

SENATE BILL REPORT

SB 5958

As Reported By Senate Committee On:
Labor, Commerce & Financial Institutions, March 5, 2001

Title: An act relating to the Washington life and disability insurance guaranty association act.

Brief Description: Adopting the Washington life and disability insurance guaranty association act.

Sponsors: Senators Prentice and Winsley.

Brief History:

Committee Activity: Labor, Commerce & Financial Institutions: 2/22/01, 3/5/01 [DPS].

SENATE COMMITTEE ON LABOR, COMMERCE & FINANCIAL INSTITUTIONS

Majority Report: That Substitute Senate Bill No. 5958 be substituted therefor, and the substitute bill do pass.

Signed by Senators Prentice, Chair; Gardner, Vice Chair; Benton, Deccio, Fairley, Franklin, Hochstatter, Honeyford, Patterson, Rasmussen, Regala, West and Winsley.

Staff: Dave Cheal (786-7576)

Background: Insurance guaranty associations are organizations created by statute for the purpose of reimbursing policy holders and beneficiaries for losses resulting from the financial impairment or insolvency of insurance companies. Members of these associations are the individual companies authorized to write particular types of insurance within a state. They are governed by a board of directors made up of representatives of the industry, the state regulator, and in some cases, policy holders. There are statutory provisions governing assessments, eligibility for payment and maximum amount of benefits. Members are assessed following an insolvency in order to keep the fund primed for possible future payments. Assessments in most states, including Washington, are based on the percentage of total premium for the type of insurance written by each member.

In Washington there are two guaranty associations, one to protect property and casualty policy holders and one for life and disability policies. Members of both associations may offset any payments made to the guaranty fund against premium taxes due over a five-year period. A member is exempt from a payment otherwise due if the payment would render them insolvent. The current Life and Disability Guaranty Association Act was enacted in 1971.

Summary of Substitute Bill: The Washington Life and Disability Guaranty Association Act is repealed and replaced with a comprehensive act of the same name, and devoted to the same purposes.

General. This bill is a creation of the National Association of Insurance Commissioners and National Association of Life and Health Guaranty Associations. It was developed ten years ago, and has been adopted in a majority of states.

Coverage. Persons covered are as follows: residents and nonresident beneficiaries of policies owned by residents, or in some limited cases, owned by nonresidents; persons who are owners of unallocated annuity contracts (e.g., pension plans) whose plan sponsor has its principal place of business in this state; payees under a structured settlement annuity, or beneficiary of the payee, if the payee is a resident, and in certain limited cases if the payee is not a resident. Duplicate coverage from the guaranty plans of more than one state is avoided.

Types of policies and contracts covered are as follows: direct non-group life and certain group life; disability or annuity policies and their supplements; and unallocated annuity contracts. Various exclusions are specified. Non-economic value obligations of the insolvent insurer are excluded.

Benefits the association may become obligated to cover are the lesser of the contractual obligations of the impaired or insolvent insurer, or \$500,000, in the case of individual policies. For unallocated annuity policies, the limit is \$5 million.

Association created. A non-corporate association is created known as the Washington Life and Disability Insurance Guaranty Association. Membership includes all insurers who write the covered products, and the Insurance Commissioner, ex officio. Insurers must remain members as a condition of authority to transact insurance business. Two accounts are to be maintained: the life insurance account and the disability insurance account. The association is under the immediate supervision of the commissioner. It exercises its powers through a board of directors and performs its function under a plan of operation that is prescribed by the bill.

Powers and duties. In the case of an impaired insurer, the association may assume or reinsure any or all of its policies and provide financial assistance or guarantees. With respect to an insolvent member, the association may guarantee, assume or reinsure any or all of its policies, provide a variety of forms of financial assistance, or may provide benefits and coverage to policyholders subject to a number of limitations. The association has certain broad powers, subject to court approval, with respect to administration of the assets of the insolvent member. The commissioner has the authority to act on behalf of the association in the event of unreasonable delays. The association has the authority to appear or intervene before any court or state agency on behalf of any impaired or insolvent member. The association may exercise any common law rights of subrogation that would have been available to the impaired or insolvent insurer, or any policy holder or beneficiary. Numerous other powers and procedures for their exercise are prescribed.

Assessments. Two classes of assessments are provided: "Class A" assessments are administrative, and "Class B" assessments are those necessary to carry out the substantive duties of the association. Class A assessments may either be assessed pro rata or non pro rata. Class B assessments must be made on the basis of percentage of total premiums written for that type of insurance in the state by the member. Assessments may be abated or deferred at the discretion of the board if immediate payment would endanger the ability of the member

to meet its contractual obligations. Assessments are limited to 2 percent of the average annual premiums of the member for the past three years.

Credits for assessments paid“tax offsets. An insurer may offset premium taxes due to the state by the amount of assessments paid to the fund. The offset is to be spread evenly over the five-year period following the payment of the assessment.

Plan of operation. The association must submit a plan of operation for approval by the commissioner to assure the proper administration of the association. The plan must include methods of operation, methods for handling assets and meeting obligations, times and places of meetings, and other administrative functions.

Role of the commissioner. The commissioner must provide the necessary premium information, make proper demands upon impaired or insolvent insurers, and serve as liquidator or rehabilitator as necessary. The commissioner may suspend or revoke the certificate of authority of any member who fails to pay an assessment. The commissioner hears and determines appeals from members of any final action by the association with respect to that member. The commissioner must take certain steps to aid in the prevention of insolvencies or impairments.

Examination and annual report. The association is subject to examination and supervision by the commissioner, and must submit an annual financial report in a form approved by the commissioner.

Stay of proceedings. All proceedings in any court in the state where an insolvent insurer is a party are stayed for 60 days following the order of liquidation, conservation or insolvency to allow the association to take appropriate action.

Miscellaneous provisions. Insurers may not use the existence of the association as a sales or marketing device. The bill is to act prospectively. Sections of the repealed act pertaining to powers and obligations of the association regarding any insurer under an order of rehabilitation or conservation, or to any insolvent insurer under an order of liquidation prior to the effective date of the act to continue to apply to those insurers and those proceedings.

Substitute Bill Compared to Original Bill: The substitute bill makes numerous grammatical and technical corrections. The substitute bill preserves sections of the repealed act as to insurers under an order of rehabilitation, conservatorship, or insolvency entered prior to the effective date of the act.

Appropriation: None.

Fiscal Note: Available.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: The bill is based on a model act developed by the National Association of Insurance Commissioners. It deals with some new insurance products that did not exist when the original Life and Disability Guaranty Association Act was enacted in 1971. The bill will

eliminate many of the ambiguities in the present act and provide clearer direction to the association, affected insurers, the commissioner and the courts.

Testimony Against: None.

Testified: Basil Badley, ACLI, HIAA (pro).