

Regular Session, 2009

SENATE BILL NO. 318

BY SENATOR QUINN

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

INSURANCE DEPARTMENT. Provides for changes to the Louisiana Life and Health Insurance Guaranty Association Law. (8/15/09)

1 AN ACT  
2 To amend and reenact R.S. 22:2081, 2083 (B)(2)(d)(i), (C)(2)(b) and (c), and (D), 2084(8)(f)  
3 and (g), the introductory paragraph of R.S. 22:2086(A), (2), (3) and (6) and (D),  
4 2087(G), (L), and (N)(5), 2088(C)(1), (D) and (E), 2090(D), 2092(A), 2093(C) and  
5 (E)(3) and (5), 2097, and 2098(A) and to enact R.S. 22:2083(B)(2)(h), 2084(8)(h),  
6 2087(M)(4), (5), and (P), 2088(I) and (J) and 2089(C)(8) and (9), relative to the  
7 Louisiana Life and Health Insurance Guaranty Association Law; to provide for  
8 coverage limitations of the association; to provide for benefit limitations of the  
9 association; to provide for definitions; to provide for the membership of the board  
10 of directors; to provide for the powers and duties of the association; to provide for  
11 venue; to provide for assessments of member insurers; to provide for protests of  
12 assessments; to provide for the plan of operation of the association; to provide for  
13 premium tax liability offsets for assessments paid; to provide for a stay of  
14 proceedings against insolvent insurers; to provide for prohibited advertising; and to  
15 provide for related matters.

16 Be it enacted by the Legislature of Louisiana:

17 Section 1. R.S. 22:2081, 2083 (B)(2)(d)(i), (C)(2)(b) and (c), and (D), 2084(8)(f) and

1 (g), the introductory paragraph of R.S. 22:2086(A), (2), (3) and (6) and (D), 2087(G), (L),  
2 and (N)(5), 2088(C)(1), (D) and (E), 2090(D), 2092(A), 2093(C) and (E)(3) and (5), 2097,  
3 and 2098(A) are hereby amended and reenacted and R.S. 22:2083(B)(2)(h), 2084(8)(h),  
4 2087(M)(4) and(5), 2087(P), 2088(I) and (J) and 2089(C)(8) and (9) are hereby enacted to  
5 read as follows:

6 PART II. LOUISIANA LIFE AND HEALTH INSURANCE

7 GUARANTY ASSOCIATION FUNDS

8 §2081. Title

9 This Part shall be known and may be cited as the "Louisiana Life and Health  
10 Insurance Guaranty Association ~~Act~~ **Law and shall be construed to effect the**  
11 **purpose under R.S. 22:2082.**

12 \* \* \*

13 §2083. Coverages and limitations

14 \* \* \*

15 B.(1)

\* \* \*

16 (2) This Part shall not provide coverage for:

17 \* \* \*

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

22 \* \* \*

23 (i) A Multiple Employer Welfare Arrangement as defined in 29 U.S.C.  
24 Section ~~514~~ **1002(40)** (the Employee Retirement Income Security Act of 1974) as  
25 amended.

26 \* \* \*

27 **(h) An obligation that does not arise under the express written terms of**  
28 **the policy or contract issued by the contract owner or policy owner, including**  
29 **without limitations, any of the following:**



\* \* \*

(8) "Member insurer" means any insurer licensed or which holds a certificate of authority to transact in this state any kind of insurance for which coverage is provided by R.S. 22:2083, and includes any insurer whose license or certificate of authority in this state may have been suspended, revoked, not renewed, or voluntarily withdrawn, but shall not include any of the following:

\* \* \*

(f) A ~~nonprofit~~ hospital or medical service organization, **whether operated for profit or as a nonprofit.**

(g) **An organization that issues charitable gift annuities as is defined in R.S. 22:952(A)(3).**

(h) Any entity similar to any of the above.

\* \* \*

§2086. Board of directors

A. The board of directors of the association shall consist of **one consumer representative appointed by the commissioner, who shall be a resident of the state of Louisiana, and** ten member insurers serving terms as established in the plan of operation. **The consumer representative may be an officer, director or employee of an insurance company or engaged in the business of insurance.** The **insurer** members of the board shall be selected by member insurers subject to the approval of the commissioner from the following groups **or their successors:**

\* \* \*

(2) Two representatives of member insurers selected from recommendations of the American Council of Life ~~Insurance Companies~~ **Insurers.**

(3) One representative of a member insurer selected from recommendations of the ~~Health Insurance Association of America's~~ **Health Insurance Plans.**

\* \* \*

(6) One representative of a member insurer which is a member of the ~~National Association of Life Companies~~ **American Council of Life Insurers**

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**Forum 500.**

\* \* \*

D. Members of the board may be reimbursed from the assets of the association for **reasonable** expenses incurred by them as members of the board of directors. The members of the board shall not otherwise be compensated by the association for their services.

§2087. Powers and duties of the association

\* \* \*

G. Premiums due for coverage after entry of an order of liquidation of an insolvent insurer shall belong to and be payable at the direction of the association; **and the. If the liquidator of an insolvent insurer requests, the association shall provide a report to the liquidator regarding such premiums collected by the association. The** association shall be liable for unearned premiums due to policy or contract owners arising after the entry of such order.

\* \* \*

L. The association shall have standing to appear **or intervene** before any court in this state **or state agency** with jurisdiction over an impaired or insolvent insurer **and** concerning which the association shall become obligated under this Part **or with jurisdiction over any other person or property against which the association may have benefit through subrogation or otherwise.** The standing shall extend to all matters germane to the powers and duties of the association, including but not limited to proposals for reinsuring, modifying, or guaranteeing the policies or contracts of the impaired or insolvent insurer and the determination of the policies or contracts and contractual obligations. The association shall also have the right to appear or intervene before a court **or agency** in another state with jurisdiction over ~~an impaired or insolvent insurer~~ **any person or property** for which the association shall become obligated or with jurisdiction over a third party against whom the association may have rights through subrogation ~~of the insurer's~~ **policyholders or otherwise.**

1 M. \* \* \*

2 (4) If the provisions of this Subsection are determined to be invalid or  
3 ineffective with respect to any person or claim for any reason, the amount  
4 payable by the association with respect to the related, covered obligations shall  
5 be reduced by the amount realized by any other person or claim that is  
6 attributable to the policies, or portion thereof, covered by the association.

7 (5) If the association has provided benefits with respect to a covered  
8 obligation and a person recovers amounts as to which the association has rights  
9 as described in Paragraph (4) of this Subsection, the person shall pay to the  
10 association the portion of the recovery attributable to the polices, or the portion  
11 thereof, covered by the association.

12 N. The association may:

13 (5) Take such legal action as may be necessary to avoid payment or recover  
14 payment of improper claims.

15 \* \* \*

16 P.(1) Venue in a suit against the association arising under this Part shall  
17 be in the Nineteenth Judicial District.

18 (2) The association shall not be required to give an appeal bond that  
19 relates to a cause of action arising under this Part.

20 §2088. Assessments

21 \* \* \*

22 C.(1) The amount of any Class A assessment shall be determined by the  
23 board and shall not exceed ~~one~~ **three** hundred ~~fifty~~ dollars per member insurer in any  
24 one calendar year. The amount of any Class B assessment shall be allocated for  
25 assessment purposes among the accounts pursuant to an allocation formula which  
26 may be based on the premiums or reserves of the impaired or insolvent insurer or any  
27 other standard deemed by the board in its sole discretion as being fair and reasonable  
28 under the circumstances and established in the plan of operation.

29 \* \* \*

1 D. The association may abate or defer, in whole or in part, the assessment of  
2 an insurer if, in the opinion of the board, payment of the assessment would endanger  
3 the ability of the insurer to fulfill its contractual obligations. In the event an  
4 assessment against an insurer is abated, or deferred in whole or in part, the amount  
5 by which such assessment is abated or deferred may be assessed against the other  
6 insurers in a manner consistent with the basis for assessments set forth in R.S.  
7 22:2088. **Once the conditions that caused a deferral have been removed or**  
8 **rectified, the member insurer shall pay all assessments that were deferred**  
9 **pursuant to a repayment plan approved by the association.**

10 E.(1)(a) The total of all assessments upon an insurer for each account shall  
11 not in any one calendar year exceed two percent of such average premiums received  
12 of the insurers in this state on the policies and contracts covered by the account  
13 during the three calendar years preceding the year in which the insurer became an  
14 impaired or insolvent insurer.

15 **(b) With respect to insurers that become impaired or insolvent in**  
16 **different calendar years, if two or more assessments are authorized in one**  
17 **calendar year, the average annual premiums for purposes of the aggregate**  
18 **assessment percentage limitation referenced in Subparagraph (a) of this**  
19 **Paragraph shall be equal and limited to the higher of the three-year average**  
20 **annual premiums for the applicable subaccount or account as calculated**  
21 **pursuant to this Section.**

22 (c) If the maximum assessment, together with the other assets of the  
23 association in any account, does not provide in any one year in either account an  
24 amount sufficient to carry out the obligations of the association, the necessary  
25 additional funds shall be assessed as permitted by this Part.

26 \* \* \*

27 **I.(1) A member insurer that wishes to protect all or part of an**  
28 **assessment shall pay when due the amount of the assessment as set forth in the**  
29 **notice provided by the association. The payment shall be available to meet**

1 association obligations during the pendency of the protest or any subsequent  
2 appeal. Payment shall be accompanied by a statement in writing that the  
3 payment is made under protest and setting forth a brief statement of the  
4 grounds for the protest.

5 (2) Within sixty days following the payment of an assessment under  
6 protest by a member insurer, the association shall notify the member insurer  
7 in writing of its determination with respect to the protest unless the association  
8 notifies the member insurer that additional time is required to resolve the issues  
9 raised by the protest.

10 (3) Within thirty days after the final decision has been made, the  
11 association shall notify the protesting member insurer in writing of that final  
12 decision. Within sixty days of receipt of notice of the final decision, the  
13 protesting member insurer may appeal that final action to the commissioner.

14 (4) In the alternative to rendering a final decision with respect to a  
15 protest based on a question regarding the assessment base, the association may  
16 refer protests to the commissioner for a final decision, with or without a  
17 recommendation from the association.

18 (5) If the protest or appeal on the assessment is upheld, the amount paid  
19 in error or excess shall be returned to the member company. Interest on a  
20 refund due a protesting member shall be paid at the rate actually earned by the  
21 association.

22 J. The association may request information of member insurers in order  
23 to aid in the exercise of its powers under this Section and member insurers shall  
24 promptly comply with a request.

25 §2089. Plan of operation

26 \* \* \*

27 C. The plan of operation shall in addition to requirements enumerated  
28 elsewhere in this part:

29 \* \* \*



1 for the policies bear to the reserves that should have been established for all policies  
2 of insurance written by the impaired or insolvent insurer.

3 (2) As a creditor of the impaired or insolvent insurer as established in  
4 Paragraph (1) of this Subsection and consistent with R.S. 22:2037, the  
5 association and other similar associations shall be entitled to receive a  
6 disbursement of assets out of the marshaled assets, from time to time as the  
7 assets become available to reimburse it, as a credit against contractual  
8 obligations under this Part. If the liquidator has not, within one hundred and  
9 twenty days of a final determination of insolvency of an insurer by the  
10 receivership court, made an application to the court for the approval of a  
11 proposal to disburse assets out of marshaled assets to guarantee associations  
12 having obligations because of the insolvency, then the association shall be  
13 entitled to make application to the receivership court for approval of its own  
14 proposal to disburse these assets.

15 \* \* \*

16 E. \* \* \*

17 (3) Any person who was an affiliate that controlled the insurer at the time the  
18 distributions were paid shall be liable up to the amount of distributions received. Any  
19 person who was an affiliate that controlled, as defined in R.S. 22:2092(C)(2), the  
20 insurer at the time the distributions were declared, shall be liable up to the amount  
21 of distributions he would have received if they had been paid immediately. If two or  
22 more persons are liable with respect to the same distributions, they shall be jointly  
23 and ~~severally~~ **solidarily** liable.

24 \* \* \*

25 (5) If any person liable under Paragraph (3) of this Subsection is insolvent,  
26 all its affiliates that controlled it at the time the distribution was paid, shall be jointly  
27 and ~~severally~~ **solidarily** liable for any resulting deficiency in the amount recovered  
28 from the insolvent affiliate.

29 \* \* \*

1 §2097. Stay of proceeding; reopening of default judgments

2 All proceedings in which the insolvent insurer is a party in any court in this  
3 state shall be stayed ~~sixty~~ **one hundred eighty** days from the date an order of  
4 liquidation, rehabilitation, or conservation is final to permit proper legal action by  
5 the association on any matters germane to its powers or duties. As to judgment under  
6 any decision, order, verdict, or finding based on default, the association may apply  
7 to have such judgment set aside by the same court that entered such judgment and  
8 shall be permitted to defend against such suit on the merits.

9 §2098. Prohibited advertisement of Insurance Guaranty Association Act in insurance  
10 sales; notice to policyholders

11 A. No person, including an insurer, agent, or affiliate of an insurer shall  
12 make, publish, disseminate, circulate, or place before the public, or cause directly or  
13 indirectly, to be made, published, disseminated, circulated, or placed before the  
14 public, in any newspaper, magazine, or other publication, or in the form of a notice,  
15 circular, pamphlet, letter, or poster, or over any radio station or television station, or  
16 in any other way, any advertisement, announcement, or statement, written or oral,  
17 which uses the existence of the Life and Health Insurance Guaranty Association of  
18 this state for the purpose of sales solicitation, or inducement to purchase any form  
19 of insurance covered by the Louisiana Life and Health Insurance Guaranty  
20 Association ~~Act~~ **Law**. This Section shall not apply to the Louisiana Life and Health  
21 Insurance Guaranty Association or any other entity which does not sell or solicit  
22 insurance.

23 \* \* \*

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The original instrument and the following digest, which constitutes no part  
of the legislative instrument, were prepared by Carla S. Roberts.

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#### DIGEST

Present law provides for an association made up of certain life and health insurance companies, which acts as guarantor for policies sold by its members who become insolvent and are unable to pay claims. The Association is known as the Louisiana Life and Health Association (hereinafter "LaHIGA").

Proposed law retains present law but provides that LaHIGA will only honor an obligation,

as it relates to an insured of an insolvent insurance company, if the obligation arises under the express written terms of the policy or contract and not claims based upon marketing materials, side letters, riders, or documents that were issued without approval of the forms by the Dept. of Insurance nor obligations arising under misrepresentation regarding benefits or extra-contractual claims.

Proposed law provides that LaHIGA will only honor an obligation, as it relates to an insured of an insolvent company, if the obligation does not arise out of a claim for penalties or consequences or incidental damages nor if it arises from a claim associated with a policy or a contract for benefits under Medicare Part C coverage or Medicare Part D drug coverage.

Proposed law increases the maximum amount for which LaHIGA will guarantee a health insurance policy of a member insurance company from \$100,000 to \$500,000 in benefits.

Proposed law increases the maximum amount for which LaHIGA will guarantee an annuity of a member insurance company from \$100,000 to \$250,000 in present value of annuity benefits, not to exceed \$100,000 in net cash surrender and net cash withdrawals.

Proposed law increases from 10 to 11 the membership of the LaHIGA board of directors with the additional member being a consumer representative appointed by the commissioner and who is a resident of the state of Louisiana.

Proposed law provides that this consumer member of the board may be an officer, director or employee of an insurance company or engaged in the business of insurance.

Present law provided the following as to the selection of certain board members:

- (1) Two members selected from recommendations by the American Council of Life Insurance Companies.
- (2) One member selected from recommendations by the Health Insurance Association of America.
- (3) One representative who is a member of the National Association of Life Companies.

Proposed law retains provisions but changes the names of the entities listed above as follows:

- (1) American Council of Life Insurance Companies changed to American Council of Life Insurers.
- (2) Health Insurance Association of America changed to America's Health Insurance Plans.
- (3) National Association of Life Companies changed to American Council of Life Insurers Forum 500.

Present law authorizes LaHIGA to intervene in cases to obtain monies that are owed to the defunct insurer to reimburse LaHIGA for claims paid.

Proposed law retains present law but requires that monies received by an insured from LaHIGA be reduced by the amount realized by that insured from monies obtained by the insured from a third party which owed money to the defunct insurance company.

Present law provides, when LaHIGA is sued, the law suit would be filed in whatever parish that venue would have been proper against the insolvent insurance company.

Proposed law requires that venue in a suit against LaHIGA be in East Baton Rouge Parish.

Present law provides that a member insurer may be assessed in an amount determined by the board, not to exceed \$150 per member insurer in any one calendar year to cover administrative costs and legal fees.

Proposed law increases the amount of the assessment from \$150 to \$300.

Present law authorizes LaHIGA to file suit if a member insurance company does not pay a assessment because the member believes that the amount is not owed.

Proposed law provides that if a member insurance company believes that the amount is not correct or is not owed, the member may pay-in-protest and challenge the assessment and, if the member company loses, may appeal to the commissioner of the Dept. of Insurance.

Proposed law provides that LaHIGA may forgo its right to rule on the challenged assessment and send the case directly to the commissioner for action on the case.

Proposed law requires that LaHIGA rule on an assessment case within 60 days following the payment of an assessment under protest by a member insurer, unless LaHIGA notifies the member insurer that additional time is required to resolve the issues raised by the protest.

Proposed law requires that LaHIGA will, within 30 days after the final decision has been made, to notify the protesting member insurer in writing of the final decision.

Proposed law provides that the protesting member insurer may appeal LaHIGA's final ruling within 60 days of receipt of notice of the final decision to the commissioner.

Proposed law provides that all proceedings, in which the insolvent insurer is a party in any court in this state, shall be stayed for 60 days from the date an order of liquidation, rehabilitation, or conservation is final to permit proper legal action by LaHIGA on any matters germane to its powers or duties.

Proposed law increases the period of the stay from 60 days to 180 days.

Effective August 15, 2009.

(Amends R.S. 22:2081, 2083 (B)(2)(d)(i), (C)(2)(b) and (c), and (D), 2084(8)(f) and (g), (intro para), R.S. 22:2086(A)(intro para), (2), (3) and (6) and (D), 2087(G), (L), and (N)(5), 2088(C)(1), (D) and (E), 2090(D), 2092(A), 2093(C) and (E)(3) and (5), 2097, and 2098(A); adds R.S. 22:2083(B)(2)(h), 2084(8)(h), 2087(M)(4) and (5), 2087(P), 2088(I) and (J) and 2089(C)(8) and (9)