

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.