

# SENATE APPROPRIATIONS COMMITTEE

## FISCAL NOTE

**BILL NO.** Senate Bill 1195

**PRINTER NO.** 1825

**AMOUNT**

No Fiscal Impact

**FUND**

General Fund

**DATE INTRODUCED**

June 9, 2020

**PRIME SPONSOR**

Senator Scavello

**DESCRIPTION**

Senate Bill 1195 amends the act of May 17, 1921 (P.L.682, No.284), known as the Insurance Company Law of 1921 to comply with the National Association of Insurance Commissioners (NAIC) model acts regarding credit for reinsurance and the life and health insurance guaranty association. Specifically, Senate Bill 1195 adopts the NAIC Credit for Reinsurance Model Law, which modernizes reinsurance regulation in the United States.

### **Section 319.1 – Reinsurance credits:**

Senate Bill 1195 authorizes a domestic ceding (primary) insurer to take a credit for reinsurance as either an asset or reduction from liability based on the reinsurance ceded if it meets the requirements under this this section.

The bill allows for the following types of reinsurance arrangements:

- Reinsurance ceded to an assuming (reinsurer) insurer that is licensed to transact insurance or reinsurance in Pennsylvania;
- Reinsurance ceded to an assuming insurer meeting the conditions specified by the Insurance Commissioner (commissioner) and included on a list of qualified or certified reinsurers published and periodically reviewed by the commissioner;
- Reinsurance ceded to an assuming insurer meeting the requirements of section 319.3 (relating to credit for reinsurance and reciprocal jurisdictions); and
- Reinsurance ceded to an assuming insurer that is domiciled in, or for a U.S. branch of an alien assuming insurer, is entered through a state that employs standards regarding credit for reinsurance that are similar to those in Pennsylvania and meeting the following requirements:
  - The assuming insurer maintains a surplus regarding policyholders of no less than \$20 million, except with regard to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system; and
  - Submits to the authority of the commissioner to examine its books.

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The bill authorizes the commissioner to promulgate regulations regarding reinsurance relating to certain life insurance, health insurance, long-term care insurance and annuities. The regulations may apply to treaties entered into after the effective date of this act. The regulations may not apply to cessions to an assuming insurer that:

- Meets the requirements under section 319.3;
- Is certified in this Commonwealth; or
- Maintains as least \$250 million in capital and surplus, as determined by the commissioner and is licensed in at least 26 states, or is licensed in at least 10 states and licensed or accredited in a total of at least 35 states.

### **Section 319.3 – Credit for reinsurance and reciprocal jurisdictions:**

Senate Bill 1195 mandates the commissioner to allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that is licensed to write reinsurance by, and has its head office or is domiciled in, a reciprocal jurisdiction that meets the requirements of this section.

The bill adds criteria that the assuming insurer must meet in order for a ceding insurer, domiciled in the Commonwealth, to be given credit by the commissioner for reinsurance:

- Must be licensed to transact reinsurance by, and have its principal office or be domiciled in, a reciprocal jurisdiction;
- Must have and maintain minimum capital and surplus levels as calculated by the methodology of its domiciliary jurisdiction in an amount specified in this act, which may be modified by the commissioner;
- Must have and maintain a minimum solvency or capital ratio as specified in this act;
- Agrees to provide prompt written notice to the commissioner if it falls below the minimum requirements for capital and surplus or capital ratio;
- Consents in writing to submit to the jurisdiction of the courts of the Commonwealth and to designate the commissioner as its agent for service of process;
- Consents in writing to pay all final judgments declared enforceable in the jurisdiction where the judgments were obtained;
- Includes a provision in each reinsurance agreement that, where necessary, the assuming insurer will provide security in the amount equal to 100 percent of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to the agreement;
- Confirms that the assuming insurer is not participating in any solvent scheme or arrangement that involves Pennsylvania ceding insurers and should the assuming insurer enter into such an agreement, it will notify the commissioner and the ceding insurer will provide appropriate security;

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- Provide certain specified documentation to the Insurance Department (department) upon request; and
- Maintain a practice of prompt payment of claims under reinsurance agreements.

The bill requires the commissioner to timely create and publish a list of reciprocal jurisdictions and assuming insurers that meet the requirements and conditions specified in this act on the department's internet website and submit the list to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin.

### **Article XVII - Life and Health Insurance Guaranty Association:**

Senate Bill 1195 updates the provisions related to the Life and Health Insurance Guaranty Association (Guaranty Association) to bring it in compliance with the NAIC model act, which provides stronger protections for policy and contract owners, insureds, beneficiaries, health care providers, annuitants, payees and assignees against losses, which might otherwise occur due to an impairment or insolvency of insurer. It also provides for assessing insurers in a fair and reasonable manner so that the guaranty association has sufficient assessment capacity for all insolvencies.

The bill clarifies that coverage under this article includes health care providers rendering services covered under health insurance policies or certificates, in addition to the beneficiaries, assignees or payees of contracts or policies.

The bill recognizes that protections afforded by the Guaranty Association are intended for insurance consumers, such as the original payees of structured settlement annuities and does not extend to sophisticated investors who acquire rights to receive structured settlement annuity benefits in the secondary market. This exclusion does not apply to structured settlement annuity benefits that are transferred to children, present or former spouses, or other dependents as part of domestic relation settlements or orders.

The bill further clarifies that this article is intended to provide coverage to residents of this Commonwealth and, in special circumstances, to a nonresident. In order to avoid duplicate coverage, if a person who would otherwise receive coverage under this article is provided coverage under the laws of any other state, the person shall not be provided coverage under this article. In determining the application of the provision of this paragraph in situations where a person could be covered by the association of more than one state, whether as an owner, payee, enrollee, beneficiary, or assignee, this article shall be construed in conjunction with other state laws to result in coverage by only one association.

The bill adds the following exclusions from coverage:

- A portion of a policy or contract to the extent that the assessments required by section 1707 are preempted by federal or state law;
- An obligation that does not arise under the express written terms of the policy or contract issued by the member insurer to the enrollee, certificate holder, contract owner or policy owner, including:

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- Claims based on marketing materials or on documents that were issued by the member insurer without meeting policy or contract form filing or approval requirements;
- Misrepresentations of policy or contract benefits;
- Extra-contractual claims; or
- A claim for penalties or damages.
- 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;
- 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, or as to which the policy or contract owner's rights are subject to forfeiture, as of the date the insurer becomes impaired or insolvent, whichever is earlier;
- A policy or contract providing hospital, medical, prescription drug or other health care benefits under Part C or D of Title XVIII of the Social Security Act, Title XIX of the Social Security Act, Article XXIII-A or related regulations; and
- Structured settlement annuity benefits to which a payee or beneficiary has transferred his or her rights in a structured settlement factoring transaction as defined under federal law.

The bill updates the benefit level for which the Guaranty Association may become liable as follows:

- For health insurance benefits:
  - \$100,000 for coverages or benefits not defined as disability income insurance as defined by 31 Pa. Code § 88.167, health benefit plans as defined in this article, or long-term care insurance as defined under section 1103, including any net cash surrender and net cash withdrawal values;
  - \$300,000 for disability income insurance benefits, including any net cash surrender and net cash withdrawal values;
  - \$500,000 for health benefit plans; and
  - \$250,000 in the present value of annuity benefits, including net cash surrender and net cash withdrawal values.
- For annuity benefits, \$250,000 in present value of annuity benefits, including net cash surrender and net cash withdrawal values;

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- With respect to each individual participating in a governmental retirement plan established under section 401, 403(b) or 457 of the Internal Revenue Code of 1986 covered by an unallocated annuity contract or the beneficiaries of each such individual if deceased, in the aggregate, \$250,000 in present value annuity benefits, including net cash surrender and net cash withdrawal values; and
- With respect to each payee of a structured settlement annuity or beneficiary of the payee if deceased, \$250,000 in present value annuity benefits, including net cash surrender and net cash withdrawal values.

The bill stipulates that the limitations are limitations on benefits for which the Guaranty Association is obligated before taking into account either the association's subrogation and assignment rights or the extent to which those benefits could be provided out of the assets of the impaired or insolvent insurer attributable to covered policies. The costs of the association's obligations under this article may be met by the use of assets attributable to the covered policies or reimbursed to the association pursuant to the association's subrogation assignment rights.

The bill updates member insurers in the Guaranty Association to include RANLI PPO business, hospital plan corporation business, professional health services plan corporation business, or health maintenance organization business in this Commonwealth.

The bill amends the board of directors of the Guaranty Association to consist of not less than seven nor more than eleven member insurers and updates the powers and duties of the association. It also requires the plan of operation for the association to establish procedures whereby a director may be removed for cause, including in the case where a member insurer director becomes an impaired or insolvent insurer. Senate Bill 1195 requires the board of directors to establish a policy and procedures for addressing conflicts of interest.

The bill changes the calculation for assessments for long-term care insurance insolvencies. Under section 1707(c)(2), 50 percent of the assessment will be paid by health insurers, and 50 percent of assessment will be paid by life insurers or related companies. Current law requires long-term care insolvencies to be paid for by assessments only on health insurers because long-term care is written under a health insurance license.

This act shall take effect immediately.

### **FISCAL IMPACT:**

Senate Bill 1195 will have no fiscal impact on Commonwealth funds. The changes to the assessment affects the number of insurers that pay the assessment, not the total amount of the assessment. The total corresponding tax credits that offset a proportionate part of assessment payments made to the association against the insurance premiums tax will not change.

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In addition, the promulgation of regulations regarding reinsurance relating to certain life insurance, health insurance, long-term care insurance, and annuities and the creation and publishing of a list of reciprocal jurisdictions requirements for the Insurance Department can be accomplished within existing staffing and budget levels.