

ASSEMBLY BILL NO. 540—COMMITTEE
ON COMMERCE AND LABOR

MARCH 28, 2011

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing the Nevada Life and Health Insurance Guaranty Association. (BDR 57-1089)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to insurance; providing limited coverage by the Nevada Life and Health Insurance Guaranty Association for unallocated annuity contracts offered to participants under the Public Employees' Deferred Compensation Program; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

The Nevada Life and Health Insurance Guaranty Association protects, within certain limits, certain persons against failure in the performance of contractual obligations under certain life and health insurance policies and contracts, and annuities because of the impairment or insolvency of the insurer issuing such policies or contracts. (Chapter 686C of NRS) Existing law establishes the Public Employees' Deferred Compensation Program. The Program offers public employees the option of setting aside income for investment under the Program. The employees' contributions and any interest, dividends and capital gains resulting from those contributions are held in trust and are exempt from federal income taxes until withdrawn. (NRS 287.250-287.370) The contributions and earnings of employees are not covered by the Association against loss in the event of the impairment or insolvency of a provider under the Program.

Section 1 of this bill requires the Association to provide coverage for unallocated annuity contracts offered to participants under the Program in the amount of \$100,000 per participant account, not to exceed \$100,000 in the aggregate for any participant.



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THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 686C of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in subsection 3, this chapter provides coverage for unallocated annuity contracts offered to participants under the Public Employees' Deferred Compensation Program authorized by NRS 287.250 to 287.370, inclusive, in the amount of \$100,000 per participant account.

2. The coverage provided pursuant to subsection 1 is for the protection of the participant and, if the participant is deceased, the beneficiaries of the participant.

3. In no event may the coverage provided by subsection 1 exceed \$100,000 in the aggregate for any participant in the Public Employees' Deferred Compensation Program.

4. The Commissioner shall adopt such regulations as necessary to carry out the provisions of this section.

Sec. 2. NRS 686C.020 is hereby amended to read as follows:

686C.020 The purpose of this chapter is to protect, within certain limits ~~[, the]~~:

1. The persons specified in subsections 1 and 2 of NRS 686C.030 against failure in the performance of contractual obligations under life and health insurance policies and contracts, and annuities, specified in subsection 4 of NRS 686C.030 because of the impairment or insolvency of a member insurer issuing such policies or contracts.

2. Participants under the Public Employees' Deferred Compensation Program authorized by NRS 287.250 to 287.370, inclusive, as described in section 1 of this act, because of the impairment or insolvency of a member insurer.

Sec. 3. NRS 686C.035 is hereby amended to read as follows:

686C.035 1. This chapter does not provide coverage for:

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

(b) A policy or contract of reinsurance unless assumption certificates have been issued pursuant to that policy or contract.

(c) A portion of a policy or contract to the extent that the rate of interest on which it is based, or the interest rate, crediting rate or similar factor determined by the use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value:

(1) Averaged over the period of 4 years before the date on which the association becomes obligated with respect to the policy



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1 or contract, exceeds the rate of interest determined by subtracting 2
2 percentage points from Moody's Corporate Bond Yield Average
3 averaged for the same period, or for the period between the date of
4 issuance of the policy or contract and the date the association
5 became obligated, whichever period is less; and

6 (2) On or after the date on which the association becomes
7 obligated with respect to the policy or contract, exceeds the rate of
8 interest determined by subtracting 3 percentage points from
9 Moody's Corporate Bond Yield Average as most recently available.

10 (d) A portion of a policy or contract issued to a plan or program
11 of an employer, association or other person to provide life, health or
12 annuity benefits to its employees, members or other persons to the
13 extent that the plan or program is self-funded or uninsured,
14 including, but not limited to, benefits payable by an employer,
15 association or other person under:

16 (1) A multiple employer welfare arrangement described in 29
17 U.S.C. § 1144;

18 (2) A minimum-premium group insurance plan;

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

20 (4) A contract for administrative services only.

21 (e) A portion of a policy or contract to the extent that it provides
22 for dividends, credits for experience, voting rights or the payment of
23 any fee or allowance to any person, including the owner of a policy
24 or contract, for services or administration connected with the policy
25 or contract.

26 (f) A policy or contract issued in this state by a member insurer
27 at a time when the member insurer was not authorized to issue the
28 policy or contract in this state.

29 (g) A portion of a policy or contract to the extent that the
30 assessments required by NRS 686C.230 with respect to the policy or
31 contract are preempted by federal law.

32 (h) An obligation that does not arise under the express written
33 terms of the policy or contract issued by the insurer, including:

34 (1) Claims based on marketing materials;

35 (2) Claims based on side letters or other documents that were
36 issued by the insurer without satisfying applicable requirements for
37 filing or approval of policy forms;

38 (3) Misrepresentations of or regarding policy benefits;

39 (4) Extra-contractual claims; or

40 (5) A claim for penalties or consequential or incidental
41 damages.

42 (i) A contractual agreement that establishes the member
43 insurer's obligation to provide a guarantee based on accounting at
44 book value for participants in a defined-contribution benefit plan by



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reference to a portfolio of assets owned by the benefit plan or its trustee, which in each case is not an affiliate of the member insurer.

(j) A portion of a policy or contract to the extent that it provides for interest or other changes in value which are determined by the use of an index or other external reference stated in the policy or contract, but which have not been credited to the policy or contract, or as to which the rights of the owner of the policy or contract are subject to forfeiture, determined on the date the member insurer becomes an impaired or insolvent insurer, whichever occurs first. If the interest or changes in value of a policy or contract are credited less frequently than annually, for the purpose of determining the values that have been credited and are not subject to forfeiture, the interest or change in value determined by using procedures stated in the policy or contract must be credited as if the contractual date for crediting interest or changing values was the date of the impairment or insolvency of the insured member, whichever occurs first and is not subject to forfeiture.

(k) ~~[An]~~ *Except as otherwise provided in section 1 of this act, an* unallocated annuity contract.

2. As used in this section, "Moody's Corporate Bond Yield Average" means the monthly average for corporate bonds published by Moody's Investors Service, Inc., or any successor average.

Sec. 4. NRS 686C.200 is hereby amended to read as follows:

686C.200 1. A person receiving benefits under this chapter shall be deemed to have assigned his or her rights under, and any causes of action against any person for losses arising under, resulting from or otherwise relating to, the covered policy or contract *or unallocated annuity contract described in section 1 of this act* to the Association to the extent of the benefits received because of this chapter, whether the benefits are payments of or on account of contractual obligations, continuation of coverage or provision of substitute or alternative coverages. The Association may require an assignment to it of those rights and causes of action by any payee, owner of a policy or contract, beneficiary, insured or annuitant as a condition precedent to the receipt of any rights or benefits conferred by this chapter upon that person.

2. The rights of the Association to subrogation under this subsection have the same priority against the assets of the impaired or insolvent insurer as that possessed by the person entitled to receive benefits under this chapter.

3. In addition to the rights provided under subsections 1 and 2, the Association has all rights of subrogation at common law and any other equitable or legal remedy which would have been available to the impaired or insolvent insurer or the owner, beneficiary or payee of a policy or contract with respect to the policy or contract ~~[H]~~ *or*



1 *unallocated annuity contract described in section 1 of this act,*
2 including, in the case of a structured settlement annuity, any rights
3 of the owner, beneficiary or payee of the annuity, to the extent of
4 benefits received under this chapter, against a person originally or
5 by succession responsible for the losses arising from the personal
6 injury relating to the annuity or payment for it, except any such
7 person responsible solely by reason of serving as an assignee under
8 section 130 of the Internal Revenue Code, 26 U.S.C. § 130.

9 4. If the provisions of subsections 1, 2 and 3 are invalid or
10 ineffective with respect to any person or any claim for any reason,
11 the amount payable to the Association with respect to the related
12 covered obligations is reduced by the amount realized by any other
13 person with respect to the person or claim which is attributable to
14 the policies or portions thereof covered by the Association.

15 5. If the Association has provided benefits with respect to a
16 covered obligation and a person recovers amounts as to which the
17 Association has rights under subsections 1 to 4, inclusive, the person
18 shall pay to the Association the portion of the recovery attributable
19 to the policies or portions thereof covered by the Association.

20 **Sec. 5.** NRS 686C.210 is hereby amended to read as follows:

21 686C.210 1. ~~[The]~~ *Except as otherwise provided in section 1*
22 *of this act, the* benefits that the Association may become obligated
23 to cover may not exceed the lesser of:

24 (a) The contractual obligations for which the insurer is liable or
25 would have been liable if it were not an impaired or insolvent
26 insurer;

27 (b) With respect to one life, regardless of the number of policies
28 or contracts:

29 (1) Three hundred thousand dollars in death benefits from
30 life insurance, but not more than \$100,000 in net cash for surrender
31 and withdrawal for life insurance; or

32 (2) One hundred thousand dollars in the present value of
33 benefits from annuities, including net cash for surrender and
34 withdrawal;

35 (c) With respect to health insurance for any one natural person:

36 (1) One hundred thousand dollars for coverages other than
37 disability insurance, basic hospital, medical and surgical insurance
38 or major medical insurance, including any net cash for surrender or
39 withdrawal;

40 (2) Three hundred thousand dollars for disability insurance;
41 or

42 (3) Five hundred thousand dollars for basic hospital, medical
43 and surgical insurance or major medical insurance; or

44 (d) With respect to each payee of a structured settlement
45 annuity, or beneficiary or beneficiaries of the payee if deceased,



1 \$100,000 in present value of benefits from the annuity in the
2 aggregate, including any net cash for surrender or withdrawal.

3 2. In no event is the Association obligated to cover more than:

4 (a) With respect to any one life or person under paragraphs (b)
5 and (c) of subsection 1:

6 (1) An aggregate of \$300,000 in benefits, excluding benefits
7 for basic hospital, medical and surgical insurance or major medical
8 insurance; or

9 (2) An aggregate of \$500,000 in benefits, including benefits
10 for basic hospital, medical and surgical insurance or major medical
11 insurance.

12 (b) With respect to one owner of several nongroup policies of
13 life insurance, whether the owner is a natural person or an
14 organization and whether the persons insured are officers, managers,
15 employees or other persons, more than \$5,000,000 in benefits,
16 regardless of the number of policies and contracts held by the
17 owner.

18 3. The limitations set forth in this section are limitations on the
19 benefits for which the Association is obligated before taking into
20 account its rights to subrogation or assignment or the extent to
21 which those benefits could be provided out of the assets of the
22 impaired or insolvent insurer attributable to covered policies. The
23 cost of the Association's obligations under this chapter may be met
24 by the use of assets attributable to covered policies, or reimbursed to
25 the Association pursuant to its rights to subrogation or assignment.

26 4. In performing its obligation to provide coverage under NRS
27 686C.150 and 686C.152, the Association need not guarantee,
28 assume, reinsure or perform, or cause to be guaranteed, assumed,
29 reinsured or performed, the contractual obligations of the impaired
30 or insolvent insurer under a covered policy or contract which do not
31 materially affect the economic value or economic benefits of the
32 covered policy or contract.

33 **Sec. 6.** This act becomes effective upon passage and approval
34 for the purpose of adopting regulations and on October 1, 2011, for
35 all other purposes.

