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SENATE BILL 5191

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State of Washington

53rd Legislature

1993 Regular Session

By Senators Moore and Prentice

Read first time 01/15/93. Referred to Committee on Labor & Commerce.

1 AN ACT Relating to the life and disability guaranty fund; and  
2 amending RCW 48.32A.010, 48.32A.020, 48.32A.030, 48.32A.050,  
3 48.32A.060, 48.32A.070, 48.32A.080, and 48.32A.120.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 48.32A.010 and 1990 c 51 s 1 are each amended to read  
6 as follows:

7 The purpose of this chapter is the creation of funds arising from  
8 assessments upon all insurers authorized to transact life or disability  
9 insurance business in the state of Washington, to be used to assure to  
10 the extent prescribed herein the performance of the insurance  
11 contractual obligations of insurers becoming impaired or insolvent to  
12 residents of this state, and to promote thereby the stability of  
13 domestic insurers. In the judgment of the legislature, the foregoing  
14 purpose not being capable of accomplishment by a corporation created  
15 under general laws, the creation of the nonprofit association  
16 hereinafter in this chapter described is deemed essential for the  
17 protection of the general welfare.

1       **Sec. 2.** RCW 48.32A.020 and 1990 c 51 s 2 are each amended to read  
2 as follows:

3       This chapter shall apply as follows to life insurance policies,  
4 disability insurance policies, and annuity contracts of (~~liquidating~~)  
5 impaired or insolvent insurers, other than separate account variable  
6 policies and contracts authorized by chapter 48.18A RCW:

7       (1) To all such policies and contracts of a domestic, foreign, or  
8 alien insurer authorized to transact such insurance or annuity business  
9 in this state at the time such policies or contracts were issued or at  
10 the time (~~of entry of the order of liquidation of the insolvent~~) the  
11 insurer becomes an impaired or insolvent insurer, and of which the  
12 policy or contract owner, insured, annuitant, beneficiary, or payee is  
13 a resident (~~of and domiciled within this state. This chapter shall~~  
14 ~~apply only as to the insurance or annuities thereunder of individuals~~  
15 ~~who are residents of and domiciled within this state. The place of~~  
16 ~~residence or domicile shall be determined as of the date of entry of~~  
17 ~~the order of liquidation against the insurer~~)).

18       (2) To policies and contracts only of impaired or insolvent  
19 insurers (~~with respect to which an order of liquidation is entered~~  
20 ~~after May 21, 1971~~)).

21       (3) The obligations of the association created under this chapter  
22 shall apply only as to contractual obligations of the insurer under  
23 insurance policies and annuity contracts, and shall be no greater than  
24 such obligations of the impaired or insolvent insurer (~~at the time of~~  
25 ~~entry of the order of liquidation~~)). However, the liability of the  
26 association shall in no event exceed:

27       (a) With respect to any one life, regardless of the number of  
28 policies or contracts:

29       (i) Five hundred thousand dollars in life insurance death benefits,  
30 including any net cash surrender and net cash withdrawal values for  
31 life insurance;

32       (ii) Five hundred thousand dollars in disability insurance  
33 benefits, including any net cash surrender and net cash withdrawal  
34 values; or

35       (iii) Five hundred thousand dollars in the present value of  
36 allocated annuity benefits and annuities established under section  
37 403(b) of the United States internal revenue code.

1 The association shall not be liable to expend more than five  
2 hundred thousand dollars in the aggregate with respect to any one  
3 individual under this subsection; or

4 (b) With respect to any one contract owner covered by any  
5 unallocated annuity contract, including governmental retirement plans  
6 established under section 401 or 457 of the United States internal  
7 revenue code, five million dollars in benefits, irrespective of the  
8 number of such contracts held by that contract owner.

9 (4) This chapter shall not apply to:

10 (a) Fraternal benefit societies;

11 (b) Health care service contractors;

12 (c) Insurance or liability assumed by the ~~((liquidating))~~ impaired  
13 or insolvent insurer under a contract of reinsurance other than bulk  
14 reinsurance;

15 (d) Any unallocated annuity contract issued to an employee benefit  
16 plan protected under the federal pension benefit guaranty corporation;  
17 or

18 (e) Any portion of any unallocated annuity contract which is not  
19 issued to or in connection with a specific employee, union, association  
20 of natural persons benefit plan, or a government lottery.

21 **Sec. 3.** RCW 48.32A.030 and 1990 c 51 s 3 are each amended to read  
22 as follows:

23 Within the meaning of this chapter:

24 (1) "Account" means any one of the three guaranty fund accounts  
25 created under RCW 48.32A.080(1).

26 (2) "Assessment" means a charge made upon an insurer by the board  
27 under this chapter for payment into a guaranty fund. The charge  
28 constitutes a legal liability of the insurer so assessed.

29 (3) "Association" means "the Washington life and disability  
30 insurance guaranty association((#))."

31 ~~((+2))~~ (4) "Board" means the board of directors of the Washington  
32 life and disability insurance guaranty association.

33 ~~((+3))~~ (5) "Certificate" means a certificate of contribution  
34 provided for in RCW 48.32A.090.

35 (6) "Commissioner" means the insurance commissioner of this state.

36 ~~((+4))~~ "Policies" means life or disability insurance policies;  
37 "contracts" means annuity contracts and contracts supplemental to such  
38 insurance policies and annuity contracts.

1       ~~(5) "Liquidating)) (7) "Contributor" means an insurer that has paid~~  
2 ~~an assessment.~~

3       (8) "Fund" means a guaranty fund provided for in RCW 48.32A.080.

4       (9) "Impaired insurer" means an insurer that, after the effective  
5 date of this act, is not an insolvent insurer, and (a) is deemed by the  
6 commissioner to be potentially unable to fulfill its contractual  
7 obligations or (b) is placed under an order of rehabilitation or  
8 conservation, or a substantially similar order, by a court of competent  
9 jurisdiction.

10       (10) "Insolvent insurer" means an insurer with respect to which an  
11 order of liquidation has been entered by a court of competent  
12 jurisdiction.

13       ~~((6) "Fund" means a guaranty fund provided for in RCW 48.32A.080.~~

14       ~~(7) "Account" means any one of the three guaranty fund accounts~~  
15 ~~created under RCW 48.32A.080(1).~~

16       ~~(8) "Assessment" means a charge made upon an insurer by the board~~  
17 ~~under this chapter for payment into a guaranty fund. The charge shall~~  
18 ~~constitute a legal liability of the insurer so assessed.~~

19       ~~(9) "Contributor" means an insurer which has paid an assessment.~~

20       ~~(10) "Certificate" means a certificate of contribution provided for~~  
21 ~~in RCW 48.32A.090.))~~

22       (11) "Policies" means life or disability insurance policies;  
23 "contracts" means annuity contracts and contracts supplemental to such  
24 insurance policies and annuity contracts.

25       (12) "Resident" means a person who resides in this state at the  
26 time an insurer is determined to be an impaired or insolvent insurer  
27 and to whom a contractual obligation is owed. A person may be resident  
28 of only one state, which in the case of a person other than an  
29 individual is its principal place of business.

30       (13) "Unallocated annuity contract" means any annuity contract or  
31 group annuity certificate which is not issued to and owned by an  
32 individual, except to the extent of any annuity benefits guaranteed to  
33 an individual by an insurer under such contract or certificate.

34       **Sec. 4.** RCW 48.32A.050 and 1971 ex.s. c 259 s 5 are each amended  
35 to read as follows:

36       The association shall have the power:

1 (1) To use a seal, to contract, to sue and be sued and, in  
2 addition, possess and exercise all powers necessary or convenient for  
3 the purposes of this chapter.

4 (2) With the approval of the commissioner and as provided in RCW  
5 48.32A.060, to assume, reinsure, or guarantee or cause to be assumed,  
6 reinsured, or guaranteed, partially or wholly, any or all of the  
7 policies or contracts of any (~~(liquidating)~~) impaired or insolvent  
8 domestic life or disability insurer or any policy or contract to which  
9 this chapter applies, and to make available from a fund, the creation  
10 of which is hereinafter in RCW 48.32A.080 provided, such sum or sums as  
11 may be necessary for such purpose.

12 (3) To carry out the provisions of this section, the association  
13 shall have, and may exercise, all necessary rights, powers, privileges,  
14 and franchises of a domestic insurer, except that it shall not be  
15 authorized to issue contracts or policies unless such contracts or  
16 policies are pursuant to contracts and policies representing  
17 obligations in whole or in part of the (~~(liquidating)~~) impaired or  
18 insolvent insurer or of the association.

19 (4) To borrow money for the purposes of the fund, either with or  
20 without security, and pledge such assets in a fund as security for such  
21 loans, and in connection therewith, rehypothecate any securities or  
22 collateral pledged to it by an insurer. Any notes or other evidence of  
23 indebtedness of the association shall be legal investments for domestic  
24 insurers and may be carried as admitted assets.

25 (5) To collect or enforce by legal proceedings, if necessary, the  
26 payment of all assessments for which any insurer may be liable under  
27 this chapter; and to collect any other debt or obligation due to the  
28 association or a fund created in this chapter.

29 (6) To make bylaws and regulations for the conduct of the affairs  
30 of the association, not inconsistent with this chapter.

31 **Sec. 5.** RCW 48.32A.060 and 1990 c 51 s 4 are each amended to read  
32 as follows:

33 (1) The association shall, subject to such terms and conditions as  
34 it may impose with the approval of the commissioner, assume, reinsure,  
35 or guarantee the performance of the policies and contracts, for a  
36 resident (~~(of the state)~~), of any insolvent domestic life or disability  
37 insurer (~~(with respect to which an order of liquidation has been~~  
38 ~~entered by any court of general jurisdiction in the state of~~

1 Washington)), and shall have power to receive, own, and administer any  
2 assets acquired in connection with such assumption, reinsurance, or  
3 guaranty. The association, as to any such policy or contract under  
4 which there is no default in payment of premiums subsequent to such  
5 assumption, reinsurance, or guaranty, shall make or cause to be made  
6 prompt payment of the benefits due under the terms of the policy or  
7 contract.

8 (2) The association shall make or cause to be made payment of the  
9 death, endowment, or disability insurance or annuity benefits due under  
10 the terms of each policy or contract insuring the life or health of, or  
11 providing annuity or other benefits for, a resident of this state which  
12 was issued or assumed by ((a)) an insolvent foreign or alien insurer  
13 ~~((with respect to which an order of liquidation has been entered by a  
14 court of competent jurisdiction in the state or country of its  
15 domicile))~~.

16 (3) The association may, subject to such terms and conditions  
17 imposed by the association that do not impair the contractual  
18 obligations of the impaired insurer and that are approved by the  
19 commissioner, take those actions authorized in subsection (1) of this  
20 section with regards to an impaired domestic life or disability insurer  
21 and subsection (2) of this section with regards to an impaired foreign  
22 or alien insurer. The association may provide substitute benefits in  
23 lieu of the contractual obligations of the impaired insurer solely for  
24 health claims, periodic annuity benefit payments, death benefits,  
25 supplemental benefits, and cash withdrawals for policy or contract  
26 owners who qualify therefor under claims of emergency or hardship in  
27 accordance with standards proposed by the association and approved by  
28 the commissioner.

29 (4) In determining benefits to be paid with respect to the policies  
30 and contracts of a particular ~~((liquidating))~~ impaired or insolvent  
31 insurer the board may give due consideration to amounts reasonably  
32 recoverable or deductible because of the contingent liability, if any,  
33 of policyholders of the insurer (if a mutual insurer) or recoverable  
34 because of the assessment liability, if any, of the insurer's  
35 stockholders (if a stock insurer).

36 ~~((+4))~~ (5) With respect to an insolvent domestic insurer, the  
37 board shall have power to petition the court in which the delinquency  
38 proceedings are pending for, and the court shall have authority to  
39 order and effectuate, such modifications in the terms, benefits,

1 values, and premiums thereafter to be in effect of policies and  
2 contracts of the insurer as may reasonably be necessary to effect a  
3 bulk reinsurance of such policies and contract in a solvent insurer.  
4 In the event, after the entry of an order of liquidation, an assessment  
5 on the members is necessary to increase the assets of the insolvent  
6 company to an extent that a bulk reinsurance of such policies may be  
7 effected, the court shall have authority to order such assessment.

8 ~~((+5))~~ (6) In addition to any other rights of the association  
9 acquired by assignment or otherwise, the association shall be  
10 subrogated to the rights of any person entitled to receive benefits  
11 under this chapter against the ~~((liquidating))~~ impaired or insolvent  
12 insurer, or the receiver, rehabilitator, liquidator, or conservator, as  
13 the case may be, under the policy or contract with respect to which a  
14 payment is made or guaranteed, or obligation assumed by the association  
15 pursuant to this section, and the association may require an assignment  
16 to it of such rights by any such persons as a condition precedent to  
17 the receipt by such person of payment of any benefits under this  
18 chapter.

19 ~~((+6))~~ (7) For the purpose of carrying out its obligations under  
20 this chapter, the association shall be deemed to be a creditor of the  
21 ~~((liquidating))~~ impaired or insolvent insurer to the extent of assets  
22 attributable to covered policies and contracts reduced by any amounts  
23 to which the association is entitled as a subrogee. All assets of the  
24 ~~((liquidating))~~ impaired or insolvent insurer attributable to covered  
25 policies and contracts shall be used to continue all covered policies  
26 and contracts and pay all contractual obligations of the  
27 ~~((liquidating))~~ impaired or insolvent insurer as required by this  
28 chapter. Assets attributable to covered policies and contracts, as  
29 used in this subsection, are those in that proportion of the assets  
30 which the reserves that should have been established for such policies  
31 and contracts bear to the reserves that should have been established  
32 for all insurances written by the ~~((liquidating))~~ impaired or insolvent  
33 insurer.

34 ~~((+7))~~ (8) The association shall have the power to petition the  
35 superior court for an order appointing the commissioner as receiver of  
36 a domestic insurer upon any of the grounds set forth in RCW 48.31.030.

37 **Sec. 6.** RCW 48.32A.070 and 1971 ex.s. c 259 s 7 are each amended  
38 to read as follows:

1           Whenever a guaranty or payment of proceeds or benefits of a policy  
2 or contract otherwise provided for under this chapter is also provided  
3 for by a similar law of another jurisdiction, there shall be only one  
4 recovery of values or benefits, and the association or their entity  
5 established by such law in the domiciliary jurisdiction or state of  
6 entry of the (~~liquidating~~) impaired or insolvent insurer shall be  
7 solely responsible for such guaranty and payment.

8           **Sec. 7.** RCW 48.32A.080 and 1990 c 51 s 5 are each amended to read  
9 as follows:

10           (1) For purposes of administration and assessment, the association  
11 shall establish and maintain three guaranty fund accounts:

12           (a) The life insurance and annuity account, which shall be divided  
13 into three subaccounts:

14           (i) The life insurance subaccount;

15           (ii) The allocated annuity subaccount; and

16           (iii) The unallocated annuity subaccount which shall include  
17 contracts qualified under section 403(b) of the United States internal  
18 revenue code;

19           (b) The disability insurance account; and

20           (c) The general account.

21           (2) For the purpose of providing the funds necessary to carry out  
22 the powers and duties of the association, the board shall assess the  
23 member insurers, separately for each account, at such times and for  
24 such amounts as the board finds necessary. The board shall collect the  
25 assessment after thirty days written notice to the member insurers  
26 before payment is due. The board may charge reasonable interest for  
27 delinquent payment of the assessment.

28           (3) (a) The amount of any assessment for each account and  
29 subaccount shall be determined by the board, and shall be divided among  
30 the accounts and subaccounts in the proportion that the premiums  
31 received by the (~~liquidating~~) impaired or insolvent insurer on the  
32 policies or contracts covered by each account and subaccount bears to  
33 the premiums received by such insurer on all covered policies and  
34 contracts.

35           (b) Assessments against member insurers for each account and  
36 subaccount shall be in the proportion that the premiums received on  
37 business in this state by each assessed member insurer on policies or

1 contracts covered by each account or subaccount bears to such premiums  
2 received on business in this state by all assessed member insurers.

3 (c) Assessments for funds to meet the requirements of the  
4 association with respect to a particular (~~liquidating~~) impaired or  
5 insolvent insurer shall not be made until necessary, in the board's  
6 opinion, to implement the purposes of this chapter; and in no event  
7 shall such an assessment be made with respect to (~~such~~) an insolvent  
8 insurer until an order of liquidation has been entered against the  
9 insurer by a court of competent jurisdiction of the insurer's state or  
10 country of domicile. Computation of assessments under this subsection  
11 shall be made with a reasonable degree of accuracy, recognizing that  
12 exact determination may not always be possible.

13 (d) The board may make an assessment of up to one hundred fifty  
14 dollars for each member insurer to be deposited in the general account  
15 and used for administrative and general expenses in carrying out the  
16 provisions of this chapter.

17 (4)(a) The total of all assessments upon a member insurer for the  
18 life and annuity account and for each subaccount shall not in any one  
19 calendar year exceed two percent and for the disability account shall  
20 not in any one calendar year exceed two percent of such insurer's  
21 average premiums received in this state on the policies and contracts  
22 covered by the account during the three calendar years preceding the  
23 (~~entry of the order of liquidation against the liquidating~~) year in  
24 which the insurer became an impaired or insolvent insurer.

25 (b) The board may provide a method of allocating funds among  
26 claims, whether relating to one or more impaired or insolvent insurers,  
27 when the maximum assessment will be insufficient to cover anticipated  
28 claims.

29 (c) If a one percent assessment for any subaccount of the life and  
30 annuity account in any one year does not provide an amount sufficient  
31 to carry out the responsibilities of the association, then pursuant to  
32 subsection (3) of this section, the board shall access all subaccounts  
33 of the life and annuity account for the necessary additional amount,  
34 subject to the maximum stated in (a) of this subsection.

35 (5) The association may abate or defer, in whole or in part, the  
36 assessment of a member insurer if, in the opinion of the board, payment  
37 of the assessment would endanger the ability of the insurer to fulfill  
38 its contractual obligations. In the event an assessment against a  
39 member insurer is abated or deferred, in whole or in part, the amount

1 by which such assessment is abated or deferred may be assessed against  
2 the other member insurers in a manner consistent with the basis for  
3 assessments set forth in this section. If the maximum assessment,  
4 together with the other assets of the association in an account, does  
5 not provide in any one year an amount sufficient to carry out the  
6 responsibilities of the association with respect to such account, the  
7 necessary additional funds shall be assessed as soon thereafter as  
8 permitted by this chapter.

9 (6) The amount in a fund shall be kept at such a sum as in the  
10 opinion of the board will enable the association to meet the immediate  
11 obligations and liabilities of such fund. Whenever in the opinion of  
12 the board the amount in a fund is in excess of such immediate  
13 obligations and liabilities, with the approval of the commissioner the  
14 association may distribute such excess by retirement of certificates  
15 previously issued against the fund. Such distribution shall be made  
16 pro rata upon the basis of outstanding certificates, except that by  
17 unanimous consent of all directors and with the approval of the  
18 commissioner any other reasonable method of retirement of such  
19 certificates may be adopted.

20 (7) As used in this section, "premiums" are those for the calendar  
21 year preceding the ~~((entry of the order of liquidation as to a~~  
22 particular liquidating)) year in which the insurer became an impaired  
23 or insolvent insurer, and shall be direct gross insurance premiums and  
24 annuity considerations received on policies and contracts to which this  
25 chapter applies, less return premiums and considerations and less  
26 dividends paid or credited to policyholders.

27 (8) Upon dissolution of a fund by the repeal of this chapter or  
28 otherwise, the fund shall be distributed in the same manner as is  
29 provided for the repayment or retirement of certificates. If the  
30 amount in the fund at the time of dissolution is in excess of  
31 outstanding certificates issued against the fund, such excess shall be  
32 distributed among contributing member insurers in such equitable manner  
33 as is approved by the commissioner.

34 **Sec. 8.** RCW 48.32A.120 and 1971 ex.s. c 259 s 12 are each amended  
35 to read as follows:

36 (1) If an order for liquidation or rehabilitation of a domestic  
37 insurer has been entered, the receiver appointed or existing under such  
38 order shall have a right to recover, and upon request of the board or

1 without such request shall take such action as he or she deems  
2 advisable to recover, on behalf of the insurer from any affiliate that  
3 controlled it the amount of distributions, other than stock dividends  
4 paid by the insurer on its capital stock, at any time during the five  
5 years preceding the petition for liquidation or rehabilitation of the  
6 insurer subject to the limitations of subsections (2) through (4) of  
7 this section.

8 (2) No such dividend shall be recoverable if the insurer shows that  
9 when paid the distribution was lawful and reasonable, and that the  
10 insurer did not know and could not reasonably have known that the  
11 distribution might adversely affect the ability of the insurer to  
12 fulfill its contractual obligations.

13 (3) Any person who was an affiliate in control of the insurer at  
14 the time a distribution was paid shall be liable up to the amount of  
15 distribution ((he)) that person received. Any person who was an  
16 affiliate in control of the insurer at the time a distribution was  
17 declared shall be liable up to the amount of distribution ((he)) the  
18 person would have received if it had been paid immediately. If two  
19 persons are liable with respect to the same distribution they shall be  
20 jointly and severally liable.

21 (4) The maximum amount recoverable by the receiver under this  
22 section shall be the amount needed in excess of all other available  
23 assets to pay the contractual obligations of the insurer.

24 (5) If any person liable under subsection (3) of this section is  
25 insolvent, all its affiliates that controlled it at the time the  
26 distribution was paid shall be jointly and severally liable for any  
27 resulting deficiency in the amount recovered from the insolvent  
28 affiliate.

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