

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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HOUSE PRINCIPAL CLERK

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HOUSE DRH70253-MH-107 (03/14)

Short Title: Guaranty Association Act Amendments. (Public)

Sponsors: Representative Collins.

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO MAKE CLARIFYING, CONFORMING, AND OTHER CHANGES TO THE  
3 NORTH CAROLINA LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION  
4 ACT.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 58-62-21 reads as rewritten:

7 "§ 58-62-21. Coverage and limitations.

8 ...

9 (c) This Article does not provide coverage for:

- 10 (1) Any part of a policy not guaranteed by the insurer, or under which the risk is  
11 borne by the policyholder;
- 12 (2) Any policy or contract of reinsurance, unless assumption certificates have  
13 been issued;
- 14 (3) Any part of a policy to the extent that the rate of interest on which it is  
15 ~~based~~ based, or the interest rate, crediting rate, or similar factor determined  
16 by the use of an index or other external reference stated in the policy or  
17 contract and employed in calculating returns or changes in value:
- 18 a. Averaged over the period of four years before the date on which the  
19 Association becomes obligated with respect to the policy, exceeds a  
20 rate of interest determined by subtracting two percentage points from  
21 Moody's Corporate Bond Yield Average averaged for that same  
22 four-year period or for a lesser period if the policy was issued less  
23 than four years before the Association became obligated; and
- 24 b. On and after the date on which the Association becomes obligated  
25 with respect to the policy, exceeds the rate of interest determined by  
26 subtracting three percentage points from Moody's Corporate Bond  
27 Yield Average as most recently available;
- 28 (4) Any plan or program of an employer, association, or similar entity to provide  
29 life, health, or annuity benefits to its employees or members to the extent  
30 that the plan or program is self-funded or uninsured, including benefits  
31 payable by an employer, association, or similar entity under:
- 32 a. A multiple employer welfare arrangement as defined in section 514  
33 of the Employee Retirement Income Security Act of 1974, as  
34 amended;
- 35 b. A minimum premium group insurance plan;
- 36 c. A stop-loss group insurance plan; or



- 1 d. An administrative services only contract;
- 2 (5) Any part of a policy to the extent that it provides dividends or
- 3 experience-rating credits, or provides that any fees or allowances be paid to
- 4 any person, including the policyholder, in connection with the service to or
- 5 administration of the policy;
- 6 (6) Any policy issued in this State by a member insurer at a time when it was
- 7 not licensed to issue the policy in this State;
- 8 (7) Any unallocated annuity contract issued to an employee benefit plan
- 9 protected under the federal Pension Benefit Guaranty Corporation; and
- 10 (8) Any part of any unallocated annuity contract that is not issued to or in
- 11 connection with a specific employee, union, or association of natural persons
- 12 benefit plan or a government lottery.
- 13 (9) A policy or contract providing any hospital, medical, prescription drug, or
- 14 other health care benefits pursuant to Part C or Part D of Subchapter XVIII,
- 15 Chapter 7 of Title 42 of the United States Code (commonly known as
- 16 Medicare Parts C & D) or any regulations issued pursuant thereto.
- 17 (10) A portion of a policy or contract to the extent it provides for interest or other
- 18 changes in value to be determined by the use of an index or other external
- 19 reference stated in the policy or contract, but which have not been credited to
- 20 the policy or contract or as to which the policy or contract owner's rights are
- 21 subject to forfeiture, as of the date the member insurer becomes an impaired
- 22 or insolvent insurer under this Act, whichever is earlier. If a policy's or
- 23 contract's interest or changes in value are credited less frequently than
- 24 annually, then for purposes of determining the values that have been credited
- 25 and are not subject to forfeiture under this subdivision, the interest or change
- 26 in value determined by using the procedures defined in the policy or contract
- 27 will be credited as if the contractual date of crediting interest or changing
- 28 values was the date of impairment or insolvency, whichever is earlier, and
- 29 will not be subject to forfeiture.
- 30 (d) The benefits for which the Association is liable do not, in any event, exceed the
- 31 lesser of:
- 32 (1) The contractual obligations for which the insurer is liable or would have
- 33 been liable if it were not a delinquent insurer; or
- 34 (2) With respect to any one individual, regardless of the number of policies,
- 35 three hundred thousand dollars (\$300,000) for all benefits, including cash
- 36 values; or
- 37 (2a) With respect to health insurance benefits for any one individual, regardless
- 38 of the number of policies:
- 39 a. Three hundred thousand dollars (\$300,000) for coverages not defined
- 40 as basic hospital, medical, and surgical insurance or major medical
- 41 insurance as defined in this Chapter and regulations adopted pursuant
- 42 to this Chapter, including disability insurance and long-term care
- 43 insurance; or
- 44 b. Five hundred thousand dollars (\$500,000) for basic hospital, medical,
- 45 and surgical insurance or major medical insurance as defined in this
- 46 Chapter and regulations adopted pursuant to this Chapter;
- 47 (3) With respect to each individual participating in a governmental retirement
- 48 plan established under section 401, 403(b), or 457 of the Internal Revenue
- 49 Code covered by an unallocated annuity contract, or the beneficiaries of each
- 50 individual if deceased, in the aggregate, three hundred thousand dollars

- 1 (\$300,000) in present value annuity benefits, including net cash surrender  
 2 and net cash withdrawal values; or  
 3 (4) With respect to any one contract holder covered by any unallocated annuity  
 4 contract not included in subdivision (3) of this subsection, five million  
 5 dollars (\$5,000,000) in benefits, regardless of the number of such contracts  
 6 held by that contract holder; or  
 7 (5) With respect to any one payee (or beneficiaries of one payee if the payee is  
 8 deceased) of a structured settlement annuity, one million dollars  
 9 (\$1,000,000) for all benefits, including cash values.  
 10 (6) However, in no event shall the Association be obligated to cover more than  
 11 (i) an aggregate of three hundred thousand dollars (\$300,000) in benefits  
 12 with respect to any one individual under subdivisions (2) and (3) and  
 13 sub-subdivision (2a)a. except with respect to benefits for basic hospital,  
 14 medical, and surgical and major medical insurance under sub-subdivision  
 15 (2a)b. of this subsection, in which case the aggregate liability of the  
 16 Association shall not exceed five hundred thousand dollars (\$500,000) with  
 17 respect to any one individual."

18 **SECTION 2.** G.S. 58-62-36 reads as rewritten:

19 **"§ 58-62-36. Powers and duties of the Association.**

20 (a) If a member insurer is an impaired domestic insurer, the Association may, subject to  
 21 any conditions imposed by the Association and approved by the Commissioner that do not  
 22 impair the contractual obligations of the impaired insurer and that are, except in cases of  
 23 court-ordered conservation or rehabilitation, also approved by the impaired insurer:

- 24 (1) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or  
 25 reinsured, any or all of the policies of the impaired insurer;  
 26 (2) Provide such monies, pledges, notes, guarantees, or other means as are  
 27 proper to carry out subdivision (1) of this subsection and assure payment of  
 28 the contractual obligations of the impaired insurer pending action under  
 29 subdivision (1) of this subsection; or  
 30 (3) Lend money to the impaired insurer.

31 (b) ~~If a member insurer is an impaired insurer, whether domestic, foreign, or alien, and~~  
 32 ~~the insurer is not paying claims in a timely manner, then subject to the preconditions specified~~  
 33 ~~in subsection (c) of this section, the Association shall, in its discretion, either:~~

- 34 (1) ~~Take any of the actions specified in subsection (a) of this section, subject to~~  
 35 ~~the conditions therein; or~~  
 36 (2) ~~Provide substitute benefits in lieu of the contractual obligations of the~~  
 37 ~~impaired insurer solely for health claims, periodic annuity benefit payments,~~  
 38 ~~death benefits, supplemental benefits, and cash withdrawals for~~  
 39 ~~policyowners who petition therefor under claims of emergency or hardship~~  
 40 ~~in accordance with standards proposed by the Association and approved by~~  
 41 ~~the Commissioner.~~

42 (c) ~~The Association is subject to the requirements of subsection (b) of this section only~~  
 43 ~~if:~~

- 44 (1) ~~The laws of the impaired insurer's state of domicile provide that until all~~  
 45 ~~payments of or on account of the impaired insurer's contractual obligations~~  
 46 ~~by all guaranty associations, along with all expenses thereof and interest on~~  
 47 ~~all the payments and expenses, have been repaid to the guaranty associations~~  
 48 ~~or a plan of repayment by the impaired insurer has been approved by the~~  
 49 ~~guaranty associations, the delinquency proceeding shall not be dismissed;~~  
 50 ~~neither the impaired insurer nor its assets may be returned to the control of~~  
 51 ~~its shareholders or private management; and the impaired insurer may not~~

solicit or accept new business or have any suspended or revoked license restored; and

(2) ~~The impaired insurer is a domestic insurer that has been placed under an order of rehabilitation by a court of competent jurisdiction in this State; or the impaired insurer is a foreign or alien insurer that has been prohibited from soliciting or accepting new business in this State, its license has been suspended or revoked in this State, and a petition for rehabilitation or liquidation has been filed in a court of competent jurisdiction in its state of domicile by that state's insurance regulator.~~

(d) If a member insurer is an insolvent insurer, the Association shall, in its discretion, either:

- (1) Guarantee, assume or reinsure, or cause to be guaranteed, assumed, or reinsured, the policies of the insolvent insurer; or
- (2) Assure payment of the contractual obligations of the insolvent insurer; and
- (3) Provide such monies, pledges, guarantees, or other means as are reasonably necessary to discharge those duties; or
- (4) With respect only to life and health insurance policies, provide benefits and coverages in accordance with subsection (e) of this section.

(d1) In carrying out its duties in connection with guaranteeing, assuming, or reinsuring policies or contracts under subsections (a) and (d) of this section, the Association may, subject to approval of the receivership court, issue substitute coverage for a policy or contract that provides an interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value by issuing an alternative policy or contract in accordance with the following provisions:

- (1) In lieu of the index or other external reference provided for in the original policy or contract, the alternative policy or contract provides for (i) a fixed interest rate, (ii) payment of dividends with minimum guarantees, or (iii) a different method for calculating interest or changes in value;
- (2) There is no requirement for evidence of insurability, waiting period, or other exclusion that would not have applied under the replaced policy or contract;  
and
- (3) The alternative policy or contract is substantially similar to the replaced policy or contract in all other material terms.

...."

**SECTION 3.** G.S. 58-62-41 reads as rewritten:

**"§ 58-62-41. Assessments.**

...

(c) The amount of any Class A assessment shall be determined by the Board and may or may not be prorated. If prorated, the Board may provide that it be credited against future Class B assessments. If not prorated, the assessment shall not exceed ~~one hundred fifty dollars (\$150.00)~~ five hundred dollars (\$500.00) per member insurer in any one calendar year. The amount of any Class B assessment shall be allocated for assessment purposes among the accounts pursuant to an allocation formula, which may be based on the premiums or reserves of the delinquent insurer or any other standard considered by the Board in its sole discretion to be fair and reasonable under the circumstances.

...."

**SECTION 4.** This act becomes effective July 1, 2013.