

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

Senate Bill 1003

(Senator Middleton, *et al.*)

Finance

Health and Government Operations

Life and Health Insurance Guaranty Corporation Act - Revisions

This bill revises various provisions of the Life and Health Insurance Guaranty Corporation Act.

Fiscal Summary

State Effect: The bill does not directly affect State operations or finances.

Local Effect: The bill does not directly affect local government operations or finances.

Small Business Effect: None.

Analysis

Bill Summary/Current Law:

Purpose of the Act and Definitions

Current Law: The Life and Health Insurance Guaranty Corporation Act of 1970 created the Life and Health Insurance Guaranty Corporation to provide limited protection to State residents holding insurance policies or annuities issued by the corporation's member insurers in the event that such an insurer becomes insolvent. The corporation operates under the supervision of the Maryland Insurance Commissioner and consists of all insurers licensed to sell life insurance, accident insurance, health insurance, and individual annuities in the State.

The Bill: The bill clarifies that, subject to certain limitations, the purpose of the Act is to protect specified policy owners, contract owners, certificate holders, beneficiaries, payees, and assignees of specified life insurance policies, health insurance policies, annuity contracts, and supplemental contracts against failure in the performance of contractual obligations due to the impairment or insolvency of the insurer that issued the policies or contracts.

The bill specifies that “member insurer” includes an insurer whose license or certificate of authority in the State may have been suspended, revoked, not renewed, or voluntarily withdrawn. In addition, the bill clarifies that an “impaired insurer” is not synonymous with an “insolvent insurer” and makes conforming changes throughout the Act. The bill also clarifies that “resident” means a person that resides in the State on the date of entry of a court order that determines a member insurer to be (1) an impaired insurer; or (2) an insolvent insurer to whom a contractual obligation is owed. Finally, the bill defines “structured settlement” as an annuity purchased in order to fund periodic payments for a plaintiff or any other claimant in payment for (or with respect to) personal injury suffered by the plaintiff or other claimant.

Scope of the Act

Current Law: Coverage must be provided, for specified policies or contracts, to an individual who is a resident and an owner of (or certificate holder under) the policy or contract. Similarly, coverage must be provided, for specified policies or contracts, to an individual who is a *nonresident* and an owner of (or certificate holder under) the policy or contract if (1) the insurer that issued the policy or contract is domiciled in the State; (2) the insurer that issued the policy or contract has never held a license or certificate of authority in the state in which the nonresident resides; (3) the state in which the nonresident resides has an insurance guaranty corporation or its equivalent similar to the Life and Health Insurance Guaranty Corporation; and (4) the nonresident is not eligible for coverage by the insurance guaranty corporation or its equivalent in the state in which the nonresident resides. However, coverage must be provided for specified policies or contracts to a beneficiary, assignee, or payee of a covered individual regardless of the individual’s residence.

The Bill: For specified policies or contracts *other than structured settlement annuities*, coverage must be provided to a person that is a resident and an owner of (or certificate holder under) the policy or contract. Similarly, coverage must be provided for specified policies or contracts (other than structured settlement annuities) to a person that is a nonresident and an owner of (or certificate holder under) the policy or contract if (1) the insurer that issued the policy or contract is domiciled in the State; (2) the state in which the nonresident resides has an insurance guaranty corporation or its equivalent similar to the Life and Health Insurance Guaranty Corporation; and (3) the nonresident is not

eligible for coverage by the insurance guaranty corporation or its equivalent in the state in which the nonresident resides *because the insurer was not licensed in that state at the time specified in that state's guaranty corporation of association law*. However, coverage must be provided for specified policies or contracts to a beneficiary, assignee, or payee of a covered person regardless of the person's residence.

With specified exceptions, the Act must provide coverage to a person who is a payee (or a beneficiary of the payee, if the payee is deceased) under a structured settlement annuity if (1) either the payee is a resident or the payee is a nonresident and specified requirements are met; and (2) the payee (or beneficiary) and the contract owner are not eligible for coverage by the association of the state in which the payee or contract owner resides.

The bill also specifies several parts of a policy or contract for which coverage may not be provided. In addition, the bill specifies that – if a policy or contract's interest or changes in value are credited less frequently than annually – 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.

Construction of the Act

Current Law: The Act must be liberally construed to carry out its specified purpose.

A person may be a resident of only one state. For a person other than an individual, that state is the state in which its principal place of business is located.

The Bill: Subject to specified existing provisions, the principal place of business for a plan sponsor or person other than an individual is the single state in which the individuals who establish policy for the direction, control, and coordination of the operations of the entity primarily exercise that function (as determined by the corporation in its reasonable judgment, considering several specified factors).

For a plan sponsor, if more than 50% of the participants in the benefit plan are employed in a single state, that state is deemed to be the principal place of business of the plan sponsor. For an association, committee, joint board of trustees, or any other similar group of representatives of the parties who establish or maintain a benefit plan when there is no specific or clear designation of a principal place of business, the principal place of business is the one that has the largest investment in the benefit plan in question.

Powers and Duties of Corporation

Current Law: The corporation is authorized to take certain action for member insurers that are impaired or insolvent.

Benefits for which the corporation may become liable may not exceed the lesser of (1) the contractual obligations for which the insurer is or would have been liable if it were not an impaired insurer or insolvent insurer; or (2) specified maximum amounts, depending on the types of benefits.

Bill Summary: The bill clarifies the corporation's authority to take certain action for member insurers that are impaired or insolvent. In addition, the bill authorizes the corporation, subject to approval by the Insurance Commissioner, to issue substitute coverage for policies and contracts under specified circumstances. The bill also alters the maximum amounts of contractual obligations of impaired or insolvent insurers for which the corporation may become liable.

The corporation may join an organization of one or more other state associations of similar purposes to further the purposes, and administer the powers and duties of, the corporation.

At any time within 180 days after the date of an order of liquidation, the corporation may, as specified by the bill, elect to succeed to the rights and obligations of the ceding member insurer that relate to policies or annuities covered by the corporation, in each case under any one or more reinsurance contracts entered into by the insolvent insurer and its reinsurers and selected by the corporation. The receiver and each reinsurer of the ceding member insurer must make specified material available to the corporation on request.

The bill also (1) establishes rights and obligations of the corporation relating to reinsurance contracts assumed by the corporation; (2) requires the corporation and reinsurers to make payments to a receiver as specified by the bill; (3) requires a receiver to remit payments to the corporation as specified by the bill; (4) prohibits reinsurers from taking specified actions relating to reinsurance contracts; (5) establishes rights and obligations of the corporation and reinsurers during a specified period of time after the date of an order of liquidation; and (6) authorizes the corporation to transfer reinsurance of specified policies, annuities, or covered obligations as specified by the bill.

These provisions do not (1) abrogate or limit any rights of any reinsurer to claim that the reinsurer is entitled to rescind a reinsurance contract; (2) give a policyholder or beneficiary an independent cause of action against a reinsurer that is not otherwise set

forth in the reinsurance contract; (3) limit or affect the corporation's rights as a creditor of the estate against the assets of the estate; or (4) apply to reinsurance agreements covering property or casualty risks.

Immunity

Current Law: A member insurer (or its agents or employees), the corporation (or its agents or employees), members of the corporation's board of directors, and the Insurance Commissioner (or the Commissioner's representatives) are immune from liability for any action or omission taken by them in the performance of their powers and duties under the Act.

The Bill: This immunity is extended to (1) the corporation as a participant in an organization of one or more other state associations of similar purposes; and (2) the agents or employees of such an organization in which the corporation is a participant.

Background: All 50 states, as well as the District of Columbia and Puerto Rico, have life and health insurance guaranty associations.

Additional Information

Prior Introductions: None.

Cross File: HB 1340 (Delegate Cullison) - Health and Government Operations.

Information Source(s): Maryland Insurance Administration, Department of Health and Mental Hygiene, Maryland Automobile Insurance Fund, Department of Legislative Services

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