsection 4] subsections 4 and 5 of this section are
20 limitations on the benefits for which the association is obligated before taking into account either
21 its subrogation and assignment rights or the extent to which such benefits could be provided out
22 of the assets of the impaired or insolvent insurer attributable to covered policies. The costs of the
23 association's obligations under sections 376.715 to 376.758 may be met by the use of assets
24 attributable to covered policies or reimbursed to the association under its subrogation and
25 assignment rights.”; and
26
27 Further amend said bill by amending the title, enacting clause, and intersectional references
28 accordingly.