

SENATE BILL NO. 318

BY SENATOR QUINN

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

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AN ACT

To amend and reenact R.S. 22:2081, 2083 (B)(2)(d)(i), (C)(2)(b) and (c), and (D), 2084(8)(f) and (g), the introductory paragraph of 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) and to enact 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), relative to the Louisiana Life and Health Insurance Guaranty Association Law; to provide for coverage limitations of the association; to provide for benefit limitations of the association; to provide for definitions; to provide for the membership of the board of directors; to provide for the powers and duties of the association; to provide for venue; to provide for assessments of member insurers; to provide for protests of assessments; to provide for the plan of operation of the association; to provide for premium tax liability offsets for assessments paid; to provide for a stay of proceedings against insolvent insurers; to provide for prohibited advertising; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 22:2081, 2083 (B)(2)(d)(i), (C)(2)(b) and (c), and (D), 2084(8)(f) and (g), the introductory paragraph of 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) are hereby amended and reenacted and 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) are hereby enacted to read as follows:

PART II. LOUISIANA LIFE AND HEALTH INSURANCE

GUARANTY ASSOCIATION FUNDS

1 §2081. Title; **construction**

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

5 * * *

6 §2083. Coverages and limitations

7 * * *

8 B.(1) * * *

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

10 * * *

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

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

18 * * *

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

22 **(i) Claims based upon marketing materials.**

23 **(ii) Claims based on side letters, riders, or other documents that were**
24 **issued by the insurer without meeting applicable policy form filing or approval**
25 **requirements.**

26 **(iii) Misrepresentations of or regarding policy benefits.**

27 **(iv) Extra-contractual claims.**

28 **(v) A claim for penalties or consequences or incidental damages.**

29 **(i) A policy or contract providing any hospital, medical, prescription**
30 **drug or other health care benefits pursuant to Part C or Part D of Subchapter**

1 XVIII, Chapter 7 of Title 42 of the United States Code, commonly referred to
2 as "Medicare Part C coverage" and "Medicare Part D coverage" and any
3 regulations issued pursuant to those parts.

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

6 * * *

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

9 * * *

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

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

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

18 * * *

19 §2084. Definitions

20 As used in this Part:

21 * * *

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

27 * * *

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

30 (g) **An organization that issues charitable gift annuities as is defined in**

1 R.S. 22:952(A)(3).

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

3 * * *

4 §2086. Board of directors

5 A. The board of directors of the association shall consist of one consumer
6 representative appointed by the commissioner subject to Senate confirmation,
7 who shall be a resident of the state of Louisiana, and ten member insurers serving
8 terms as established in the plan of operation. The consumer representative may
9 not be an officer, director, or employee of an insurance company or engaged in
10 the business of insurance. The insurer members of the board shall be selected by
11 member insurers subject to the approval of the commissioner from the following
12 groups or their successors:

13 * * *

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

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

18 * * *

19 (6) One representative of a member insurer which is a member of the
20 ~~National Association of Life Companies~~ American Council of Life Insurers
21 Forum 500.

22 * * *

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

27 §2087. Powers and duties of the association

28 * * *

29 G. Premiums due for coverage after entry of an order of liquidation of an
30 insolvent insurer shall belong to and be payable at the direction of the association;

1 ~~and the.~~ **If the liquidator of an insolvent insurer requests, the association shall**
 2 **provide a report to the liquidator regarding such premiums collected by the**
 3 **association.** The association shall be liable for unearned premiums due to policy or
 4 contract owners arising after the entry of such order.

5 * * *

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

20 M. * * *

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

26 **(5) If the association has provided benefits with respect to a covered**
 27 **obligation and a person recovers amounts as to which the association has rights**
 28 **as described in Paragraph (4) of this Subsection, the person shall pay to the**
 29 **association the portion of the recovery attributable to the policies, or the portion**
 30 **thereof, covered by the association.**

1 N. The association may:

2 * * *

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

5 * * *

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

8 **(2) The association shall not be required to furnish an appeal bond that**
9 **relates to a cause of action arising under this Part.**

10 §2088. Assessments

11 * * *

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

19 * * *

20 D. The association may abate or defer, in whole or in part, the assessment of
21 an insurer if, in the opinion of the board, payment of the assessment would endanger
22 the ability of the insurer to fulfill its contractual obligations. In the event an
23 assessment against an insurer is abated, or deferred in whole or in part, the amount
24 by which such assessment is abated or deferred may be assessed against the other
25 insurers in a manner consistent with the basis for assessments set forth in R.S.
26 22:2088. **Once the conditions that caused a deferral have been removed or**
27 **rectified, the member insurer shall pay all assessments that were deferred**
28 **pursuant to a repayment plan approved by the association.**

29 E.(1)(a) The total of all assessments upon an insurer for each account shall
30 not in any one calendar year exceed two percent of such average premiums received

1 of the insurers in this state on the policies and contracts covered by the account
 2 during the three calendar years preceding the year in which the insurer became an
 3 impaired or insolvent insurer.

4 (b) With respect to insurers that become impaired or insolvent in
 5 different calendar years, if two or more assessments are authorized in one
 6 calendar year, the average annual premiums for purposes of the aggregate
 7 assessment percentage limitation referenced in Subparagraph (a) of this
 8 Paragraph shall be equal and limited to the higher of the three-year average
 9 annual premiums for the applicable account as calculated pursuant to this
 10 Section.

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

15 * * *

16 I.(1) A member insurer that wishes to protest all or part of an
 17 assessment shall pay when due the amount of the assessment as set forth in the
 18 notice provided by the association. The payment shall be available to meet
 19 association obligations during the pendency of the protest or any subsequent
 20 appeal. Payment shall be accompanied by a statement in writing that the
 21 payment is made under protest and setting forth a brief statement of the
 22 grounds for the protest.

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

28 (3) Within thirty days after the final decision has been made, the
 29 association shall notify the protesting member insurer in writing of that final
 30 decision. Within sixty days of receipt of notice of the final decision, the

1 protesting member insurer may appeal that final action to the commissioner.

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

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

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

13 §2089. Plan of operation

14 * * *

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

17 * * *

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

21 (9) Require the board of directors to establish policy and procedures for
22 addressing conflicts of interest.

23 * * *

24 §2090. Powers and duties of the commissioner

25 * * *

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

28 * * *

29 §2092. Offsets for assessments paid

30 A. An insurer may offset against any premium ~~or~~ tax liability to the state an

1 assessment not greater than twenty percent of the amount of such assessment for
 2 each of the five calendar years following the year in which such assessment was paid
 3 in full. In the event a member insurer should voluntarily cease doing business in this
 4 state, all uncredited assessments may be credited against any premium, franchise, or
 5 income tax due for the year it ceases doing business.

6 * * *

7 §2093. Miscellaneous provisions

8 * * *

9 C.(1) For the purpose of carrying out its obligations under this Part, the
 10 association shall be deemed to be a creditor of the impaired or insolvent insurer to
 11 the extent of assets attributable to covered policies reduced by any amounts to which
 12 the association is entitled as subrogee pursuant to R.S. 22:2087(M). The assets of the
 13 impaired or insolvent insurer attributable to covered policies shall be used to
 14 continue all covered policies and pay all contractual obligations of the impaired or
 15 insolvent insurer as required by this Part. The assets attributable to covered policies,
 16 are that proportion of the assets which the reserves that should have been established
 17 for the policies bear to the reserves that should have been established for all policies
 18 of insurance written by the impaired or insolvent insurer.

19 (2) As a creditor of the impaired or insolvent insurer as established in
 20 Paragraph (1) of this Subsection and consistent with R.S. 22:2034, the
 21 association and other similar associations shall be entitled to receive a
 22 disbursement of assets out of the marshaled assets, from time to time as the
 23 assets become available to reimburse it, as a credit against contractual
 24 obligations under this Part. If the liquidator has not, within one hundred and
 25 twenty days of a final determination of insolvency of an insurer by the
 26 receivership court, made an application to the court for the approval of a
 27 proposal to disburse assets out of marshaled assets to guarantee associations
 28 having obligations because of the insolvency, then the association shall be
 29 entitled to make application to the receivership court for approval of its own
 30 proposal to disburse these assets.

1 * * *

2 E. * * *

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

10 * * *

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

15 * * *

16 §2097. Stay of proceeding; reopening of default judgments

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

24 §2098. Prohibited advertisement of Insurance Guaranty Association Act in insurance
25 sales; notice to policyholders

26 A. No person, including an insurer, agent, or affiliate of an insurer shall
27 make, publish, disseminate, circulate, or place before the public, or cause directly or
28 indirectly, to be made, published, disseminated, circulated, or placed before the
29 public, in any newspaper, magazine, or other publication, or in the form of a notice,
30 circular, pamphlet, letter, or poster, or over any radio station or television station, or

1 in any other way, any advertisement, announcement, or statement, written or oral,
 2 which uses the existence of the Life and Health Insurance Guaranty Association of
 3 this state for the purpose of sales solicitation, or inducement to purchase any form
 4 of insurance covered by the Louisiana Life and Health Insurance Guaranty
 5 Association ~~Act~~ Law. This Section shall not apply to the Louisiana Life and Health
 6 Insurance Guaranty Association or any other entity which does not sell or solicit
 7 insurance.

8 * * *

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____