

Regular Session, 2014

SENATE BILL NO. 169

BY SENATOR LONG

INSURERS. Provides relative to the Louisiana Life and Health Insurance Guaranty Association and structured settlement annuities. (8/1/14)

1 AN ACT
2 To amend and reenact the introductory paragraph of R.S. 22:2083(A)(2), (B)(1) and (2)(c)
3 and the introductory paragraph of (h) and (v), and (C)(2)(c), 2084(6) and (12),
4 2087(A), (B), and (C), and the heading of R.S. 22:2098 and 2098(D); to enact R.S.
5 22:2083(A)(3), (4), and (5) and (B)(2)(j), 2084(11.1) and (12.1), and 2087(Q); and
6 to repeal R.S. 22:2087(D) and (E), relative to the Louisiana Life and Health
7 Insurance Guaranty Association; to provide for coverage and structured settlement
8 annuities; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. The introductory paragraph of R.S. 22:2083(A)(2), (B)(1) and (2)(c) and
11 the introductory paragraph of (h) and (v), and (C)(2)(c), 2084(6) and (12), 2087(A), (B), and
12 (C), and the heading of R.S. 22:2098 and 2098(D) are hereby amended and reenacted and
13 R.S. 22:2083(A)(3), (4), and (5) and (B)(2)(j), 2084(11.1) and (12.1), and 2087(Q) are
14 hereby enacted to read as follows:

15 §2083. Coverages and limitations

16 A. This Part shall provide coverage for the policies and contracts specified
17 in Subsection B of this Section:

1 * * *

2 (2) To any person who is the owner of or certificate holder under such a
3 policy or contract, **other than a structured settlement annuity**, and who is either:

4 * * *

5 **(3) For structured settlement annuities specified in Subsection B of this**
6 **Section, Paragraphs (1) and (2) of this Subsection shall not apply, and this Part**
7 **shall, except as provided in Paragraphs (4) and (5) of this Subsection, provide**
8 **coverage to a person who is a payee under a structured settlement annuity, or**
9 **a beneficiary of a payee if the payee is deceased, if the payee is one of the**
10 **following:**

11 **(a) A resident, regardless of where the contract owner resides.**

12 **(b) Not a resident, but only under both of the following conditions:**

13 **(i) The contract owner of the structured settlement annuity either is a**
14 **resident or is not a resident and meets at least one of the following conditions:**

15 **(aa) The insurer that issued the structured settlement annuity is**
16 **domiciled in this state.**

17 **(bb) The state in which the contract owner resides has an association**
18 **similar to the association created by this Part.**

19 **(ii) Neither the payee, or the beneficiary, nor the contract owner is**
20 **eligible for coverage by the association of the state in which the payee or**
21 **contract owner resides.**

22 **(4) This Part shall not provide coverage to a person who is a payee or**
23 **beneficiary of a contract owner resident of this state, if the payee or beneficiary**
24 **is afforded any coverage by the association of another state.**

25 **(5) This Part is intended to provide coverage to a person who is a**
26 **resident of this state and, in special circumstances, to a nonresident. In order to**
27 **avoid duplicate coverage, if a person who would otherwise receive coverage**
28 **under this Part is provided coverage under the laws of any other state, the**
29 **person shall not be provided coverage under this Part. In determining the**

1 application of the provisions of this Paragraph in situations where a person
 2 could be covered by the association of more than one state, whether as an
 3 owner, payee, beneficiary or assignee, this Part shall be construed in
 4 conjunction with other state laws to result in coverage by only one association.

5 B.(1) This Part shall provide coverage to the persons specified in Subsection
 6 A of this Section for direct ~~nongroup~~ **non-group** life, health, ~~or~~ **or** annuity ~~and~~
 7 ~~supplemental~~ policies or contracts, for certificates under direct group policies and
 8 contracts; **for supplemental contracts to any of these,** and for unallocated annuity
 9 contracts, **in each case** issued by member insurers, except as limited by this Part.

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

11 * * *

12 (c) Any portion of a policy or contract to the extent that the rate of interest
 13 on which it is based, **or the interest rate, crediting rate, or similar factor**
 14 **determined by use of an index or other external reference stated in the policy**
 15 **or contract employed in calculating returns or changes in value and meets both**
 16 **of the following criteria:**

17 (i) Averaged over the period of four years prior to the date on which the
 18 ~~association becomes obligated with respect to the policy or contract~~ **member**
 19 **insurer becomes an impaired or insolvent insurer under this Part, whichever is**
 20 **earlier,** exceeds a ~~the~~ **the** rate of interest determined by subtracting two percentage
 21 points from Moody's Corporate Bond Yield Average averaged for that same
 22 four-year period or for such lesser period if the policy or contract was issued less
 23 than four years before ~~the association became obligated~~ **the member insurer**
 24 **becomes an impaired or insolvent insurer under this Part, whichever is earlier.**

25 (ii) On and after the date on which the ~~association becomes obligated with~~
 26 ~~respect to the policy or contract~~ **member insurer becomes an impaired or**
 27 **insolvent insurer under this Part, whichever is earlier,** exceeds the rate of interest
 28 determined by subtracting three percentage points from Moody's Corporate Bond
 29 Yield Average as most recently available.

* * *

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

* * *

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

* * *

(j) A portion of a policy or contract to the extent it provides for interest or other changes in value to be 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 policy or contract owner's rights are subject to forfeiture, as of the date the member insurer becomes an impaired or insolvent insurer under this Part, whichever is earlier. If a policy's or contract's interest or changes in value are credited less frequently than annually, then for purposes of determining the values that have been credited and are not subject to forfeiture under this Paragraph, the interest or change in value determined by using the procedures defined in the policy or contract shall be credited as if the contractual date of crediting interest or changing values was the date of impairment or insolvency, whichever is earlier, and shall not be subject to forfeiture.

C. The benefits for which the association shall become liable shall in no event exceed the lesser of the following:

* * *

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

* * *

(c) Two hundred and fifty thousand dollars in the present value of annuity benefits, ~~not to exceed one hundred thousand dollars in~~ **including** net cash surrender

1 and net cash withdrawal values.

2 * * *

3 §2084. Definitions

4 As used in this Part:

5 * * *

6 (6) "Impaired insurer" means a member insurer which, after September 30,
7 1991, is not an insolvent insurer, and ~~meets at least one of the following criteria:~~

8 ~~(a) Is deemed by the commissioner to be potentially unable to fulfill its~~
9 ~~contractual obligations.~~

10 ~~(b) is~~ placed under an order of rehabilitation or conservation by a court of
11 competent jurisdiction.

12 ~~(c) In the case of a stock insurer, whose paid in capital, minimum surplus~~
13 ~~and operating surplus, or in the case of a mutual insurer, whose minimum surplus~~
14 ~~and operating surplus does not satisfy the minimum level by this Code.~~

15 * * *

16 **(11.1) "Receivership court" means the court in the insolvent or impaired**
17 **insurer's state having jurisdiction over the conservation, rehabilitation, or**
18 **liquidation of the insurer.**

19 * * *

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

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domicile of the insurer that issued the policies or contracts.

(12.1) "Structured settlement annuity" means an annuity purchased in order to fund periodic payments for a plaintiff or other claimant in payment for or with respect to personal injury suffered by the plaintiff or other claimant.

* * *

§2087. Powers and duties of the association

A. If a member insurer is an impaired ~~domestic~~ insurer, the association may, in its discretion, subject to any conditions imposed by the association, **perform the following**, ~~take such actions as~~ **that** do not impair the contractual obligations of the impaired insurer; **and** that are approved by the commissioner:

(1) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, any or all of the policies or contracts of the impaired insurer.

(2) Provide such monies, pledges, notes, **loans**, guarantees, or other means as are proper to effectuate Paragraph (1) of this Subsection and assure payment of the contractual obligations of the impaired insurer pending action under Paragraph (1) of this Subsection.

~~(3) Loan money to the impaired insurer.~~

~~B.(1) If an insurer is an impaired insurer, whether domestic, foreign, or alien, and the insurer is not paying claims timely, then subject to the preconditions specified in Paragraph (A)(2) of this Section, the association shall, in its discretion, either:~~

~~(a) Take any of the actions specified in Subsection A of this Section, subject to the conditions in that Section.~~

~~(b) Provide substitute benefits in lieu of the contractual obligations of the impaired insurer solely for health claims, periodic annuity benefit payments, death benefits, supplemental benefits, and cash withdrawals for policy or contract owners who petition therefor under claims of emergency or hardship in accordance with standards proposed by the association in its plan of operation and approved by the commissioner.~~

1 (2) The association shall be subject to the requirements of Paragraph (1) of
2 this Subsection only if:

3 (a) The laws of its state of domicile of the impaired insurer provide that until
4 all payments of or on account of the impaired insurer's contractual obligations by all
5 guaranty associations, along with all expenses thereof and interest on all such
6 payments and expenses, shall have been repaid to the guaranty associations or a plan
7 of repayment by the impaired insurer shall have been approved by the guaranty
8 associations:

9 (i) The delinquency proceeding shall not be dismissed.

10 (ii) Neither the impaired insurer nor its assets shall be returned to the control
11 of its shareholders or private management.

12 (iii) It shall not be permitted to solicit or accept new business or have any
13 suspended or revoked license restored.

14 (b)(i) If the impaired insurer is a domestic insurer, it has been placed under
15 an order of rehabilitation by a court of competent jurisdiction in this state.

16 (ii) If the impaired insurer is a foreign or alien insurer:

17 (aa) It has been prohibited from soliciting or accepting new business in this
18 state;

19 (bb) Its certificate of authority has been suspended or revoked in this state;

20 and

21 (cc) A petition for rehabilitation or liquidation has been filed in a court of
22 competent jurisdiction in its state of domicile by the commissioner of its state.

23 E. If a member insurer is an insolvent insurer, the association shall, in its
24 discretion, **either perform any of the following:**

25 (1)(a) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed,
26 or reinsured, the policies or contracts of the insolvent insurer.

27 (b)(2) Assure payment of the contractual obligations of the insolvent insurer.

28 (c)(3) Provide such monies, pledges, guarantees, or other means as are
29 reasonably necessary to discharge such duties.

1 ~~(2)(4)~~ ~~With respect only to life and health insurance policies, provide~~
 2 **Provide** benefits and coverages in accordance with Subsection ~~D~~ **C** of this Section.

3 ~~D. C. When proceeding under Subparagraph (B)(1)(b) of this Section or~~
 4 ~~Paragraph (C)(2) of this Section, the association shall, with With respect to only life~~
 5 and health insurance policies **and annuities the association shall:**

6 (1) Assure payment of benefits for premiums identical to the premiums and
 7 benefits, except for terms of conversion and renewability, that would have been
 8 payable under the policies **or contracts** of the insolvent insurer, for claims incurred.

9 (a) With respect to group policies **and contracts**, not later than the
 10 ~~succeeding~~ **earlier of the** next renewal date under such policies or contracts or
 11 forty-five days, but in no event less than thirty days, after the date on which the
 12 association becomes obligated with respect to such policies **and contracts**.

13 (b) With respect to ~~individual~~ **non-group** policies, **contracts, and annuities**,
 14 not later than the earlier of the ~~succeeding~~ **next** renewal date, if any, under such
 15 policies or one year, but in no event less than thirty days, from the date on which the
 16 association becomes obligated with respect to such policies **or contracts**.

17 (2) Make reasonable and diligent efforts to provide all known insureds **or**
 18 **annuitants for non-group policies and contracts**, or group policyholders with
 19 respect to group policies **and contracts**, thirty days prior notice of the termination
 20 of the benefits provided.

21 (3) With respect to ~~individual~~ policies **non-group life and health insurance**
 22 **policies and annuities covered by the association**, make available to each known
 23 insured **or annuitant**, or owner if other than the insured **or annuitant**, and with
 24 respect to an individual formerly insured **or formerly an annuitant** under a group
 25 policy who is not eligible for replacement group coverage, make available substitute
 26 coverage on an individual basis in accordance with the provisions of Paragraph (4)
 27 of this Subsection, if the insureds **or annuitants** had a right under law or the
 28 terminated policy **or annuity** to convert coverage to individual coverage or to
 29 continue an individual policy **or annuity** in force until a specified age or for a

1 specified time, during which the insurer ~~shall have~~ **had** no right to unilaterally alter
2 any provision of the policy or **annuity or had a right to** undertake alterations only
3 in premium by class.

4 (4)(a) In providing the substitute coverage required under Paragraph (3) of
5 this Subsection, the association may offer either to reissue the terminated coverage
6 or to issue an alternative policy.

7 (b) Alternative or reissued policies shall be offered without requiring
8 evidence of insurability, and shall not provide for any waiting period or exclusion
9 that would not have applied under the ~~former~~ **terminated** policy.

10 (c) The association may reinsure any alternative or reissued policy.

11 (5)(a) Alternative policies adopted by the association shall be subject to the
12 ~~prior~~ approval of the **domiciliary insurance** commissioner **and the receivership**
13 **court**. The association may adopt alternative policies of various types for future
14 issuance without regard to any particular impairment or insolvency ~~of an insurer~~.

15 (b) Alternative policies shall contain at least the minimum statutory
16 provisions required in this state; and ~~shall~~ provide benefits that shall not be
17 unreasonable in relation to the premium charged. The association shall set the
18 premium in accordance with a table of rates ~~which~~ **that** it shall adopt ~~in its plan of~~
19 ~~operation~~. The premium shall reflect the amount of insurance to be provided and the
20 age and class of risk of each insured, but shall not reflect any changes in the health
21 of the insured after the original policy was last underwritten.

22 (c) Any alternative policy issued by the association shall provide coverage
23 of a type similar to that of the policy issued by the impaired or insolvent insurer, as
24 determined by the association.

25 (6) If the association elects to reissue terminated coverage at a premium rate
26 different from that charged under the terminated policy, the premium shall be set by
27 the association in accordance with the amount of insurance provided and the age and
28 class of risk, subject to the ~~prior~~ approval of the **domiciliary insurance**
29 commissioner ~~or by a court of competent jurisdiction~~ **and the receivership court**.

1 **replaced policy or contract in all other material terms.**

2 §2098. Prohibited advertisement of **Louisiana Life and Health** Insurance Guaranty
3 Association Act in insurance sales; notice to policyholders

4 * * *

5 D. No insurer or agent may deliver a policy or contract described in R.S.
6 22:2083(B)(1) and excluded by R.S. 22:2083(B)(2)(~~a~~) from coverage under this Part
7 unless the insurer or agent, prior to or at the time of delivery gives the policy or
8 contract holder a separate written notice which clearly and conspicuously discloses
9 that the policy or contract is not covered by the association. The commissioner shall
10 by rule specify the form and content of the notice.

11 Section 2. R.S. 22:2087(D) and (E) are hereby repealed in their entirety.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Cheryl Horne.

DIGEST

Long (SB 169)

Proposed law provides relative to coverage by the Louisiana Life and Health Insurance Guaranty Association (LLHIGA), as follows:

(1) Present law does not address structured settlement annuities.

Proposed law defines a "structured settlement annuity" as an annuity purchased in order to fund periodic payments for a plaintiff or other claimant in payment for or with respect to personal injury suffered by the plaintiff or other claimant. Adds such structured settlement annuities as a type of insurance protected by LLHIGA. Adds residency rules for payees, beneficiaries, and contract owners of structured settlement annuities to receive the benefit of LLHIGA protection. Further provides for the coordination of benefits between LLHIGA and other associations.

(2) Present law covers supplemental contracts to covered non-group life, health, and annuity policies or contracts.

Proposed law adds supplemental contracts for covered certificates under direct group policies and contracts.

(3) Present law provides for the exclusion of certain interest payments from coverage by LLHIGA.

Proposed law makes a number of technical changes to the language of the exclusion and adds language regarding interest or crediting rates determined by reference to an external index. Also adds a provision addressing the crediting of interest payments that have accrued but not been credited as of the day of impairment or insolvency and provides for their non-forfeiture.

(4) Present law provides for \$100,000 in coverage for the net cash surrender and net

cash withdrawal values of annuities.

Proposed law raises the limit for the net cash surrender and net cash withdrawal values of annuities to \$250,000.

- (5) Proposed law defines "impaired insurer" as a member insurer which, after September 30, 1991, is not an insolvent insurer, and is placed under an order of rehabilitation or conservation by a court of competent jurisdiction. Further defines "receivership court" as the court in the insolvent or impaired insurer's state having jurisdiction over the conservation, rehabilitation or liquidation of the insurer. Also makes technical changes to the definition of "resident" and adds provisions regarding the treatment of U.S. citizens who reside in foreign countries or in U.S. territories without guaranty funds.
- (6) Present law provides for certain assistance to impaired domestic insurers, foreign, and alien insurers.

Proposed law removes the distinctions between domestic and foreign and alien for LLHIGA purposes. Additionally deletes provisions for assistance to impaired insurers that involves assuming obligations of a delinquent insurer not yet found insolvent. Further makes technical changes to the provisions governing the assumption of obligations of an insolvent insurer.

- (7) Proposed law adds provisions that permit LLHIGA to offer substitute policies that pay interest subject to certain limitations.

Effective August 1, 2014.

(Amends R.S. 22:2083(A)(2)(intro para), (B)(1) and (2)(c) and (h)(intro para) and (v), and (C)(2)(c), 2084(6) and (12), and 2087(A), (B), and (C), the heading of R.S. 22:2098 and 2098(D); adds R.S. 22:2083(A)(3), (4), and (5) and (B)(2)(j), 2084 (11.1) and (12.1), and 2087(Q); repeals R.S. 22:2087(D) and (E))

Summary of Amendments Adopted by Senate

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

1. Defines "impaired insurer" as a member insurer which, after September 30, 1991, is not an insolvent insurer, and is placed under an order of rehabilitation or conservation by a court of competent jurisdiction.
2. Defines "receivership court" as the court in the insolvent or impaired insurer's state having jurisdiction over the conservation, rehabilitation or liquidation of the insurer.
3. Removes all provisions that permit LLHIGA to succeed to certain reinsurance contracts that cover assumed policies of an insolvent insurer effective as of the date of the order of liquidation.
4. Makes technical changes.