

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 2086(A), 2086(A)(2), (3) and (6) and (D),
4 2087(G), (L) and (N)(5), 2088(C)(1), (D) and (E)(1), 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) and (i),
6 2084(8)(h), 2087(M)(4) and (5) and (P), 2088(I) and (J) and 2089(C)(8) and (9),
7 relative to the Louisiana Life and Health Insurance Guaranty Association Law; to
8 provide for coverage limitations of the association; to provide for benefit limitations
9 of the association; to provide for definitions; to provide for the membership of the
10 board of directors; to provide for the powers and duties of the association; to provide
11 for 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 2086(A), 2086(A)(2), (3) and (6) and (D), 2087(G), (L)
 2 and (N)(5), 2088(C)(1), (D) and (E)(1), 2090(D), 2092(A), 2093(C) and (E)(3) and (5),
 3 2097, and 2098(A) are hereby amended and reenacted and R.S. 22:2083(B)(2)(h) and (i),
 4 2084(8)(h), 2087(M)(4) and(5) and (P), 2088(I) and (J) and 2089(C)(8) and (9) are hereby
 5 enacted to read as follows:

PART II. LOUISIANA LIFE AND HEALTH INSURANCE

GUARANTY ASSOCIATION FUNDS

§2081. Title; **construction**

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 * * *

§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:**

- 1 (i) Claims based upon marketing materials.
- 2 (ii) Claims based on side letters, riders, or other documents that were
- 3 issued by the insurer without meeting applicable policy form filing or approval
- 4 requirements.
- 5 (iii) Misrepresentations of or regarding policy benefits.
- 6 (iv) Extra-contractual claims.
- 7 (v) A claim for penalties or consequences or incidental damages.
- 8 A policy or contract providing any hospital, medical, prescription drug
- 9 or other health care benefits pursuant to Part C or Part D of Subchapter XVIII,
- 10 Chapter 7 of Title 42 of the United States Code, commonly referred to as
- 11 "Medicare Part C coverage" and "Medicare Part D coverage" and any
- 12 regulations issued pursuant to those parts.

13 C. The ~~benefit~~ **benefits** for which the association shall become liable shall
 14 in no event exceed the lessor of:

15 * * *

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

18 * * *

19 (b) ~~One~~ **Five** hundred thousand dollars in health insurance benefits, ~~including~~
 20 ~~any net cash surrender and net cash withdrawal values.~~

21 (c) ~~One~~ **Two** hundred **and fifty** thousand dollars in the present value of
 22 annuity benefits, ~~including~~ **not to exceed one hundred thousand dollars in** net cash
 23 surrender and net cash withdrawal values.

24 D. However, in no event shall the association be liable to expend more than
 25 ~~three~~ **five** hundred thousand dollars in the aggregate with respect to any one
 26 individual under Subsection C **of this Section.**

27 * * *

28 §2084. Definitions

29 As used in this Part:

* * *

(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 subject to Senate confirmation, 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 not 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

1 ~~National Association of Life Companies~~ American Council of Life Insurers
2 Forum 500.

3 * * *

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

8 §2087. Powers and duties of the association

9 * * *

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

16 * * *

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

1 policyholders or otherwise.

2 M. * * *

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

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

13 N. The association may:

14 * * *

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

17 * * *

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

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

22 §2088. Assessments

23 * * *

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

1 under the circumstances and established in the plan of operation.

2 * * *

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

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

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

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

28 * * *

29 **I.(1) A member insurer that wishes to protest all or part of an**

1 assessment shall pay when due the amount of the assessment as set forth in the
 2 notice provided by the association. The payment shall be available to meet
 3 association obligations during the pendency of the protest or any subsequent
 4 appeal. Payment shall be accompanied by a statement in writing that the
 5 payment is made under protest and setting forth a brief statement of the
 6 grounds for the protest.

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

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

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

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

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

27 §2089. Plan of operation

28 * * *

29 C. The plan of operation shall in addition to requirements enumerated

1 elsewhere in this part:

2 * * *

3 **(8) Establish procedures whereby a director may be removed for cause,**
4 **including, but not limited to, the case where the director of a member insurer**
5 **becomes impaired or insolvent.**

6 **(9) Require the board of directors to establish policy and procedures for**
7 **addressing conflicts of interest.**

8 * * *

9 §2090. Powers and duties of the commissioner

10 * * *

11 D. The ~~rehabilitation,~~ **rehabilitator,** or conservator of any impaired **or**
12 **insolvent** insurer shall notify all interested persons of the effect of this Part.

13 * * *

14 §2092. Offsets for assessments paid

15 A. An insurer may offset against any premium ~~or~~ tax liability to the state an
16 assessment not greater than twenty percent of the amount of such assessment for
17 each of the five calendar years following the year in which such assessment was paid
18 in full. In the event a member insurer should voluntarily cease doing business in this
19 state, all uncredited assessments may be credited against any premium, franchise, or
20 income tax due for the year it ceases doing business.

21 * * *

22 §2093. Miscellaneous provisions

23 * * *

24 C.**(1)** For the purpose of carrying out its obligations under this Part, the
25 association shall be deemed to be a creditor of the impaired or insolvent insurer to
26 the extent of assets attributable to covered policies reduced by any amounts to which
27 the association is entitled as subrogee pursuant to R.S. 22:2087(M). The assets of the
28 impaired or insolvent insurer attributable to covered policies shall be used to
29 continue all covered policies and pay all contractual obligations of the impaired or

1 insolvent insurer as required by this Part. The assets attributable to covered policies,
 2 are that proportion of the assets which the reserves that should have been established
 3 for the policies bear to the reserves that should have been established for all policies
 4 of insurance written by the impaired or insolvent insurer.

5 (2) As a creditor of the impaired or insolvent insurer as established in
 6 Paragraph (1) of this Subsection and consistent with R.S. 22:2034, the
 7 association and other similar associations shall be entitled to receive a
 8 disbursement of assets out of the marshaled assets, from time to time as the
 9 assets become available to reimburse it, as a credit against contractual
 10 obligations under this Part. If the liquidator has not, within one hundred and
 11 twenty days of a final determination of insolvency of an insurer by the
 12 receivership court, made an application to the court for the approval of a
 13 proposal to disburse assets out of marshaled assets to guarantee associations
 14 having obligations because of the insolvency, then the association shall be
 15 entitled to make application to the receivership court for approval of its own
 16 proposal to disburse these assets.

17 * * *

18 E. * * *

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

26 * * *

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

1 from the insolvent affiliate.

2 * * *

3 §2097. Stay of proceeding; reopening of default judgments

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

11 §2098. Prohibited advertisement of Insurance Guaranty Association Act in insurance
12 sales; notice to policyholders

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

25 * * *

The original instrument was prepared by Carla S. Roberts. The following digest, which does not constitute a part of the legislative instrument, was prepared by Thomas L. Tyler.

DIGEST

Quinn (SB 318)

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 subject to Senate confirmation and who is a resident of the state of Louisiana.

Proposed law provides that this consumer member of the board may not 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.

Proposed law provides with respect to insurers that become impaired or insolvent in different calendar years, then if two or more assessments are authorized in one calendar year, the average annual premiums for purposes of the aggregate assessment percentage limitation shall be equal and limited to the higher of the three-year average annual premiums applicable to the account.

Present law provides that any person who is an affiliate that controlled an insurer at the time of certain distributions were paid by the insurer, then that person is liable for the amount of distributions received. Provides that if two or more persons are liable with respect to the same distribution, then they are jointly and severally liable. Proposed law retains these provisions but provides that such person is solidarily liable for such distributions.

Present law provides that if a person is insolvent at the time a distribution is made, then all its affiliates that controlled it at the time of such distribution are jointly and severally liable for any resulting deficiency. Proposed law retains these provisions but provides that such affiliates are solidarily liable.

Present law authorizes LaHIGA to file suit if a member insurance company does not pay an 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), 2086(A)(2), (3) and (6) and (D), 2087(G), (L), and (N)(5), 2088(C)(1), (D) and (E)(1), 2090(D), 2092(A), 2093(C) and (E)(3) and (5), 2097, and 2098(A); adds R.S. 22:2083(B)(2)(h) and (i), 2084(8)(h), 2087(M)(4) and (5), and (P), 2088(I) and (J) and 2089(C)(8) and (9)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Insurance to the original bill.

1. Adds Senate confirmation for consumer board member appointed by the commissioner of insurance.
2. Provides that consumer member of board may not be an officer, director, or employee of an insurance company or engaged in the insurance business.
3. Adds provisions that certain persons are solidarily liable for certain distributions made by an insurer.