House Bill 294

By: Representatives DeLoach of the 167th, Lumsden of the 12th, Williams of the 148th, and Taylor of the 173rd

A BILL TO BE ENTITLED

AN ACT

To amend Article 3 of Chapter 37 of Title 33 of the Official Code of Georgia Annotated, relating to procedure for rehabilitation, so as to provide for the administration of contracts reinsuring life, disability income or long-term care policies or annuities issued by a ceding insurer that has been placed into liquidation; to provide for the Georgia Life and Health Insurance Guaranty Association to elect to assume the rights and obligations of a ceding insurer; to provide for duties, rights, and obligations of such association, the reinsurer, and the receiver; to provide for time restrictions for certain actions; to provide for mandatory negotiation; to provide for arbitration; to provide for construction; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 3 of Chapter 37 of Title 33 of the Official Code of Georgia Annotated, relating to procedure for rehabilitation, is amended by adding a new Code section to read as follows:

"33-37-31.1.

(a)(1) For purposes of this Code section, 'guaranty association' means the Georgia Life and Health Insurance Guaranty Association, unless context clearly requires a different construction.

(2) Contracts reinsuring life, disability income or long-term care insurance policies or annuities issued by a ceding insurer that has been placed into liquidation pursuant to this chapter shall be continued, subject to the provisions of this Code section; provided, however, that, contracts terminated pursuant to contractual terms prior to the date of the order of liquidation or terminated pursuant to the order of liquidation shall be subject to the provisions of subsection (i) of this Code section.

(b)(1) At any time within 180 days of the date of the order of liquidation, the guaranty association covering life, disability income or long-term care insurance policies or annuities, in whole or in part, may elect to assume the rights and obligations of the ceding insurer related to such policies under any one or more reinsurance contracts between the ceding insurer and its reinsurers. Any such assumption shall be effective as of the date of the order of liquidation. The election shall be made by the guaranty association or the National Organization of Life and Health Insurance Guaranty Associations on its behalf sending written notice, return receipt requested, to the affected reinsurers.

(2) To facilitate the decision, the receiver and each affected reinsurer shall make available upon request to the guaranty association, any affected foreign guaranty association, or to the National Organization of Life and Health Insurance Guaranty Associations on their behalf copies of in-force reinsurance contracts and all related files and records relevant to the determination of whether such contracts should be assumed, and notices of any defaults under the reinsurance contracts or any known event or condition which with the passage of time may become a default under the reinsurance contracts.

(3) For reinsurance contracts assumed by the guaranty association, the following provisions shall apply:

(A) The guaranty 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;

(B) The guaranty association shall be entitled to any amounts payable by the reinsurer under the reinsurance contracts with respect to losses or events that occur in periods on or after the date of the order of liquidation;

(C) The guaranty association and the reinsurer shall, within 30 days following the date of such guaranty association's election to assume a reinsurance contract, calculate the balance due to or from such association under each reinsurance contract as of the date of such election, and such association or reinsurer shall pay any remaining balance due the other within 35 days of the date of such election. Any disputes over the amounts due to such association or reinsurer shall be resolved by arbitration pursuant to the terms of the affected reinsurance contract, or, if the contract contains no arbitration clause, pursuant to the provisions of paragraph (3) of subsection (i) of this Code section; and

(D) If the guaranty association or receiver on behalf of such association, within 60 days of the date such association's election to assume a reinsurance contract, pays the unpaid premiums due for periods both before and after the date of such election that are due pursuant to the reinsurance contract, the reinsurer shall not be entitled to terminate the reinsurance contract for failure to pay premiums and shall not be entitled to set off any unpaid amounts due under other contracts, or unpaid amounts due from parties other than such association, against amounts due the such association.

(c) When, pursuant to court approval provided for in Code Section 33-37-17, a receiver continues insurance policies or annuities following an order of liquidation, and the policies or annuities are not covered in whole or in part by one or more guaranty associations, the receiver may, within 180 days of the date of the order of liquidation, elect to assume the rights and obligations of the ceding insurer under any one or more of the reinsurance contracts that relate to the policies or annuities; provided, however, that the contracts have not been terminated as provided for in subsection (a) of this Code section. Such election shall be made by sending written notice, return receipt requested, to the affected reinsurers. After such notification to affected reinsurers has been made, payment of premiums on the reinsurance contracts for the policies and annuities, for periods both before and after the date of the order of liquidation, shall be chargeable against the estate as a Class 1 administrative expense. Amounts paid by the reinsurer on account of losses on the policies and annuities shall be to the estate of the ceding insurer.

(d) During the period from the date of the order of liquidation until the date the receiver elects to assume the rights and obligations of the ceding insurer under any one or more of the reinsurance contracts that relate to the policies or annuities as provided for in subsection (c) of this Code section, the guaranty association, the receiver, and the reinsurer shall not have any rights or obligations under any reinsurance contract that is eligible for assumption by such association or the receiver.

(e) When the guaranty association or the receiver timely elected to assume a reinsurance contract as provided for in subsection (c) of this Code section, the parties' rights and obligations shall be governed by subsection (b) or (c) of this Code section as applicable.

(f) When the guaranty association or the receiver does not timely elect to assume a reinsurance contract pursuant to subsection (c) of this Code section, the reinsurance contract shall be terminated retroactively effective on the date of the order of liquidation and subsection (i) of this Code section shall apply.

(g) When policies of life, disability income or long-term care insurance or annuities, or the guaranty association's obligations with respect thereto, are transferred to an assuming insurer, reinsurance on the policies or annuities may also be transferred by such association for contracts assumed as provided for in subsection (b) of this Code section, or by the receiver for contracts assumed as provided for in subsection (c) of this Code section; provided, however, that all of the following conditions are met:

(1) Unless the reinsurer and the assuming insurer agree otherwise, the reinsurance contract transferred shall not cover any new policies or annuities in addition to those transferred;

(2) The obligations described in subsections (b) and (c) of this Code section shall no longer apply with respect to matters arising after the effective date of the transfer; and

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

(h) The provisions of this Code section shall, to the extent provided in this Code section, supersede the provisions of 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 ceding 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 provisions of this chapter including applicable setoff provisions.

(i) When a reinsurance contract is terminated pursuant to this Code section, the reinsurer and the receiver shall commence a mandatory negotiation procedure in accordance with the following procedures:

(1) No later than 30 days after the date of termination, each party shall appoint an actuary to determine an estimated sum due as a result of the termination of the reinsurance contract calculated in a way expected to make the parties economically indifferent as to whether the reinsurance contract continues or terminates, giving due regard to the economic effects of the insolvency. The sum shall take into account the present value of future cash flows expected under the reinsurance contract and be based on a gross

premium valuation of net liability using current assumptions that reflect post-insolvency experience expectations, with no additional margins, net of any amounts payable and receivable, with a market value adjustment to reflect premature sale of assets to fund the settlement;

(2) Within 90 days of the date of termination, each party shall provide the other party with its estimate of the sum due as a result of the termination of the reinsurance contract, together with all relevant documents and other information supporting the estimate. The parties shall make a good faith effort to reach agreement on the sum due;

(3) If the parties are unable to reach agreement within 90 days following the submission of materials as provided for in paragraph (2) of this subsection, either party may initiate arbitration proceedings as provided in the reinsurance contract. In the event that the reinsurance contract does not contain an arbitration clause, either party may initiate arbitration pursuant to this paragraph by providing the other party with a written demand for arbitration. Such arbitration shall be conducted pursuant to the following procedures:

(A) Venue for the arbitration shall be within the county of the court's jurisdiction or another location agreed to by the parties;

(B) Within 30 days of the responding party's receipt of the arbitration demand, each party shall appoint an arbitrator who is a disinterested active or retired officer or executive of a life insurance or reinsurance company, or other professional with no less than ten years' experience in or relating to the field of life insurance or life reinsurance. The two arbitrators shall appoint an independent, impartial, disinterested umpire who is an active or retired officer or executive of a life insurance or reinsurance company, or other professional with no less than ten years' experience in the field of life insurance or life reinsurance. If the arbitrators are unable to agree on an umpire, each arbitrator shall provide the other with the names of three qualified individuals, each arbitrator shall strike two names for the other's list, and the umpire shall be chosen by drawing lots from the remaining individuals;

(C) Within 60 days following the appointment of the umpire, the parties shall submit to the arbitration panel, unless otherwise order by the panel, their estimates of the sum due as a result of the termination of the reinsurance contract, together with all relevant documents and other information supporting the estimate;

(D) The time periods set forth in these subsections may be extended upon mutual agreement of the parties; and

(E) The panel shall have all powers necessary to conduct the arbitration proceedings in a fair and appropriate manner, including the power to request additional information from the parties, authorize discovery, hold hearings and hear testimony. The panel also may appoint independent actuarial experts, the expense of which shall be shared equally between the parties; and

(4) An arbitration panel considering the matters set forth in this subsection shall apply the standards set forth in this subsection and shall issue a written award specifying a net settlement amount due from one party or the other as a result of the termination of the reinsurance contract. The receivership court shall confirm that award absent proof of statutory grounds for vacating or modifying arbitration awards under the Federal Arbitration Act, P.L. 68-401; and

(5) If the net settlement amount agreed or awarded as provided for in this subsection is payable by the reinsurer, the reinsurer shall pay the amount due to the estate, subject to any applicable setoff as provided for in Code Section 33-37-29. If the net settlement amount agreed or awarded pursuant to this subsection is payable by the ceding insurer, the reinsurer shall be deemed to have a timely filed claim against the estate for that amount, which claim shall be paid pursuant to the priority provided for in Code Section 33-37-41. The guaranty association and any foreign guaranty association shall not be entitled to receive the net settlement amount, except to the extent it is entitled to share in the estate assets as creditors of the estate, and shall have no responsibility for the net settlement amount.

(j) Except as otherwise provided in this Code section, nothing in this Code section shall alter or modify the terms and conditions of any reinsurance contract. Nothing in this Code section shall abrogate or limit any rights of any reinsurer to claim that it is entitled to rescind a reinsurance contract. Nothing in this Code section shall give a policyholder or beneficiary an independent cause of action against a reinsurer that is not otherwise set forth in the reinsurance contract. Nothing in this Code section shall limit or affect any guaranty association's rights as a creditor of the estate against the assets of the estate. Nothing in this Code section shall apply to reinsurance contracts covering property or casualty risks."

SECTION 2.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

SECTION 3.

All laws and parts of laws in conflict with this Act are repealed.