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SENATE BILL 6509

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State of Washington

53rd Legislature

1994 Regular Session

By Senators Moore, Amondson and Prentice; by request of Insurance Commissioner

Read first time 01/25/94. Referred to Committee on Labor & Commerce.

1 AN ACT Relating to permitting the Washington life and disability  
2 insurance guaranty association to act in the case of impaired insurers;  
3 and amending RCW 48.32A.010, 48.32A.020, 48.32A.030, 48.32A.050,  
4 48.32A.060, 48.32A.070, 48.32A.080, and 48.32A.120.

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

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

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

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

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

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

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

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

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

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

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

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

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

34       The association shall have the power:

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

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

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

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

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

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

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

30 (1) (~~The association shall,~~) Subject to such terms and conditions  
31 as it may impose with the approval of the commissioner, as to an  
32 insolvent domestic, foreign, or alien life or disability insurer the  
33 association shall, and as to an impaired domestic, foreign, or alien  
34 life or disability insurer the association may, for a resident, assume,  
35 reinsure, or guarantee the performance of the policies and contracts  
36 (~~for a resident of the state, of any domestic life or disability~~) of  
37 that 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 foreign or alien insurer with respect to~~  
13 ~~which an order of liquidation has been entered by a court of competent~~  
14 ~~jurisdiction in the state or country of its domicile.~~

15 ~~(3))~~(a) If the association acts under this section with respect to  
16 an impaired insurer, the impaired insurer shall not solicit or accept  
17 new business in Washington or have any suspended certificate of  
18 authority restored until all payments of or on account of the impaired  
19 insurer's contractual obligations by the association, along with all  
20 expenses thereof and interest at a rate determined by the commissioner  
21 on all such payments and expenses, are repaid to the guaranty  
22 association or a plan of repayment by the impaired insurer is approved  
23 by the commissioner.

24 (b) The association may act under this section as to an impaired  
25 domestic insurer only if that insurer has been placed under an order of  
26 rehabilitation or the like by a court of competent jurisdiction in this  
27 state. The association may act under this section as to an impaired  
28 foreign or alien insurer only if that insurer has been prohibited from  
29 soliciting or accepting new business in this state, its certificate of  
30 authority has been suspended or revoked in this state, and an order for  
31 rehabilitation, conservation of assets, or liquidation, or the like,  
32 has been entered by a court of competent jurisdiction in its state of  
33 domicile or in Washington.

34 (3) In determining benefits to be paid with respect to the policies  
35 and contracts of a particular (~~liquidating~~) impaired or insolvent  
36 insurer the board may give due consideration to amounts reasonably  
37 recoverable or deductible because of the contingent liability, if any,  
38 of policyholders of the insurer (if a mutual insurer) or recoverable

1 because of the assessment liability, if any, of the insurer's  
2 stockholders (if a stock insurer).

3 (4) With respect to an insolvent domestic insurer, the board shall  
4 have power to petition the court in which the delinquency proceedings  
5 are pending for, and the court shall have authority to order and  
6 effectuate, such modifications in the terms, benefits, values, and  
7 premiums thereafter to be in effect of policies and contracts of the  
8 insurer as may reasonably be necessary to effect a bulk reinsurance of  
9 such policies and contract in a solvent insurer. In the event, after  
10 the entry of an order of liquidation, an assessment on the members is  
11 necessary to increase the assets of the insolvent company to an extent  
12 that a bulk reinsurance of such policies may be effected, the court  
13 shall have authority to order such assessment.

14 (5) In addition to any other rights of the association acquired by  
15 assignment or otherwise, the association shall be subrogated to the  
16 rights of any person entitled to receive benefits under this chapter  
17 against the (~~liquidating~~) impaired or insolvent insurer, or the  
18 receiver, rehabilitator, liquidator, or conservator, as the case may  
19 be, under the policy or contract with respect to which a payment is  
20 made or guaranteed, or obligation assumed by the association pursuant  
21 to this section, and the association may require an assignment to it of  
22 such rights by any such persons as a condition precedent to the receipt  
23 by such person of payment of any benefits under this chapter. The  
24 rights of the association to payment from the impaired or insolvent  
25 insurer, or its receiver, rehabilitator, liquidator, or conservator,  
26 are subordinate to those of the persons protected under this chapter.  
27 Where the association is entitled to payment because of subrogation or  
28 assignment or because of its status as a creditor, no such payment may  
29 be made to it until either (a) the person from whom its claim arises  
30 has received benefits practically equivalent to all the benefits to  
31 which he or she is entitled under the terms of the policy or contract,  
32 or (b) it appears that amounts not paid to the association would  
33 instead be paid entirely or disproportionately to persons other than  
34 residents protected under this chapter.

35 (6) For the purpose of carrying out its obligations under this  
36 chapter, the association shall be deemed to be a creditor of the  
37 (~~liquidating~~) impaired or insolvent insurer to the extent of assets  
38 attributable to covered policies and contracts reduced by any amounts  
39 to which the association is entitled as a subrogee. All assets of the

1 ((~~liquidating~~)) impaired or insolvent insurer attributable to covered  
2 policies and contracts shall be used to continue all covered policies  
3 and contracts and pay all contractual obligations of the  
4 ((~~liquidating~~)) impaired or insolvent insurer as required by this  
5 chapter. Assets attributable to covered policies and contracts, as  
6 used in this subsection, are those in that proportion of the assets  
7 which the reserves that should have been established for such policies  
8 and contracts bear to the reserves that should have been established  
9 for all insurances written by the ((~~liquidating~~)) impaired or insolvent  
10 insurer.

11 (7) The association shall have the power to petition the superior  
12 court for an order appointing the commissioner as receiver of a  
13 domestic insurer upon any of the grounds set forth in RCW 48.31.030.

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

16 Whenever a guaranty or payment of proceeds or benefits of a policy  
17 or contract otherwise provided for under this chapter is also provided  
18 for by a similar law of another jurisdiction, there shall be only one  
19 recovery of values or benefits, and the association or ((~~their~~)) other  
20 entity established by such law in the domiciliary jurisdiction or state  
21 of entry of the ((~~liquidating~~)) impaired or insolvent insurer shall be  
22 solely responsible for such guaranty and payment.

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

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

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

29 (i) The life insurance subaccount;

30 (ii) The allocated annuity subaccount; and

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

34 (b) The disability insurance account; and

35 (c) The general account.

36 (2) For the purpose of providing the funds necessary to carry out  
37 the powers and duties of the association, the board shall assess the

1 member insurers, separately for each account, at such times and for  
2 such amounts as the board finds necessary. The board shall collect the  
3 assessment after thirty days written notice to the member insurers  
4 before payment is due. The board may charge reasonable interest for  
5 delinquent payment of the assessment.

6 (3) (a) The amount of any assessment for each account and  
7 subaccount shall be determined by the board, and shall be divided among  
8 the accounts and subaccounts in the proportion that the premiums  
9 received by the (~~liquidating~~) impaired or insolvent insurer on the  
10 policies or contracts covered by each account and subaccount bears to  
11 the premiums received by such insurer on all covered policies and  
12 contracts.

13 (b) Assessments against member insurers for each account and  
14 subaccount shall be in the proportion that the premiums received on  
15 business in this state by each assessed member insurer on policies or  
16 contracts covered by each account or subaccount bears to such premiums  
17 received on business in this state by all assessed member insurers.

18 (c) Assessments for funds to meet the requirements of the  
19 association with respect to a particular (~~liquidating~~) impaired or  
20 insolvent insurer shall not be made until necessary, in the board's  
21 opinion, to implement the purposes of this chapter; and in no event  
22 shall such an assessment be made with respect to (~~such~~) an insolvent  
23 insurer until an order of liquidation has been entered against the  
24 insurer by a court of competent jurisdiction of the insurer's state or  
25 country of domicile. Computation of assessments under this subsection  
26 shall be made with a reasonable degree of accuracy, recognizing that  
27 exact determination may not always be possible.

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

32 (4)(a) The total of all assessments upon a member insurer for the  
33 life and annuity account and for each subaccount shall not in any one  
34 calendar year exceed two percent and for the disability account shall  
35 not in any one calendar year exceed two percent of such insurer's  
36 average premiums received in this state on the policies and contracts  
37 covered by the account during the three calendar years preceding the  
38 (~~entry of the order of liquidation against the liquidating~~) year in  
39 which the insurer became an impaired or insolvent insurer.

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

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

11 (5) The association may abate or defer, in whole or in part, the  
12 assessment of a member insurer if, in the opinion of the board, payment  
13 of the assessment would endanger the ability of the insurer to fulfill  
14 its contractual obligations. In the event an assessment against a  
15 member insurer is abated or deferred, in whole or in part, the amount  
16 by which such assessment is abated or deferred may be assessed against  
17 the other member insurers in a manner consistent with the basis for  
18 assessments set forth in this section. If the maximum assessment,  
19 together with the other assets of the association in an account, does  
20 not provide in any one year an amount sufficient to carry out the  
21 responsibilities of the association with respect to such account, the  
22 necessary additional funds shall be assessed as soon thereafter as  
23 permitted by this chapter.

24 (6) The amount in a fund shall be kept at such a sum as in the  
25 opinion of the board will enable the association to meet the immediate  
26 obligations and liabilities of such fund. Whenever in the opinion of  
27 the board the amount in a fund is in excess of such immediate  
28 obligations and liabilities, with the approval of the commissioner the  
29 association may distribute such excess by retirement of certificates  
30 previously issued against the fund. Such distribution shall be made  
31 pro rata upon the basis of outstanding certificates, except that by  
32 unanimous consent of all directors and with the approval of the  
33 commissioner any other reasonable method of retirement of such  
34 certificates may be adopted.

35 (7) As used in this section, "premiums" are those for the calendar  
36 year preceding the ~~((entry of the order of liquidation as to a~~  
37 particular liquidating)) year in which the insurer became an impaired  
38 or insolvent insurer, and shall be direct gross insurance premiums and  
39 annuity considerations received on policies and contracts to which this

1 chapter applies, less return premiums and considerations and less  
2 dividends paid or credited to policyholders.

3 (8) Upon dissolution of a fund by the repeal of this chapter or  
4 otherwise, the fund shall be distributed in the same manner as is  
5 provided for the repayment or retirement of certificates. If the  
6 amount in the fund at the time of dissolution is in excess of  
7 outstanding certificates issued against the fund, such excess shall be  
8 distributed among contributing member insurers in such equitable manner  
9 as is approved by the commissioner.

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

12 (1) If an order for liquidation or rehabilitation of a domestic  
13 insurer has been entered, the receiver appointed or existing under such  
14 order shall have a right to recover, and upon request of the board or  
15 without such request shall take such action as he or she deems  
16 advisable to recover, on behalf of the insurer from any affiliate that  
17 controlled it the amount of distributions, other than stock dividends  
18 paid by the insurer on its capital stock, at any time during the five  
19 years preceding the petition for liquidation or rehabilitation of the  
20 insurer subject to the limitations of subsections (2) through (4) of  
21 this section.

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

27 (3) Any person who was an affiliate in control of the insurer at  
28 the time a distribution was paid shall be liable up to the amount of  
29 distribution ((he)) that person received. Any person who was an  
30 affiliate in control of the insurer at the time a distribution was  
31 declared shall be liable up to the amount of distribution ((he)) the  
32 person would have received if it had been paid immediately. If two  
33 persons are liable with respect to the same distribution they shall be  
34 jointly and severally liable.

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

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

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