

By: Eltife

S.B. No. 1196

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the regulation of funding agreements, guaranteed
3 investment contracts, and synthetic guaranteed investment
4 contracts issued by a life insurer; clarifying certain provisions
5 relating to insurer receivership.

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

7 SECTION 1. Section [443.301](#), Insurance Code, is amended to
8 read as follows:

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

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

24 (A) the actual and necessary costs of preserving

1 or recovering the property of the insurer;

2 (B) reasonable compensation for all services
3 rendered on behalf of the administrative supervisor or receiver;

4 (C) any necessary filing fees;

5 (D) the fees and mileage payable to witnesses;

6 (E) unsecured loans obtained by the receiver; and

7 (F) expenses, if any, approved by the
8 rehabilitator of the insurer and incurred in the course of the
9 rehabilitation that are unpaid at the time of the entry of the order
10 of liquidation.

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

1 a guaranty association shall be paid on a pro rata basis after the
2 payment of costs and expenses under Subsection (a)(1) in full.

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

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

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

1 (2) All other claims incurred in fulfilling the
2 statutory obligations of a guaranty association not included in
3 Class 1, including indemnity payments on covered claims and, in the
4 case of the Life, Accident, Health, and Hospital Service Insurance
5 Guaranty Association or another life and health guaranty
6 association, all claims as a creditor of the impaired or insolvent
7 insurer for all payments of and liabilities incurred on behalf of
8 covered claims or covered obligations of the insurer and for the
9 funds needed to reinsure those obligations with a solvent insurer.

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

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

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

16 (A) obligations of the insolvent insurer arising
17 out of reinsurance contracts;

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

21 (i) the expiration date of the insurance
22 policy;

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

25 (iii) the policy has been canceled as
26 provided by this chapter;

27 (C) obligations to insurers, insurance pools, or

1 underwriting associations and their claims for contribution,
2 indemnity, or subrogation, equitable or otherwise;

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

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

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

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

13 (c) Class 3. Claims of the federal government not included
14 in Class 2.

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

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

26 (f) Class 6. Claims of any state or local governments,
27 except those specifically classified elsewhere in this section.

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

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

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

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

1 (j) Class 10. Interest on allowed claims of Classes 1
2 through 9, according to the terms of a plan proposed by the
3 liquidator and approved by the receivership court.

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

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

12 CHAPTER 1154. FUNDING AGREEMENTS, GUARANTEED INVESTMENT
13 CONTRACTS, AND SYNTHETIC GUARANTEED INVESTMENT CONTRACTS

14 SUBCHAPTER A. GENERAL PROVISIONS

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

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

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

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

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

27 (b) This chapter shall be liberally construed.

1 Sec. 1154.003. DEFINITIONS. In this chapter:

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

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

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

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

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

18 (A) accepts and accumulates funds, including
19 noncash assets; and

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

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

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

1 (6) "Group annuity certificate" means a certificate
2 issued to a group member in connection with the group member's group
3 annuity contract.

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

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

8 (A) that is a funding vehicle typically issued to
9 a retirement plan; and

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

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

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

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

27 Sec. 1154.004. APPLICABILITY OF CERTAIN OTHER LAW.

1 Chapters 521, 1107, 1115, and 1131 do not apply to funding
2 agreements, guaranteed investment contracts, or synthetic
3 guaranteed investment contracts without mortality or morbidity
4 contingencies.

5 Sec. 1154.005. RULES. The commissioner may adopt rules to
6 implement or clarify this chapter.

7 SUBCHAPTER B. FUNDING AGREEMENTS

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

13 (1) an accredited investor, as defined by 17 C.F.R.
14 Section 230.501;

15 (2) a governmental body; or

16 (3) an institution with assets in excess of \$25
17 million.

18 (b) A life insurer that issues a funding agreement in this
19 state engages in the business of insurance for the purpose of
20 regulation.

21 SUBCHAPTER C. GUARANTEED INVESTMENT CONTRACTS

22 Sec. 1154.101. ESTABLISHMENT OF GUARANTEED INVESTMENT
23 CONTRACTS. A life insurer may issue a guaranteed investment
24 contract to provide a benefit in a fixed amount or a variable amount
25 or a fixed amount and a variable amount. A life insurer may issue a
26 guaranteed investment contract to a group as an allocated or
27 unallocated group annuity contract.

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