

## **BILL ANALYSIS**

C.S.H.B. 2883  
By: Smithee  
Insurance  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The Guaranty Act protects Texas policyholders against the insolvency of an insurance carrier and its subsequent inability to perform its contractual obligations under life, accident, health and annuity contracts. The legislature established this protection in 1973 by creating a mandatory association of all licensed insurers that write these lines of business in Texas. There are 745 companies writing Life, Accident and Health Insurance and annuity contracts in Texas.

The last comprehensive update of the Guaranty Act was in 1991. The current law was based on an older version of a model law developed by the National Association of Insurance Commissioners (NAIC). The NAIC has revised and updated the model Act on at least five different occasions since 1991, including an increase of the coverage limits to provide greater consumer protections in the event of an insurer's failure. In addition, new insurance products have been introduced and innovations have been made in the marketing and sale of insurance products. Updating the Guaranty Act to respond to these changes will provide greater protection to policyholders and ease of administration, and clarify certain ambiguities within the current Guaranty Act. Updating the Guaranty Act would also help ensure uniform treatment of policyholders among the states because it would more closely align Texas laws with the guaranty acts of other states. Uniformity among the states produces a variety of desirable results, including decreasing the risk of litigation.

CSHB 2883 improves the efficiency of the Association's administration of insolvent insurance companies' policies and claims, introduces language to clarify definitions to eliminate ambiguities in the current law, and formalizes current Association practices in processing policyholder claims for benefits. The bill provides an update to address improved methods for assessing member insurers; enhancing coverage benefits available to Texas policyholders; and making coverage more equitable for entities that own insurance policies. This bill also incorporates the current revisions of the National Association of Insurance Commissioners model act.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

- SECTION 1: Amends Section 3, Article 21.28-D, Insurance Code. Adds additional language to clarify persons provided coverage under the Act, persons not eligible for coverage under the Act, and adds additional language to clarify policies and contracts that are covered and not covered by the Act. The amendments focus on coverage of products that did not exist when the Act was last amended, and establishes guidelines for determining which state's guaranty association provides coverage when it can be asserted that more than one state may be obligated to provide coverage.
- SECTION 2: Amends Section 5, Article 21.28-D, Insurance Code. Amends certain Subdivisions and adds Subdivisions to clarify definitions, or to add new definitions.

- SECTION 3: Amends Article 21.28-D, Insurance Code, by adding Section 5A. Defines the principal place of business of plan sponsors or other non-natural persons to facilitate determining when the Texas association provides coverage to insurance owned by entities that are not natural persons.
- SECTION 4: Amends Section 6 (a), Article 21.28-D, Insurance Code. Changes the name to include "Texas" in the name. The new name is the Texas Life, Accident, Health, and Hospital Service Insurance Guaranty Association, the current name is the Life, Accident, Health, and Hospital Service Insurance Guaranty Association.
- SECTION 5: Amends Section 8, Article 21.28-D, Insurance Code. Amends certain Subsections to clarify terms, and adds certain Subsections to clarify the association's rights and actions the guaranty association may take, particularly with respect to subrogation rights, access to statutory deposits, requests for information for evaluating claims for benefits, and finality of claims.
- SECTION 6: Amends Section 9, Article 21.28-D, Insurance Code. Amends certain Subsections and adds a Subsection relating to Class A and Class B assessments of member insurers to be consistent with the procedures used in the NAIC Model life and health insurance guaranty association act and several other states.
- SECTION 7: Amends Section 13 (a), Article 21.28-D, Insurance Code. Increases the percentage of reduction of an assessment credit shown on a member insurers books, and to decrease the time period for the reduction.
- SECTION 8: Amends Section 14 (d) and (i), Article 21.28-D, Insurance Code. Adds "impaired or" to the term insolvent insurer in (d) and (i) to conform to other provisions of the Act.
- SECTION 9: Makes the association name change effective September 1, 2005 and preserves the powers, duties, rights and obligations of the association and board members.
- SECTION 10: The effective date of the legislation is September 1, 2005. The legislation is not retroactive, but applies only to insurers that become impaired or insolvent on or after September 1, 2005. This revision is critical because the Association will continue to provide benefits and assess member insurers for companies that became impaired or insolvent prior to September 1, 2005; applying the legislation retroactively means policyholders and assessments of member insurers would not be treated in the same manner for the duration of an insolvency.

SECTION 11: Effective date

### **EFFECTIVE DATE**

September 1, 2005

### **COMPARISON OF SUBSTITUTE TO ORIGINAL**

The proposed committee substitute contains revisions developed jointly by the respective staffs of the Department of Insurance and the Guaranty Association. The changes in the committee substitute represent editorial enhancements, and do not substantively change the meaning or effect of the amendments in the introduced versions of the bill. In Section 1 of the bill, the substitute adds additional language to clarify policies and contracts that are covered and not covered by the Act. Adds provisions regarding the procedure when a policy or contract's interest or change in value are credited less than annually. In section 2, the substitute clarifies language regarding an allocation formula. In Section 10, there is a revision to the enactment clause, which has been clarified to provide that the changes in the law will apply on a prospective basis. This clarifies that the new law takes effect in insurer insolvencies occurring after the effective date, avoiding any retroactive application to pending claims.

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