

By: Williams

S.B. No. 567

A BILL TO BE ENTITLED

AN ACT

relating to the Texas Life, Accident, Health, and Hospital Service Insurance Guaranty Association.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Chapter 463, Insurance Code, is amended to read as follows:

CHAPTER 463. TEXAS LIFE AND [~~ACCIDENT~~] HEALTH [~~AND HOSPITAL SERVICE~~] INSURANCE GUARANTY ASSOCIATION

SECTION 2. Section 463.001, Insurance Code, is amended to read as follows:

Sec. 463.001. SHORT TITLE. This chapter may be cited as the Texas Life and [~~Accident~~] Health [~~and Hospital Service~~] Insurance Guaranty Association Act.

SECTION 3. Section 463.003(1), Insurance Code, is amended to read as follows:

(1) "Association" means the Texas Life and [~~Accident~~] Health [~~and Hospital Service~~] Insurance Guaranty Association.

SECTION 4. Section 463.051(a), Insurance Code, is amended to read as follows:

(a) The Texas Life and [~~Accident~~] Health [~~and Hospital Service~~] Insurance Guaranty Association is a nonprofit legal entity existing to pay benefits and continue coverage as provided by this chapter.

SECTION 5. Subchapter B, Chapter 463, Insurance Code, is amended by adding Section 463.059 to read as follows:

Sec. 463.059. MEETINGS BY TELEPHONE AND VIDEOCONFERENCE.

(a) Notwithstanding Chapter 551, Government Code, or any other law, the board or a committee of the board may meet by telephone conference call, videoconference, or other similar telecommunication method if immediate action is required and convening a quorum of the board or committee of the board at a single location is not reasonable or practical. A board or committee member who is unable to attend a meeting in person and who is participating in a board or committee meeting by telephone conference call, videoconference, or other similar telecommunication method may be counted to establish a quorum and may vote.

(b) A meeting authorized by this section is subject to the notice requirements that apply to other meetings.

(c) The notice of a meeting authorized by this section must specify that the location of the meeting is the location at which meetings of the board and committees of the board are usually held.

(d) Each part of a meeting authorized by this section that must be open to the public must be audible to the public at the location specified by Subsection (c).

(e) Two-way audio communication must be available during the entire meeting between all members of the board or committee attending a meeting authorized by this section and if the two-way audio communication is disrupted so that a quorum of the board or committee is no longer participating in the meeting, the meeting

1 may not continue until the two-way audio communication is
2 reestablished.

3 (f) An audio or digital recording of a meeting authorized by
4 this section must be made in accordance with the association's
5 bylaws. The recording of the open portion of the meeting must be
6 made available to the public.

7 (g) A vote during a meeting authorized by this section must
8 be taken in such a manner that the vote of each member is audible and
9 may be verified as the vote of the member.

10 SECTION 6. Section 463.153(c), Insurance Code, is amended
11 to read as follows:

12 (c) The total amount of assessments on a member insurer for
13 each account under Section 463.105 may not in one calendar year
14 exceed two percent of the insurer's average annual premiums on the
15 policies covered by the account during the three calendar years
16 preceding the year in which the insurer became an impaired or
17 insolvent insurer. If two or more assessments are authorized in a
18 calendar year with respect to insurers that become impaired or
19 insolvent in different calendar years, the average annual premiums
20 for purposes of the aggregate assessment percentage limitation
21 described by this subsection shall be equal to the higher of the
22 three-year average annual premiums for the applicable subaccount or
23 account as computed in accordance with this section. If the
24 maximum assessment and the other assets of the association do not
25 provide in a year an amount sufficient to carry out the
26 association's responsibilities, the association shall make
27 necessary additional assessments as soon as this chapter permits.

SECTION 7. Section 463.203(b), Insurance Code, is amended to read as follows:

(b) This chapter does not provide coverage for:

(1) any part of a policy or contract not guaranteed by the insurer or under which the risk is borne by the policy or contract owner;

(2) a policy or contract of reinsurance, unless an assumption certificate has been issued;

(3) any part of a policy or contract to the extent that the rate of interest on which that part is based:

(A) as averaged over the period of four years before the date the member insurer becomes impaired or insolvent under this chapter, whichever is earlier, exceeds a rate of interest determined by subtracting two percentage points from Moody's Corporate Bond Yield Average averaged for the same four-year period or for a lesser period if the policy or contract was issued less than four years before the date the member insurer becomes impaired or insolvent under this chapter, whichever is earlier; and

(B) on and after the date the member insurer becomes impaired or insolvent under this chapter, whichever is earlier, exceeds the rate of interest determined by subtracting three percentage points from Moody's Corporate Bond Yield Average as most recently available;

(4) a portion of a policy or contract issued to a plan or program of an employer, association, similar entity, or other person to provide life, health, or annuity benefits to the entity's

1 employees, members, or others, to the extent that the plan or
2 program is self-funded or uninsured, including benefits payable by
3 an employer, association, or similar entity under:

4 (A) a multiple employer welfare arrangement as
5 defined by Section 3, Employee Retirement Income Security Act of
6 1974 (29 U.S.C. Section 1002);

7 (B) a minimum premium group insurance plan;

8 (C) a stop-loss group insurance plan; or

9 (D) an administrative services-only contract;

10 (5) any part of a policy or contract to the extent that
11 the part provides dividends, experience rating credits, or voting
12 rights, or provides that fees or allowances be paid to any person,
13 including the policy or contract owner, in connection with the
14 service to or administration of the policy or contract;

15 (6) a policy or contract issued in this state by a
16 member insurer at a time the insurer was not authorized to issue the
17 policy or contract in this state;

18 (7) an unallocated annuity contract issued to or in
19 connection with a benefit plan protected under the federal Pension
20 Benefit Guaranty Corporation, regardless of whether the Pension
21 Benefit Guaranty Corporation has not yet become liable to make any
22 payments with respect to the benefit plan;

23 (8) any part of an unallocated annuity contract that
24 is not issued to or in connection with a specific employee, a
25 benefit plan for a union or association of individuals, or a
26 governmental lottery;

27 (9) any part of a financial guarantee, funding

1 agreement, or guaranteed investment contract that:

2 (A) does not contain a mortality guarantee; and

3 (B) is not issued to or in connection with a
4 specific employee, a benefit plan, or a governmental lottery;

5 (10) a part of a policy or contract to the extent that
6 the assessments required by Subchapter D with respect to the policy
7 or contract are preempted by federal or state law;

8 (11) a contractual agreement that established the
9 member insurer's obligations to provide a book value accounting
10 guaranty for defined contribution benefit plan participants by
11 reference to a portfolio of assets that is owned by the benefit plan
12 or the plan's trustee in a case in which neither the benefit plan
13 sponsor nor its trustee is an affiliate of the member insurer; ~~[or]~~

14 (12) a part of a policy or contract to the extent the
15 policy or contract provides for interest or other changes in value
16 that are to be determined by the use of an index or external
17 reference stated in the policy or contract, but that have not been
18 credited to the policy or contract, or as to which the policy or
19 contract owner's rights are subject to forfeiture, as of the date
20 the member insurer becomes an impaired or insolvent insurer under
21 this chapter, whichever date is earlier, subject to Subsection (c);
22 or

23 (13) a policy or contract providing a hospital,
24 medical, prescription drug, or other health care benefit under 42
25 U.S.C. Sections 1395w-21 et seq. and 1395w-101 et seq. (Medicare
26 Parts C and D) or a regulation adopted under those federal statutes.

27 SECTION 8. Section 463.204, Insurance Code, is amended to

1 read as follows:

2 Sec. 463.204. OBLIGATIONS EXCLUDED. A contractual
3 obligation does not include:

4 (1) death benefits in an amount in excess of \$300,000
5 or a net cash surrender or net cash withdrawal value in an amount in
6 excess of \$100,000 under one or more policies on a single life;

7 (2) an amount in excess of:

8 (A) \$250,000 [~~\$100,000~~] in the present value
9 under one or more annuity contracts issued with respect to a single
10 life under individual annuity policies or group annuity policies;
11 or

12 (B) \$5 million in unallocated annuity contract
13 benefits with respect to a single contract owner regardless of the
14 number of those contracts;

15 (3) an amount in excess of the following amounts,
16 including any net cash surrender or cash withdrawal values, under
17 one or more accident, health, accident and health, or long-term
18 care insurance policies on a single life:

19 (A) \$500,000 for basic hospital,
20 medical-surgical, or major medical insurance, as those terms are
21 defined by this code or rules adopted by the commissioner;

22 (B) \$300,000 for disability and long-term care
23 insurance, as those terms are defined by this code or rules adopted
24 by the commissioner; or

25 (C) \$200,000 for coverages that are not defined
26 as basic hospital, medical-surgical, major medical, disability, or
27 long-term care insurance;

1 (4) an amount in excess of \$250,000 [~~\$100,000~~] in
2 present value annuity benefits, in the aggregate, including any net
3 cash surrender and net cash withdrawal values, with respect to each
4 individual participating in a governmental retirement benefit plan
5 established under Section 401, 403(b), or 457, Internal Revenue
6 Code of 1986 (26 U.S.C. Sections 401, 403(b), and 457), covered by
7 an unallocated annuity contract or the beneficiary or beneficiaries
8 of the individual if the individual is deceased;

9 (5) an amount in excess of \$250,000 [~~\$100,000~~] in
10 present value annuity benefits, in the aggregate, including any net
11 cash surrender and net cash withdrawal values, with respect to each
12 payee of a structured settlement annuity or the beneficiary or
13 beneficiaries of the payee if the payee is deceased;

14 (6) aggregate benefits in an amount in excess of
15 \$300,000 with respect to a single life, except with respect to:

16 (A) benefits paid under basic hospital,
17 medical-surgical, or major medical insurance policies, described
18 by Subdivision (3)(A), in which case the aggregate benefits are
19 \$500,000; and

20 (B) benefits paid to one owner of multiple
21 nongroup policies of life insurance, whether the policy owner is an
22 individual, firm, corporation, or other person, and whether the
23 persons insured are officers, managers, employees, or other
24 persons, in which case the maximum benefits are \$5 million
25 regardless of the number of policies and contracts held by the
26 owner;

27 (7) an amount in excess of \$5 million in benefits, with

1 respect to either one plan sponsor whose plans own directly or in
2 trust one or more unallocated annuity contracts not included in
3 Subdivision (4) irrespective of the number of contracts with
4 respect to the contract owner or plan sponsor or one contract owner
5 provided coverage under Section 463.201(a)(3)(B), except that, if
6 one or more unallocated annuity contracts are covered contracts
7 under this chapter and are owned by a trust or other entity for the
8 benefit of two or more plan sponsors, coverage shall be afforded by
9 the association if the largest interest in the trust or entity
10 owning the contract or contracts is held by a plan sponsor whose
11 principal place of business is in this state, and in no event shall
12 the association be obligated to cover more than \$5 million in
13 benefits with respect to all these unallocated contracts;

14 (8) any contractual obligations of the insolvent or
15 impaired insurer under a covered policy or contract that do not
16 materially affect the economic value of economic benefits of the
17 covered policy or contract; or

18 (9) punitive, exemplary, extracontractual, or bad
19 faith damages, regardless of whether the damages are:

20 (A) agreed to or assumed by an insurer or
21 insured; or

22 (B) imposed by a court.

23 SECTION 9. Section 463.263(b), Insurance Code, is amended
24 to read as follows:

25 (b) The association is entitled to retain a portion of any
26 amount paid to the association under this section equal to the
27 percentage determined by dividing the aggregate amount of policy

owners' claims related to that insolvency for which the association has provided statutory benefits by the aggregate amount of all policy owners' claims in this state related to that insolvency and shall remit to the domiciliary receiver the amount paid to the association less the amount ~~and~~ retained under this section.

SECTION 10. Subchapter F, Chapter 463, Insurance Code, is amended by adding Section 463.264 to read as follows:

Sec. 463.264. REINSURANCE. (a) The association may elect to succeed to the rights of an insolvent insurer under a contract of reinsurance to which the insolvent insurer is a party to the extent:

(1) of the contractual obligations of the covered policies for which the association may become obligated; and

(2) that the reinsurance contract provides coverage for losses occurring after the association is obligated to provide coverage.

(b) As a condition to making an election under Subsection (a), the association shall pay all unpaid premiums due under the reinsurance contract to which Subsection (a) refers for coverage relating to a period before and after the date the association is obligated to provide coverage.

SECTION 11. Section 154.359(c), Finance Code, is amended to read as follows:

(c) A claim may not be approved for a loss to the extent the claim is insured, bonded, or otherwise covered, protected, or reimbursed from other sources, including coverage provided by the Texas Life and ~~[, Accident,]~~ Health~~[, and Hospital Service]~~ Insurance Guaranty Association under Chapter 463, Insurance Code.

SECTION 12. Section 609.113(b), Government Code, is amended to read as follows:

(b) A plan administrator may not approve a vendor's application if the vendor is:

(1) a state or national bank or savings and loan association, the deposits of which are not insured by the Federal Deposit Insurance Corporation;

(2) a credit union, the deposits of which are not insured by the National Credit Union Administration Board or the Texas Share Guaranty Credit Union; or

(3) an insurance company that:

(A) is not a member of the Texas Life and ~~Accident,~~ Health ~~and Hospital Service~~ Insurance Guaranty Association; or

(B) is an impaired or insolvent insurer under Chapter 463 ~~Article 21.28-D~~, Insurance Code.

SECTION 13. Section 609.712(b), Government Code, is amended to read as follows:

(b) A plan administrator may not approve a vendor's application if the vendor is:

(1) a state or national bank or savings and loan association, the deposits of which are not insured by the Federal Deposit Insurance Corporation;

(2) a credit union, the deposits of which are not insured by the National Credit Union Administration Board; or

(3) an insurance company that:

(A) is not a member of the Texas Life and

1 ~~Accident,~~] Health[, ~~and Hospital Service~~] Insurance Guaranty
2 Association; or

3 (B) is an impaired or insolvent insurer under
4 Chapter 463 [~~Article 21.28-D~~], Insurance Code.

5 SECTION 14. (a) Effective September 1, 2011:

6 (1) the name of the Texas Life, Accident, Health, and
7 Hospital Service Insurance Guaranty Association is changed to the
8 Texas Life and Health Insurance Guaranty Association, and all
9 powers, duties, rights, and obligations of the Texas Life,
10 Accident, Health, and Hospital Service Insurance Guaranty
11 Association are the powers, duties, rights, and obligations of the
12 Texas Life and Health Insurance Guaranty Association;

13 (2) a member of the board of directors of the Texas
14 Life, Accident, Health, and Hospital Service Insurance Guaranty
15 Association is a member of the board of directors of the Texas Life
16 and Health Insurance Guaranty Association; and

17 (3) a reference in law to the Texas Life, Accident,
18 Health, and Hospital Service Insurance Guaranty Association is a
19 reference to the Texas Life and Health Insurance Guaranty
20 Association.

21 (b) The Texas Life and Health Insurance Guaranty
22 Association is the successor to the Texas Life, Accident, Health,
23 and Hospital Service Insurance Guaranty Association in all
24 respects. All personnel, equipment, data, documents, facilities,
25 contracts, items, other property, rules, decisions, and
26 proceedings of or involving the Texas Life, Accident, Health, and
27 Hospital Service Insurance Guaranty Association are unaffected by

1 the change in the name of the association.

2 SECTION 15. (a) The change in law made by this Act to
3 Section 463.153(c), Insurance Code, applies to assessments
4 authorized on or after October 1, 2008, with respect to an insurer
5 that first became impaired or insolvent after September 1, 2005;
6 all other changes in law made by this Act apply only to an insurer
7 that first becomes an impaired or insolvent insurer on or after the
8 effective date of this Act.

9 (b) Except as provided by Subsection (a) of this section, an
10 insurer that becomes an impaired or insolvent insurer before the
11 effective date of this Act is governed by the law as it existed
12 immediately before that date, and that law is continued in effect
13 for that purpose.

14 SECTION 16. This Act takes effect September 1, 2011.