

CHAPTER 215  
FORMERLY  
HOUSE BILL NO. 202

AN ACT TO AMEND TITLE 18 OF THE DELAWARE CODE RELATING TO THE DELAWARE LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE :

Section 1. Amend Title 18 of the Delaware Code, Chapter 44, by adding a new subsection

§ 4403(b)(2) n. thereto as follows:

“n. A policy or contract providing any hospital, medical, prescription drug or other health care benefits pursuant to Part C or Part D of Subchapter XVIII, Chapter 7 of Title 42 of the U.S.C. (commonly known as Medicare Part C and D) or any regulations issued pursuant thereto.”

Section 2. Amend Title 18 of the Delaware Code, Chapter 44, § 4403(c)(2) a. 2. B. by striking subsection B. in its entirety and substituting in lieu thereof the following:

“B. \$300,000 for disability insurance and \$300,000 for long-term care insurance. For purposes of this section, “disability insurance” shall mean the type of policy which pays a monthly or weekly amount if an individual is disabled and cannot work. “Long-term care insurance” shall have the meaning as defined in 18 Del. Code § 7103(5).”

Section 3. Amend Title 18 of the Delaware Code, Chapter 44, § 4403(c)(2) a. 3. by striking subsection 3. in its entirety and substituting in lieu thereof:

“3. \$250,000 in present value of annuity benefits including net cash surrender and net cash withdrawal values.”

Section 4. Amend Title 18 of the Delaware Code, Chapter 44, § 4403(c)(2) b. by striking subsection b. in its entirety and substituting in lieu thereof:

“b. With respect to each individual participating in a governmental retirement benefit plan established under § 401, § 403(b) or § 457 of the U.S. Internal Revenue Code [26 U.S.C. § 401, § 402(b) or § 457] covered by an unallocated annuity contract, or the beneficiaries of each such individual if deceased, \$250,000 in the aggregate in present value annuity benefits, including net cash surrender and net cash withdrawal values;”

Section 5. Amend Title 18 of the Delaware Code, Chapter 44, § 4403(c)(2) c. by striking subsection c. in its entirety and substituting in lieu thereof:

“c. With respect to each payee of a structured settlement annuity (or beneficiary or beneficiaries of the payee, if deceased), \$250,000 in present value annuity benefits, in the aggregate, including net cash surrender and net cash withdrawal values, if any;”

Section 6. Amend Title 18 of the Delaware Code, Chapter 44, § 4408(d) by numbering the existing sentence as subsection (1) and inserting a new sentence following same, which will become the second sentence of existing § 4408(d) as follows:

“(2) If the liquidator of an insolvent insurer requests, the Association shall provide a report to the liquidator regarding such premiums collected by the Association.”

Section 7. Amend Title 18 of the Delaware Code, Chapter 44, § 4408(g) by striking the word “and” as it appears in the second sentence of said section after the word “Association” and by substituting in lieu thereof the phrase “less the amount”; and by striking from the third sentence of said section the phrase “less the amount” after the word “Association” and by substituting in lieu of such phrase the word “and”.

Section 8. Amend Title 18 of the Delaware Code, Chapter 44, § 4408(k)(3) by deleting the parentheses after the word “therefor” and inserting a parentheses after the phrase “Internal Revenue Code Section 130 [26 U.S.C. § 130].”

Section 9. Amend Title 18 of the Delaware Code, Chapter 44, by striking existing subsection § 4408(n) in its entirety and replacing it with the following:

“(n)(1) At any time within one hundred eighty (180) days of 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 (in whole or in part) by the Association, in each case under any one or more reinsurance contract(s) entered into by the insolvent insurer and its reinsurers and selected by the Association. Any such assumption shall be effective as of the date of the order of liquidation. The election shall be effected by the Association or the National Organization of Life and Health Insurance Guaranty Associations (NOLHGA) on its behalf sending written notice, return receipt requested, to the affected reinsurers.

(2) To facilitate the earliest practicable decision about whether to assume any of the contracts of reinsurance and to protect the financial position of the estate, the receiver and each reinsurer of the ceding member insurer shall make available, upon request, to the Association or to NOLHGA on its behalf as soon as possible after commencement of formal delinquency proceedings: (i) copies of in-force contracts of reinsurance and all related files and records relevant to the determination of whether such contracts should be assumed; and (ii) notices of any defaults under the reinsurance contracts or any known event or condition which, with the passage of time, could become a default under the reinsurance contracts.

(3) The following subsections a. through f. shall apply to reinsurance contracts so assumed by the Association:

a. The Association shall be 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, in each case which relate to policies or annuities covered (in whole or in part) by the Association. The Association may charge policies or annuities covered in part by the Association, through reasonable allocation methods, the costs for reinsurance in excess of the obligations of the Association and shall provide notice and an accounting of these charges to the liquidator.

b. The Association shall be entitled to any and all amounts payable by the reinsurer under the reinsurance contracts with respect to losses or events that occur in periods after the date of the order of liquidation and that relate to policies or annuities covered (in whole or in part) by the Association, provided that, upon receipt of any such amounts the Association shall be obligated to pay to the beneficiary under the policy or annuity on account of which the amounts were paid a portion of the amount equal to the lesser of:

1. The amount received by the Association; and

2. The excess of the amount received by the Association, 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.

c. Within thirty (30) days following the Association's election (the "election date"), the Association and each reinsurer under contracts assumed by the Association shall calculate the net balance due to or from the Association under each reinsurance contract as of the election date with respect to policies or annuities covered, in whole or in part, by the Association, which calculation shall give full credit to all items paid by either the insurer or its receiver or the reinsurer prior to the election date. The reinsurer shall pay the receiver any amounts due for losses or events prior to the date of the order of liquidation, subject to any set-off for premiums unpaid for periods prior to the date, and the Association or reinsurer shall pay any remaining balance due the other, in each case within five (5) days of the completion of the aforementioned calculation. Any disputes over the amounts due to either the Association or the reinsurer shall be resolved by arbitration pursuant to the terms of the affected reinsurance contracts or, if the contract contains no arbitration clause, as otherwise provided by law. If the receiver has received any amounts due the Association pursuant to § 4408(n)(3) b., the receiver shall remit the same to the Association as promptly as practicable.

d. 1. If the Association or the receiver, on the Associations' behalf, within sixty (60) days of the election date, pays the unpaid premiums due for periods both before and after the election date that relate to policies or annuities covered (in whole or in part) by the Association, the reinsurer shall not be entitled to terminate the reinsurance contracts for failure to pay a premium insofar as the reinsurance contracts relate to policies or annuities covered, in whole or in part, by the Association, and shall not be entitled to set off any unpaid amounts due under other contracts, or unpaid amounts due from parties other than the Association, against amounts due the Association.

2. During the period from the date of the order of liquidation until the election date (or, if the election date does not occur, until one hundred eighty (180) days after the date of the order of liquidation):

A. (i) Neither the Association nor the reinsurer shall have any rights or obligations under reinsurance contracts that the Association has the right to assume under § 4408(n)(1), whether for periods prior to or after the date of the order of liquidation; and

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

B. Provided that once the Association has elected to assume a reinsurance contract, the parties' rights and obligations shall be governed by § 4408(n)(1).

3. If the Association does not elect to assume a reinsurance contract by the election date pursuant to § 4408(n)(1), the Association shall have no rights or obligations, in each case for periods both before and after the date of the order of liquidation, with respect to the reinsurance contract.

4. When policies or annuities, or covered obligations with respect thereto, are transferred to an assuming insurer, reinsurance on the policies or annuities may also be transferred by the Association, in the case of contracts assumed under § 4408(n)(1), subject to the following:

A. Unless the reinsurer and the assuming insurer agree otherwise, the reinsurance contract that is transferred shall not cover any new policies of insurance or annuities in addition to those transferred;

B. The obligations described in § 4408(n) d. 1. of this Section shall no longer apply with respect to matters arising after the effective date of the transfer; and

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

e. The provisions of § 4408(n) shall supersede the provisions of any law or of any affected reinsurance contract that provides for or requires any payment of reinsurance proceeds, on account of losses or events that occur in periods after the date of the order of liquidation, to the receiver of the insolvent insurer or any other person. The receiver shall remain entitled to any amounts payable by the reinsurer under the reinsurance contracts with respect to losses or events that occur in periods prior to the date of the order of liquidation, subject to applicable setoff provisions.

f. Except as otherwise provided in this section, nothing in § 4408(n) shall: (i) Alter or modify the terms and conditions of any reinsurance contract; (ii) Abrogate or limit any rights of any reinsurer to claim that it is entitled to rescind a reinsurance contract; (iii) Provide a policyholder or beneficiary with an independent cause of action against a reinsurer that is not otherwise set forth in the reinsurance contract; (iv) Limit or affect the Association's rights as a creditor of the estate against the assets of the estate; (v) Apply to reinsurance agreements covering property or casualty risks."

Section 10. Amend Title 18 of the Delaware Code, Chapter 44, § 4409(c)(1) by striking "\$150" as it appears therein and by substituting in lieu thereof "\$300".

Section 11. Amend Title 18 of the Delaware Code Chapter 44, § 4410(c)(7) by striking the existing period (".") and substituting a semi-colon (";") in its place at the end of § 4410(c)(7), and by inserting new subsections (8) and (9) as follows:

"(8) Establish procedures whereby a Director may be removed for cause, including the case where a member insurer Director becomes an impaired or insolvent insurer;

(9) Require the Board of Directors to establish policy and procedures for addressing conflicts of interest."

Section 12. Amend Title 18 of the Delaware Code, Chapter 44, § 4414(b) by striking existing subsection (b) in its entirety and substituting in lieu thereof the following:

“(b) Records shall be kept of all meetings of the Board of Directors to discuss the activities of the Association in carrying out its powers and duties under § 4408 of this Title. The records of the Association with respect to an impaired or insolvent insurer shall not be disclosed prior to the liquidation, rehabilitation or conservation proceeding involving the impaired or insolvent insurer, except upon the termination of the impairment or insolvency of the insurer or upon the order of a court of competent jurisdiction. Nothing in this subsection shall limit the duty of the Association to render a report of its activities under § 4415 of this Title.”.

Section 13. Amend Title 18 of the Delaware Code, Chapter 44, § 4418 by striking “60 days” and by substituting in lieu thereof “180 days”.

Approved January 26, 2010