

By: Frullo

H.B. No. 3238

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the regulation of funding agreements, guaranteed  
3 investment contracts, and synthetic guaranteed investment  
4 contracts issued by a life insurer.

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

6 SECTION 1. Section 443.301, Insurance Code, is amended to  
7 read as follows:

8 Sec. 443.301. PRIORITY OF DISTRIBUTION. The priority of  
9 payment of distributions on unsecured claims must be in accordance  
10 with the order in which each class of claims is set forth in this  
11 section. Every claim in each class shall be paid in full, or  
12 adequate funds retained for their payment, before the members of  
13 the next class receive payment, and all claims within a class must  
14 be paid substantially the same percentage of the amount of the  
15 claim. Except as provided by Subsections (a)(2), (a)(3), (i), and  
16 (k), subclasses may not be established within a class. No claim by a  
17 shareholder, policyholder, or other creditor shall be permitted to  
18 circumvent the priority classes through the use of equitable  
19 remedies. The order of distribution of claims shall be:

20 (a) Class 1. (1) The costs and expenses of administration  
21 expressly approved or ratified by the liquidator, including the  
22 following:

23 (A) the actual and necessary costs of preserving  
24 or recovering the property of the insurer;

1 (B) reasonable compensation for all services  
2 rendered on behalf of the administrative supervisor or receiver;  
3 (C) any necessary filing fees;  
4 (D) the fees and mileage payable to witnesses;  
5 (E) unsecured loans obtained by the receiver; and  
6 (F) expenses, if any, approved by the  
7 rehabilitator of the insurer and incurred in the course of the  
8 rehabilitation that are unpaid at the time of the entry of the order  
9 of liquidation.

10 (2) The reasonable expenses of a guaranty association,  
11 including overhead, salaries and other general administrative  
12 expenses allocable to the receivership to include administrative  
13 and claims handling expenses and expenses in connection with  
14 arrangements for ongoing coverage, other than expenses incurred in  
15 the performance of duties under Section [462.002\(3\)](#), [463.108](#),  
16 [463.111](#), [463.113](#), [463.353](#), or [2602.113](#) or similar duties under the  
17 statute governing a similar organization in another state. In the  
18 case of the Texas Property and Casualty Insurance Guaranty  
19 Association and other property and casualty guaranty associations,  
20 the expenses shall include loss adjustment expenses, including  
21 adjusting and other expenses and defense and cost containment  
22 expenses. In the event that there are insufficient assets to pay  
23 all of the costs and expenses of administration under Subsection  
24 (a)(1) and the expenses of a guaranty association, the costs and  
25 expenses under Subsection (a)(1) shall have priority over the  
26 expenses of a guaranty association. In this event, the expenses of  
27 a guaranty association shall be paid on a pro rata basis after the

1 payment of costs and expenses under Subsection (a)(1) in full.

2 (3) For purposes of Subsection (a)(1)(E), any  
3 unsecured loan obtained by the receiver, unless by its terms it  
4 otherwise provides, has priority over all other costs of  
5 administration. Absent agreement to the contrary, all claims in  
6 this subclass share pro rata.

7 (4) Except as expressly approved by the receiver, any  
8 expenses arising from a duty to indemnify the directors, officers,  
9 or employees of the insurer are excluded from this class and, if  
10 allowed, are Class 5 claims.

11 (b) Class 2. (1) All claims under policies of insurance  
12 and annuity contracts, including funding agreements, guaranteed  
13 investment contracts, synthetic guaranteed investment contracts,  
14 third-party claims, claims under nonassessable policies for  
15 unearned premium, claims of obligees and, subject to the discretion  
16 of the receiver, completion contractors under surety bonds and  
17 surety undertakings other than bail bonds, mortgage or financial  
18 guaranties, or other forms of insurance offering protection against  
19 investment risk, claims by principals under surety bonds and surety  
20 undertakings for wrongful dissipation of collateral by the insurer  
21 or its agents, and claims incurred during the extension of coverage  
22 provided for in Section 443.152. For purposes of this subdivision,  
23 "annuity contract," "funding agreement," "guaranteed investment  
24 contract," and "synthetic guaranteed investment contract" have the  
25 meanings assigned by Section 1154.003.

26 (2) All other claims incurred in fulfilling the  
27 statutory obligations of a guaranty association not included in

1 Class 1, including indemnity payments on covered claims and, in the  
2 case of the Life, Accident, Health, and Hospital Service Insurance  
3 Guaranty Association or another life and health guaranty  
4 association, all claims as a creditor of the impaired or insolvent  
5 insurer for all payments of and liabilities incurred on behalf of  
6 covered claims or covered obligations of the insurer and for the  
7 funds needed to reinsure those obligations with a solvent insurer.

8 (3) Claims for benefits under a health care plan  
9 issued by a health maintenance organization.

10 (4) Claims under insurance policies or contracts for  
11 benefits issued by an unauthorized insurer.

12 (5) Notwithstanding any provision of this chapter, the  
13 following claims are excluded from Class 2 priority:

14 (A) obligations of the insolvent insurer arising  
15 out of reinsurance contracts;

16 (B) obligations, excluding unearned premium  
17 claims on policies other than reinsurance agreements, incurred  
18 after:

19 (i) the expiration date of the insurance  
20 policy;

21 (ii) the policy has been replaced by the  
22 insured or canceled at the insured's request; or

23 (iii) the policy has been canceled as  
24 provided by this chapter;

25 (C) obligations to insurers, insurance pools, or  
26 underwriting associations and their claims for contribution,  
27 indemnity, or subrogation, equitable or otherwise;

1 (D) any claim that is in excess of any applicable  
2 limits provided in the insurance policy issued by the insurer;

3 (E) any amount accrued as punitive or exemplary  
4 damages unless expressly covered under the terms of the policy;

5 (F) tort claims of any kind against the insurer  
6 and claims against the insurer for bad faith or wrongful settlement  
7 practices; and

8 (G) claims of the guaranty associations for  
9 assessments not paid by the insurer, which must be paid as claims in  
10 Class 5.

11 (c) Class 3. Claims of the federal government not included  
12 in Class 2.

13 (d) Class 4. Debts due employees for services or benefits  
14 to the extent that the debts do not exceed \$5,000 or two months  
15 salary, whichever is the lesser, and represent payment for services  
16 performed within one year before the entry of the initial order of  
17 receivership. This priority is in lieu of any other similar  
18 priority that may be authorized by law as to wages or compensation  
19 of employees.

20 (e) Class 5. Claims of other unsecured creditors not  
21 included in Classes 1 through 4, including claims under reinsurance  
22 contracts, claims of guaranty associations for assessments not paid  
23 by the insurer, and other claims excluded from Class 2.

24 (f) Class 6. Claims of any state or local governments,  
25 except those specifically classified elsewhere in this section.  
26 Claims of attorneys for fees and expenses owed them by an insurer  
27 for services rendered in opposing a formal delinquency proceeding.

1 In order to prove the claim, the claimant must show that the insurer  
2 that is the subject of the delinquency proceeding incurred the fees  
3 and expenses based on its best knowledge, information, and belief,  
4 formed after reasonable inquiry, indicating opposition was in the  
5 best interests of the insurer, was well grounded in fact, and was  
6 warranted by existing law or a good faith argument for the  
7 extension, modification, or reversal of existing law, and that  
8 opposition was not pursued for any improper purpose, such as to  
9 harass or to cause unnecessary delay or needless increase in the  
10 cost of the litigation.

11 (g) Class 7. Claims of any state or local government for a  
12 penalty or forfeiture, but only to the extent of the pecuniary loss  
13 sustained from the act, transaction, or proceeding out of which the  
14 penalty or forfeiture arose, with reasonable and actual costs  
15 occasioned thereby. The balance of the claims must be treated as  
16 Class 9 claims under Subsection (i).

17 (h) Class 8. Except as provided in Sections [443.251\(b\)](#) and  
18 (d), late filed claims that would otherwise be classified in  
19 Classes 2 through 7.

20 (i) Class 9. Surplus notes, capital notes or contribution  
21 notes or similar obligations, premium refunds on assessable  
22 policies, and any other claims specifically assigned to this class.  
23 Claims in this class are subject to any subordination agreements  
24 related to other claims in this class that existed before the entry  
25 of the liquidation order.

26 (j) Class 10. Interest on allowed claims of Classes 1  
27 through 9, according to the terms of a plan proposed by the

1 liquidator and approved by the receivership court.

2 (k) Class 11. Claims of shareholders or other owners  
3 arising out of their capacity as shareholders or other owners, or  
4 any other capacity, except as they may be qualified in Class 2, 5,  
5 or 10. Claims in this class are subject to any subordination  
6 agreements related to other claims in this class that existed  
7 before the entry of the liquidation order.

8 SECTION 2. Subtitle C, Title 7, Insurance Code, is amended  
9 by adding Chapter 1154 to read as follows:

10 CHAPTER 1154. FUNDING AGREEMENTS, GUARANTEED INVESTMENT CONTRACTS,  
11 AND SYNTHETIC GUARANTEED INVESTMENT CONTRACTS

12 SUBCHAPTER A. GENERAL PROVISIONS

13 Sec. 1154.001. SHORT TITLE. This chapter may be cited as  
14 the Act for the Regulation of Funding Agreements, Guaranteed  
15 Investment Contracts, and Synthetic Guaranteed Investment  
16 Contracts.

17 Sec. 1154.002. PURPOSE; LEGISLATIVE INTENT; CONSTRUCTION.

18 (a) The purpose of this chapter is to:

19 (1) promote the public welfare by regulating funding  
20 agreements, guaranteed investment contracts, and synthetic  
21 guaranteed investment contracts; and

22 (2) clarify and codify the existing law pertaining to  
23 funding agreements, guaranteed investment contracts, and synthetic  
24 guaranteed investment contracts.

25 (b) This chapter shall be liberally construed.

26 Sec. 1154.003. DEFINITIONS. In this chapter:

27 (1) "Allocated group annuity contract" means a group

1 annuity contract or group annuity certificate under which the life  
2 insurer establishes and maintains individual account records and  
3 investment account balances for the group participants to allocate  
4 and guarantee a specific payment amount to each group member.

5 (2) "Annuity contract" means a contract, including a  
6 funding agreement, guaranteed investment contract, and synthetic  
7 guaranteed investment contract, issued by a life insurer, with or  
8 without a mortality or morbidity contingency, under which:

9 (A) the owner deposits cash or assets in one or  
10 more installments with the life insurer; and

11 (B) the owner or a beneficiary designated by the  
12 owner has a right to receive periodic payments for a specified  
13 future term.

14 (3) "Funding agreement" means a type of annuity  
15 contract under which a life insurer:

16 (A) accepts and accumulates funds, including  
17 noncash assets; and

18 (B) makes one or more payments at a future date in  
19 amounts that are not based on mortality or morbidity contingencies.

20 (4) "Governmental body" means a federal, state,  
21 municipal, local, or foreign court, tribunal, governmental  
22 department, commission, board, bureau, agency, authority,  
23 instrumentality, regulatory body, or quasi-regulatory body.

24 (5) "Group" means a group to which a group life  
25 insurance policy may be issued under Subchapter B, Chapter 1131.

26 (6) "Group annuity certificate" means a certificate  
27 issued to a group member in connection with the group member's group

1 annuity contract.

2 (7) "Group annuity contract" means an annuity contract  
3 issued to a group and not an individual.

4 (8) "Guaranteed investment contract" means a type of  
5 annuity contract issued by a life insurer:

6 (A) that is a funding vehicle typically issued to  
7 a retirement plan; and

8 (B) under which the life insurer accepts a  
9 deposit or series of deposits from the purchaser and guarantees to  
10 pay a specified interest rate of return on the funds deposited  
11 during a specified period.

12 (9) "Life insurer" means an insurance company  
13 authorized to engage in the business of life insurance, including  
14 issuing annuity contracts, in this state.

15 (10) "Synthetic guaranteed investment contract" means  
16 a group annuity contract or other agreement issued by a life insurer  
17 that, wholly or partly, establishes the life insurer's obligations  
18 by reference to a segregated portfolio of assets that the life  
19 insurer does not own.

20 (11) "Unallocated group annuity contract" means a  
21 group annuity contract or group annuity certificate that is not  
22 issued to and owned by an individual, except to the extent of any  
23 annuity benefits guaranteed to an individual by an insurer under  
24 the contract or certificate.

25 Sec. 1154.004. APPLICABILITY OF CERTAIN OTHER LAW.  
26 Chapters 521, 1107, 1115, and 1131 do not apply to funding  
27 agreements or guaranteed investment contracts without mortality or

1 morbidity contingencies.

2 Sec. 1154.005. RULES. The commissioner may adopt rules to  
3 implement or clarify this chapter.

4 SUBCHAPTER B. FUNDING AGREEMENTS

5 Sec. 1154.051. ESTABLISHMENT OF FUNDING AGREEMENTS. (a) A  
6 life insurer may issue a funding agreement to generate an income  
7 stream for the purchaser of the agreement or fund a future liability  
8 of the purchaser or the purchaser's designee. A life insurer may  
9 issue a funding agreement to:

10 (1) an accredited investor, as defined by 17 C.F.R.  
11 Section 230.501; or

12 (2) a governmental body.

13 (b) A life insurer that issues a funding agreement in this  
14 state engages in the business of insurance for the purpose of  
15 regulation.

16 SUBCHAPTER C. GUARANTEED INVESTMENT CONTRACTS

17 Sec. 1154.101. ESTABLISHMENT OF GUARANTEED INVESTMENT  
18 CONTRACTS. A life insurer may issue a guaranteed investment  
19 contract to provide a benefit in a fixed amount or a variable amount  
20 or a fixed amount and a variable amount. A life insurer may issue a  
21 guaranteed investment contract to a group as an allocated or  
22 unallocated group annuity contract.

23 SECTION 3. This Act takes effect September 1, 2015.