

CHAPTER 205  
SB 111 – FINAL VERSION

03/26/2015 1008s  
06/11/2015 2133EBA

2015 SESSION

15-0470  
01/05

SENATE BILL ***111***

AN ACT making changes to the life and health insurance guaranty association.

SPONSORS: Sen. Pierce, Dist 5; Sen. Cataldo, Dist 6; Sen. Soucy, Dist 18; Rep. Hunt, Ches 11;  
Rep. Butler, Carr 7

COMMITTEE: Commerce

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ANALYSIS

This bill makes certain changes to the law governing the life and health insurance guaranty association.

This bill is a request of the insurance department.

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Explanation: Matter added to current law appears in ***bold italics***.  
Matter removed from current law appears [~~in brackets and struck through~~].  
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Fifteen*

AN ACT making changes to the life and health insurance guaranty association.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1 205:1 Life and Health Guaranty Association; Definitions. Amend RSA 408-B:4, XI to read as  
2 follows:

3 XI. “Premiums” means amounts received on covered policies or contracts less premiums,  
4 considerations, and deposits returned on such policies or contracts and less dividends and experience  
5 credits on such policies or contracts. “Premiums” does not include any amounts received for any  
6 policies or contracts or for the portions of any policies or contracts for which coverage is not provided  
7 under RSA 408-B:5, II, except that assessable premium shall not be reduced on account of RSA 408-  
8 B:5, II(b)(3) relating to interest limitations and RSA 408-B:5, III(b) relating to limitations with  
9 respect to any one individual, any one participant and any one contract holder; provided that  
10 “premiums” shall not include:

11 (a) Any premiums in excess of \$5,000,000 on any unallocated annuity contract not  
12 issued under a governmental retirement plan established under Section 401, 403(b) or 457 of the  
13 United States Internal Revenue Code; *or*

14 (b) *With respect to multiple non-group policies of life insurance owned by one*  
15 *owner, whether the policy owner is an individual, firm, corporation, or other person, and*  
16 *whether the persons insured are officers, managers, employees or other persons, premiums*  
17 *in excess of \$5,000,000 with respect to these policies or contracts, regardless of the number*  
18 *of policies or contracts held by the owner.*

19 205:2 Life and Health Guaranty Association; Definitions. Amend RSA 408-B:4, XII –XIV to read as  
20 follows:

21 XII. “Resident” means ~~any~~ *a person to whom a contractual obligation is owed and*  
22 *who resides in this state at the [time] date of entry of a court order that determines* a member  
23 *insurer [is determined] to be an impaired [or] insurer or a court order that determines a*  
24 *member insurer to be an insolvent insurer [and to whom a contractual obligation is owed],*  
25 *whichever occurs first.* A person may be a resident of only one state, which in the case of a person  
26 other than a natural person shall be its principal place of business. *Citizens of the United States*  
27 *that are either: (a) residents of foreign countries or (b) residents of United States*  
28 *possessions, territories or protectorates that do not have an association similar to the*

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1 *association created by this chapter, shall be deemed residents of the state of domicile of the*  
2 *insurer that issued the policies or contracts.*

3 XIII. *“Structured settlement annuity” means an annuity purchased in order to fund*  
4 *periodic payments for a plaintiff or other claimant in payment for or with respect to*  
5 *personal injury suffered by the plaintiff or other claimant.*

6 XIV. “Supplemental contract” means any agreement entered into for the distribution of  
7 policy or contract proceeds.

8 ~~XIV.]~~ XV. “Unallocated annuity contract” means any annuity contract or group annuity  
9 certificate which is not issued to and owned by an individual, except to the extent of any annuity  
10 benefits guaranteed to an individual by an insurer under the contract or certificate.

11 205:3 Life and Health Guaranty Association; Coverage and Limitations. RSA 408-B:5 is  
12 repealed and reenacted to read as follows:

13 408-B:5 Coverage and Limitations.

14 I. This chapter shall provide coverage for the policies and contracts specified in paragraph  
15 II:

16 (a) To persons who, regardless of where they reside (except for nonresident certificate  
17 holders under group policies or contracts), are the beneficiaries, assignees, or payees of the persons  
18 covered under subparagraph (b); and

19 (b) To persons who are owners of or certificate holders under the policies or contracts,  
20 (other than unallocated annuity contracts and structured settlement annuities) and in each case  
21 who:

22 (1) Are residents; or

23 (2) Are not residents, but only under all of the following conditions:

24 (A) The insurers that issued the policies or contracts are domiciled in this state;

25 (B) The states in which the persons reside have associations similar to the  
26 association created by this chapter; and

27 (C) The persons are not eligible for coverage by an association in any other state  
28 because the insurer was not licensed in the state at the time specified in the state’s guaranty  
29 association law.

30 (c) For unallocated annuity contracts specified in paragraph II, subparagraphs (a) and  
31 (b) shall not apply, and this chapter shall, except as provided in subparagraphs (e) and (f), provide  
32 coverage to:

33 (1) Persons who are the owners of the unallocated annuity contracts if the contracts  
34 are issued to or in connection with a specified benefit plan whose plan sponsor has its principal place  
35 of business in this state; and

36 (2) Persons who are owners of unallocated annuity contracts issued to or in

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1 connection with government lotteries if the owners are residents.

2 (d) For structured settlement annuities specified in paragraph II; subparagraphs (a) and  
3 (b) shall not apply, and this chapter shall, except as provided in subparagraphs (e) and (f), provide  
4 coverage to a person who is a payee under a structured settlement annuity, or beneficiary of a payee  
5 if the payee is deceased, if the payee:

6 (1) Is a resident, regardless of where the contract owner resides; or

7 (2) Is not a resident, but only under both of the following conditions:

8 (A)(i) The contract owner of the structured settlement annuity is a resident; or

9 (ii) The contract owner of the structured settlement annuity is not a resident,  
10 but the insurer that issued the structured settlement annuity is domiciled in this state, and the state  
11 in which the contract owner resides has an association similar to the association created by this  
12 chapter; and

13 (B) Neither the payee or beneficiary nor the contract owner is eligible for  
14 coverage by the association of the state in which the payee or contract owner resides.

15 (e) This chapter shall not provide coverage to:

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

18 (2) A person covered under subparagraph (c), if any coverage is provided by the  
19 association of another state to the person.

20 (f) This chapter is intended to provide coverage to a person who is a resident of this state  
21 and, in special circumstances, to a nonresident. In order to avoid duplicate coverage, if a person who  
22 would otherwise receive coverage under this chapter is provided coverage under the laws of any  
23 other state, the person shall not be provided coverage under this chapter. In determining the  
24 application of the provisions of this paragraph in situations where a person could be covered by the  
25 association of more than one state, whether as an owner, payee, beneficiary, or assignee, this chapter  
26 shall be construed in conjunction with other state laws to result in coverage by only one association.

27 II.(a) This chapter shall provide coverage to the persons specified in paragraph I for direct,  
28 non-group life, health or annuity policies or contracts, and for certificates under direct group policies  
29 and contracts, and for supplemental contracts to any of these, and for unallocated annuity contracts  
30 issued by member insurers, except as limited by this chapter. Annuity contracts and certificates  
31 under group annuity contracts include, but are not limited to, guaranteed investment contracts,  
32 deposit administration contracts, unallocated funding agreements, allocated funding agreements,  
33 structured settlement annuities, annuities issued to or in connection with government lotteries and  
34 any immediate or deferred annuity contracts.

35 (b) This chapter shall not provide coverage for:

36 (1) A portion of a policy or contract not guaranteed by the insurer, or under which

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1 the risk is borne by the policy or contract owner;

2 (2) Any policy or contract of reinsurance, unless assumption certificates have been  
3 issued;

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

7 (A) Averaged over the period of 4 years prior to the date on which the member  
8 insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier, exceeds a  
9 rate of interest determined by subtracting 2 percentage points from Moody's Corporate Bond Yield  
10 Average averaged for that same 4-year period or for such lesser period if the policy or contract was  
11 issued less than 4 years before the member insurer becomes an impaired or insolvent insurer under  
12 this chapter, whichever is earlier; and

13 (B) On and after the date on which the member insurer becomes an impaired or  
14 insolvent insurer under this chapter, whichever is earlier, exceeds the rate of interest determined by  
15 subtracting 3 percentage points from Moody's Corporate Bond Yield Average as most recently  
16 available;

17 (4) Any plan or program of an employer, association, or similar entity to provide life,  
18 health, or annuity benefits to its employees or members to the extent that the plan or program is  
19 self-funded or uninsured, including, but not limited to, benefits payable by an employer, association,  
20 or similar entity under:

21 (A) A multiple-employer welfare arrangement as defined in 29 U.S.C. section  
22 1002(40);

23 (B) A minimum premium group insurance plan;

24 (C) A stop-loss group insurance plan; or

25 (D) An administrative services only contract;

26 (5) Any portion of a policy or contract to the extent that it provides dividends or  
27 experience rating credits, or provides that any fees or allowances be paid to any person, including the  
28 policy or contract holder, in connection with the service to or administration of the policy or contract;

29 (6) Any policy or contract issued in this state by a member insurer at a time when it  
30 was not licensed or did not have a certificate of authority to issue the policy or contract in this state;

31 (7) Any unallocated annuity contract issued to an employee benefit plan protected  
32 under the federal Pension Benefit Guaranty Corporation;

33 (8) Any portion of any unallocated annuity contract which is not issued to or in  
34 connection with a specific employee, union, or association of natural persons benefit plan or a  
35 government lottery;

36 (9) Any portion of a policy or contract to the extent that the assessments required by

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1 RSA 408-B:9 with respect to the policy or contract are preempted by federal or state law;

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

13 (11) A policy or contract providing any hospital, medical, prescription drug or other  
14 health care benefits pursuant to Part C or Part D of subchapter XVIII, chapter 7 of Title 42 of the  
15 United States Code, commonly known as Medicare Part C and D, or any regulations issued pursuant  
16 thereto.

17 III. The benefits for which the association may become liable shall in no event exceed the  
18 lesser of:

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

21 (b)(1) With respect to any one life, regardless of the number of policies or contracts:

22 (A) \$300,000 in life insurance death benefits, but not more than \$100,000 in net  
23 cash surrender and net cash withdrawal values for life insurance;

24 (B) In health insurance benefits:

25 (i) \$100,000 for coverages not defined as disability insurance or basic  
26 hospital, medical and surgical insurance or long-term care insurance, as defined in RSA 415-D,  
27 including any net cash surrender and net cash withdrawal values;

28 (ii) \$300,000 for disability insurance, and \$300,000 for long-term care  
29 insurance, as defined in RSA 415-D;

30 (iii) \$500,000 for basic hospital medical and surgical insurance or major  
31 medical insurance;

32 (C) \$250,000 in the present value of annuity benefits, including net cash  
33 surrender and net cash withdrawal values; or

34 (2) With respect to each individual participating in a governmental retirement plan  
35 established under Section 401, 403(b) or 457 of the United States Internal Revenue Code covered by  
36 an unallocated annuity contract or the beneficiaries of each such individual if deceased, in the

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1 aggregate, \$250,000 in present value annuity benefits, including net cash surrender and net cash  
2 withdrawal values; or

3 (3) With respect to each payee of a structured settlement annuity or beneficiary or  
4 beneficiaries of the payee if deceased, \$250,000 in present value annuity benefits, in the aggregate,  
5 including net cash surrender and net cash withdrawal value, if any.

6 (4) However, in no event shall the association be obligated to cover more than:

7 (A) An aggregate of \$300,000 in benefits with respect to any one life under  
8 subparagraphs (b)(1), (2) and (3) except with respect to benefits for basic hospital, medical and  
9 surgical insurance and major medical insurance under subparagraph (b)(1)(B)(iii), in which case the  
10 aggregate liability of the association shall not exceed \$500,000 with respect to any one individual; or

11 (B) With respect to one owner of multiple, non-group policies of life insurance,  
12 whether the policy owner is an individual, firm, corporation or other person, and whether the  
13 persons insured are officers, managers, employees, or other persons, more than \$5,000,000 in  
14 benefits, regardless of the number of policies and contracts held by the owner.

15 (5) With respect to either one contract owner provided coverage under subparagraph  
16 I(c)(2); or one plan sponsor whose plans own directly or in trust one or more unallocated annuity  
17 contracts not included in subparagraph (b)(2) of this paragraph, \$5,000,000 in benefits, irrespective  
18 of the number of contracts with respect to the contract owner or plan sponsor. However, in the case  
19 where one or more unallocated annuity contracts are covered contracts under this chapter and are  
20 owned by a trust or other entity for the benefit of 2 or more plan sponsors, coverage shall be afforded  
21 by the association if the largest interest in the trust or entity owning the contract or contracts is held  
22 by a plan sponsor whose principal place of business is in this state and in no event shall the  
23 association be obligated to cover more than \$5,000,000 in benefits with respect to all these  
24 unallocated contracts.

25 (6) The limitations set forth in this paragraph are limitations on the benefits for  
26 which the association is obligated before taking into account either its subrogation and assignments  
27 rights or the extent to which those benefits could be provided out of the assets of the impaired or  
28 insolvent insurer attributable to covered policies. The costs of the association's obligations under  
29 this chapter may be met by the use of assets attributable to covered policies or reimbursed to the  
30 association pursuant to its subrogation and assignment rights.

31 (7) In performing its obligations to provide coverage under RSA 408-B:8, the  
32 association shall not be required to guarantee, assume, reinsure, or perform, or cause to be  
33 guaranteed, assumed, reinsured, or performed, the contractual obligations of the insolvent or  
34 impaired insurer under a covered policy or contract that do not materially affect the economic values  
35 or economic benefits of the covered policy or contract.

36 205:4 Life and Health Guaranty Association; Creation of Association. Amend RSA 408-B:6,

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1 I(a)(2) and (3) to read as follows:

2 (2) Annuity account, *which shall include annuity contracts owned by a*  
3 *governmental retirement plan (or its trustee) established under Section 401, 403(b) or 457*  
4 *of the United States Internal Revenue Code, but shall otherwise excluded unallocated*  
5 *annuities*; and

6 (3) Unallocated annuity account which shall ~~include~~ **exclude** contracts ~~qualified~~  
7 **owned by a governmental retirement benefit plan, or its trustee established** under Section  
8 **401, 403(b), or 457** of the United States Internal Revenue Code.

9 205:5 New Paragraph; Life and Health Guaranty Association; Powers and Duties of the  
10 Association. Amend RSA 408-B:8 by inserting after paragraph XV the following new paragraph:

11 XVI. In carrying out its duties in connection with guaranteeing, assuming, or reinsuring  
12 policies or contracts under paragraph I or II, the association may, subject to approval of the  
13 receivership court, issue substitute coverage for a policy or contract that provides an interest rate,  
14 crediting rate, or similar factor determined by use of an index or other external reference stated in  
15 the policy or contract employed in calculating returns or changes in value by issuing an alternative  
16 policy or contract in accordance with the following provisions:

17 (a) In lieu of the index or other external reference provided for in the original policy or  
18 contract, the alternative policy or contracts provides for:

19 (1) A fixed interest rate; or

20 (2) Payment of dividends with minimum guarantees; or

21 (3) A different method for calculating interest or changes in value;

22 (b) There is no requirement for evidence of insurability, waiting period or other exclusion  
23 that would not have applied under the replaced policy or contract, and;

24 (c) The alternative policy or contract is substantially similar to the replaced policy or  
25 contract in all other material terms.

26 205:6 Life and Health Guaranty Association; Assessments. Amend RSA 408-B:9, V(a) to read as  
27 follows:

28 (a) **Subject to the provisions of subparagraph (b)**, the total of all assessments ~~upon~~  
29 **authorized by the association with respect to** a member insurer ~~for the life and annuity account~~  
30 ~~and~~ for each subaccount ~~thereunder~~ **of the life insurance and annuity account and for the**  
31 **health account** shall not in any one calendar year exceed 2 percent ~~and for the health account~~  
32 ~~shall not in any one calendar year exceed 2 percent~~ of ~~the~~ **that member** insurer's average **annual**  
33 premiums received in this state on the policies and contracts covered by the **subaccount or** account  
34 during the 3 calendar years preceding the year in which the insurer became an impaired or insolvent  
35 insurer. If the maximum assessment, together with the other assets of the association in any  
36 account, does not provide in any one year in either account an amount sufficient to carry out the



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1 responsibilities of the association, the necessary additional funds shall be assessed as soon thereafter  
2 as permitted by this chapter.

3       205:7 Effective Date. This act shall take effect 60 days after its passage.

4

5 Approved: July 6, 2015

6 Effective Date: September 4, 2015