

# State of South Dakota

EIGHTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2012

661T0221

## SENATE COMMERCE AND ENERGY ENGROSSED NO. **HB 1071** - 2/14/2012

Introduced by: Representatives Willadsen, Conzet, Fargen, Greenfield, Hawley, Hickey, Hubbel, Jones, Kirschman, Moser, Novstrup (David), Scott, and Solum and Senators Lederman, Adelstein, Buhl, Johnston, Nelson (Tom), Nygaard, Peters, and Rave

1 FOR AN ACT ENTITLED, An Act to increase the benefits that the Insurance Guarantee  
2 Association may become obligated to cover for annuities, to provide for retroactive  
3 application, and to declare an emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That § 58-29C-46 be amended to read as follows:

6 58-29C-46. A. This chapter shall provide coverage for the policies and contracts specified  
7 in subpart B:

8 (1) To persons who, regardless of where they reside (except for nonresident certificate  
9 holders under group policies or contracts), are the beneficiaries, assignees, or payees  
10 of the persons covered under subdivision (2);

11 (2) To persons who are owners of or certificate holders under the policies or contracts  
12 (other than structured settlement annuities) and in each case who:

13 (a) Are residents; or



- 1 (b) Are not residents, but only under all of the following conditions:
  - 2 (i) The insurer that issued the policies or contracts is domiciled in this
  - 3 state;
  - 4 (ii) The states in which the persons reside have associations similar to the
  - 5 association created by this chapter;
  - 6 (iii) The persons are not eligible for coverage by an association in any other
  - 7 state due to the fact that the insurer was not licensed in the state at the
  - 8 time specified in the state's guaranty association law;
- 9 (3) For structured settlement annuities specified in subpart B, subdivisions (1) and (2)
- 10 of this subpart do not apply, and this chapter shall (except as provided in subdivisions
- 11 (4) and (5) of this subpart) provide coverage to a person who is a payee under a
- 12 structured settlement annuity (or beneficiary of a payee if the payee is deceased), if
- 13 the payee:
  - 14 (a) Is a resident, regardless of where the contract owner resides; or
  - 15 (b) Is not a resident, but only under both of the following conditions:
    - 16 (i)(I) The contract owner of the structure settlement annuity is a resident, or
    - 17 (II) The contract owner of the structured settlement annuity is not a
    - 18 resident, but the insurer that issued the structured settlement annuity is
    - 19 domiciled in this state and the state in which the contract owner resides
    - 20 has an association similar to the association created by this chapter; and
    - 21 (ii) Neither the payee (or beneficiary) nor the contract owner is eligible for
    - 22 coverage by the association of the state in which the payee or contract
    - 23 owner resides;
- 24 (4) This chapter does not provide coverage to a person who is a payee (or beneficiary)

1 of a contract owner resident of this state, if the payee (or beneficiary) is afforded any  
2 coverage by the association of another state;

3 (5) This chapter is intended to provide coverage to a person who is a resident of this state  
4 and, in special circumstances, to a nonresident. In order to avoid duplicate coverage,  
5 if a person who would otherwise receive coverage under this chapter is provided  
6 coverage under the laws of any other state, the person may not be provided coverage  
7 under this chapter. In determining the application of the provisions of this paragraph  
8 in situations where a person could be covered by the association of more than one  
9 state, whether as an owner, payee, beneficiary, or assignee, this chapter shall be  
10 construed in conjunction with other state laws to result in coverage by only one  
11 association.

12 B. (1) This chapter shall provide coverage to the persons specified in subpart A for direct,  
13 nongroup life, health, or annuity policies or contracts and supplemental contracts to any of these  
14 and for certificates under direct group policies and contracts, except as limited by this chapter.  
15 Annuity contracts and certificates under group annuity contracts include allocated funding  
16 agreements, structured settlement annuities, and any immediate or deferred annuity contracts.

17 (2) This chapter may not provide coverage for:

18 (a) A portion of a policy or contract not guaranteed by the insurer, or under which  
19 the risk is borne by the policy or contract owner;

20 (b) A policy or contract of reinsurance, unless assumption certificates have been  
21 issued pursuant to the reinsurance policy or contract;

22 (c) A portion of a policy or contract to the extent that the rate of interest on which  
23 it is based:

24 (i) Averaged over the period of four years prior to the date on which the

1 association becomes obligated with respect to the policy or contract,  
2 exceeds a rate of interest determined by subtracting two percentage  
3 points from Moody's Corporate Bond Yield Average averaged for that  
4 same four-year period or for such lesser period if the policy or contract  
5 was issued less than four years before the association became obligated;  
6 and

7 (ii) On and after the date on which the association becomes obligated with  
8 respect to the policy or contract, exceeds the rate of interest determined  
9 by subtracting three percentage points from Moody's Corporate Bond  
10 Yield Average as most recently available;

11 (d) A portion of a policy or contract issued to a plan or program of an employer,  
12 association, or other person to provide life, health, or annuity benefits to its  
13 employees, members, or others, to the extent that the plan or program is self-  
14 funded or uninsured, including benefits payable by an employer, association,  
15 or other person under:

16 (i) A multiple employer welfare arrangement as defined in 29 U.S.C.  
17 § 1144;

18 (ii) A minimum premium group insurance plan;

19 (iii) A stop-loss group insurance plan; or

20 (iv) An administrative services only contract;

21 (e) A portion of a policy or contract to the extent that it provides for:

22 (i) Dividends or experience rating credits;

23 (ii) Voting rights; or

24 (iii) Payment of any fees or allowances to any person, including the policy

1 or contract owner, in connection with the service to or administration  
2 of the policy or contract;

3 (f) A policy or contract issued in this state by a member insurer at a time when it  
4 was not licensed or did not have a certificate of authority to issue the policy  
5 or contract in this state;

6 (g) A portion of a policy or contract to the extent that the assessments required by  
7 58-29C-52 with respect to the policy or contract are preempted by federal or  
8 state law;

9 (h) An obligation that does not arise under the express written terms of the policy  
10 or contract issued by the insurer to the contract owner or policy owner,  
11 including without limitation:

12 (i) Claims based on marketing materials;

13 (ii) Claims based on side letters, riders, or other documents that were issued  
14 by the insurer without meeting applicable policy form filing or approval  
15 requirements;

16 (iii) Misrepresentations of or regarding policy benefits;

17 (iv) Extra-contractual claims; or

18 (v) A claim for penalties or consequential or incidental damages;

19 (i) A contractual agreement that establishes the member insurer's obligations to  
20 provide a book value accounting guaranty for defined contribution benefit plan  
21 participants by reference to a portfolio of assets that is owned by the benefit  
22 plan or its trustee, which in each case is not an affiliate of the member insurer;

23 (j) An unallocated annuity contract; and

24 (k) A portion of a policy or contract to the extent it provides for interest or other

1 changes in value to be determined by the use of an index or other external  
2 reference stated in the policy or contract, but which have not been credited to  
3 the policy or contract, or as to which the policy or contract owner's rights are  
4 subject to forfeiture, as of the date the member insurer becomes an impaired  
5 or insolvent insurer under this chapter, whichever is earlier. If a policy's or  
6 contract's interest or changes in value are credited less frequently than  
7 annually, then for purposes of determining the values that have been credited  
8 and are not subject to forfeiture under this subsection, the interest or change  
9 in value determined by using the procedures defined in the policy or contract  
10 will be credited as if the contractual date of crediting interest or changing  
11 values was the date of impairment or insolvency, whichever is earlier, and will  
12 not be subject to forfeiture.

13 C. The benefits that the association may become obligated to cover may in no event exceed  
14 the lesser of:

15 (1) The contractual obligations for which the insurer is liable or would have been liable  
16 if it were not an impaired or insolvent insurer; or

17 (2)(a) With respect to one life, regardless of the number of policies or contracts:

18 (i) Three hundred thousand dollars in life insurance death benefits, but not  
19 more than one hundred thousand dollars in net cash surrender and net  
20 cash withdrawal values for life insurance;

21 (ii) In health insurance benefits:

22 (I) One hundred thousand dollars for coverages not described in clauses  
23 (II) and (III) below, including any net cash surrender and net cash  
24 withdrawal values;

- 1 (II) Three hundred thousand dollars for disability income insurance as  
2 defined in § 58-17-108, and three hundred thousand dollars for long-  
3 term care insurance as defined in subdivision 58-17B-2(6);
- 4 (III) Five hundred thousand dollars for basic hospital, medical and surgical  
5 insurance, or major medical insurance as defined in the National  
6 Association of Insurance Commissioners Health Insurance Shoppers'  
7 Guide, as of January 1, 2003; or
- 8 (iii) ~~One hundred~~ Two hundred fifty thousand dollars in the present value  
9 of annuity benefits, including net cash surrender and net cash  
10 withdrawal values;
- 11 (b) With respect to each payee of a structured settlement annuity (or beneficiary  
12 or beneficiaries of the payee if deceased), ~~one hundred~~ two hundred fifty  
13 thousand dollars in present value annuity benefits, in the aggregate, including  
14 net cash surrender and net cash withdrawal values;
- 15 (c) However, in no event may the association be obligated to cover more than (i)  
16 an aggregate of three hundred thousand dollars in benefits with respect to any  
17 one life under subsections 2(a), 2(b), and 2(c) of subpart C of this section  
18 except with respect to benefits for basic hospital, medical and surgical  
19 insurance, and major medical insurance under subsection 2(a)(ii) of this  
20 section, in which case the aggregate liability of the association may not exceed  
21 five hundred thousand dollars with respect to any one individual, or (ii) with  
22 respect to one owner of multiple nongroup policies of life insurance, whether  
23 the policy owner is an individual, firm, corporation, or other person, and  
24 whether the persons insured are officers, managers, employees, or other

1 persons, more than five million dollars in benefits, regardless of the number  
2 of policies and contracts held by the owner;

3 (d) The limitations set forth in this section are limitations on the benefits for  
4 which the association is obligated before taking into account either its  
5 subrogation and assignment rights or the extent to which those benefits could  
6 be provided out of the assets of the impaired or insolvent insurer attributable  
7 to covered policies. The costs of the association's obligations under this  
8 chapter may be met by the use of assets attributable to covered policies or  
9 reimbursed to the association pursuant to its subrogation and assignment  
10 rights.

11 D. In performing its obligations to provide coverage under § 58-29C-51, the association may  
12 not be required to guarantee, assume, reinsure, or perform, or cause to be guaranteed, assumed,  
13 reinsured, or performed, the contractual obligations of the insolvent or impaired insurer under  
14 a covered policy or contract that do not materially affect the economic values or economic  
15 benefits of the covered policy or contract.

16 Section 2. The provisions of this Act apply to coverage the guaranty association provides  
17 in connection with a member insurer that is placed under an order of liquidation with a finding  
18 of insolvency on or after January 1, 2012.

19 Section 3. Whereas, this Act is necessary for the immediate preservation of the public peace,  
20 health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force and  
21 effect from and after its passage and approval retroactive to January 1, 2012.