

***Financial Institutions &
Insurance Committee***

SSB 5958

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

Sponsors: *By Senate Committee on Labor, Commerce & Financial Institutions (originally sponsored by Senators Prentice and Winsley).*

Brief Summary of Substitute Bill

- *Repeals the Washington Life and Disability Insurance Guaranty Association Act and replaces it with the model act of the same name that was developed by the National Association of Insurance Commissioners.*

Hearing Date: *3/28/01*

Staff: *Thamas Osborn (786-7129).*

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.

In Washington there are two guaranty associations, one to protect property and casualty policy holders and one for life and disability policies. The latter was created in 1971 through the passage of the Washington Life and Disability Insurance Guaranty Association Act (the act).

The act creates an association whose membership consists of the State Insurance Commissioner (the commissioner) and those insurers licensed to transact life insurance, or disability insurance, or annuity business in this state. Insurers are required to be members of the association as a condition of doing business as insurance providers. The association is governed by a board of directors, one of whom is the commissioner. The commissioner

oversees the activities of the association and is granted general supervisory powers.

In the event of the impairment or insolvency of an insurer, the association is granted broad statutory authority to reimburse policy holders and otherwise ensure the fulfillment of the contractual obligations. In order to carry out this duty, the association is empowered to raise funds, assume and/or enter into contracts, obtain reinsurance, initiate court proceedings, and take whatever other steps that may be necessary to accomplish the purposes of the act. With respect to an insolvent insurer, the association may take control of any assets as may be necessary in order to make prompt payment of the benefits due under the terms of a policy or contract.

The association is deemed to be a creditor of an impaired or insolvent insurer to the extent of assets attributable to covered policies and contracts. Such assets may be used by the association in order to continue covered policies and to pay any contractual obligations. Also, the association is subrogated to the rights of any person entitled to receive benefits under the act and may thus require any such beneficiary to assign to it any rights he or she may have with respect to policies or contracts.

The activities of the association are funded via monetary assessments imposed upon the members at the discretion of the board. The assessment against each member insurer is calculated in proportion to the premiums received by the insurer from business conducted in this state, and is subject to a limit determined via an accounting formula. The funds are distributed between three accounts: 1) the life insurance and annuity account; 2) the disability insurance account; and 3) the general account. Members of the association may offset any payments made to the guaranty fund against premium taxes due over a five year period.

The provisions of the act are applicable to both resident and nonresident insureds, although the latter are covered only under certain circumstances. Specifically, a nonresident insured is covered by the act only if: 1) the insurer is domiciled in this state; and 2) the insurer was not licensed in the state where the insured resides; and 3) the home state of the insured has an association similar to that of this state; and 4) the insured is not eligible for similar coverage under the laws of his/her home state.

The act places specific limitations on the liability of the association with respect to claims stemming from the impairment or insolvency of an insurance company. As a general rule, an individual may recover from the association an aggregate amount of not more than \$500,000 per policy or contract, subject to specific conditions and limitations. Furthermore, the owner of one or more unallocated annuity contracts (i.e., pension plans) may recover a total of not more than \$5 million dollars in benefits, irrespective of the number of contracts held by the owner.

Summary of Substitute Bill:

All sections of the Washington Life and Disability Insurance Guaranty Association Act are repealed and replaced by a model act of the same name developed by the National Association of Insurance Commissioners. This model act has been adopted by a majority of the states.

Under the substitute bill, the act retains most of the features of current law with respect to its purpose, substance and general structure. However, the provisions of the substitute bill are far more comprehensive and detailed, and serve to clarify many existing statutory provisions with respect to the powers and duties of both the association and the commissioner.

Coverage and Limitations. Residents of this state who are the owners of covered insurance policies or contracts, as well as their beneficiaries or assignees, are subject to protection under the act and may receive compensation from the association. Nonresident policy/contract owners may also be covered, but only under certain specified conditions.

Owners of unallocated annuity contracts (i.e., pensions) are covered under the act if the sponsor of the benefit plan has its principal place of business in this state or the contract is owned by a resident who obtained it via a government lottery.

Resident payees under a structured settlement annuity are covered by the act, regardless of where the contract owner resides. Nonresident payees may also be covered, but only if certain conditions are met.

Duplicate coverage under the guaranty plans of more than one state is not allowed. Where a person is eligible for coverage under the laws of more than one state, the law shall be construed as to allow coverage by the association of only one of the states.

The types of policies and contracts covered by the act include: 1) direct, non-group life, disability or annuity policies or contracts; 2) direct group policies and contracts; 3) and unallocated annuity contracts issued by member insurers, subject to certain conditions.

The act excludes many specific types of policies and contracts from coverage, including; 1) policies or contracts of reinsurance; 2) portions of policies or contracts that require interest payments exceeding specified limits; 3) unallocated annuity contracts issued in connection with a benefit plan protected under the Federal Pension Benefit Guaranty Corporation; and 4) any obligation that does not arise under the express written terms of the policy or contract.

The substitute bill retains the general rule limiting the liability of the association to an aggregate of not more than \$500,000 per person with respect to claims arising from the impairment or insolvency of an insurer. However, regarding certain governmental retirement benefit plans created under federal statutes, the liability limit is set at \$100,000.

Powers and Duties of the Association. In the case of an impaired insurer, the association may assume or reinsure any or all of its policies and provide the financial assistance and/or guarantees necessary to ensure payment of contractual obligations. Any such action must be approved by the commissioner.

With respect to an insolvent insurer, 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 may also, at its discretion, assure payment of the contractual obligations of the insolvent

insurer.

The association is required to make diligent efforts to provide "substitute coverage" to insureds with respect to nongroup life and disability insurance policies, as well as annuities that are covered by the act. The substitute coverage may be provided via the reissuance of the terminated policy or the issuance of a new policy through a solvent insurer.

The association has standing to appear or intervene before a court or agency of this state with respect to legal proceedings relating to the impairment or insolvency of an insurer. Under certain circumstances, the association may also have standing to appear in legal proceedings in other states.

A person receiving benefits under the act is deemed to have assigned to the association his or her rights relating to any covered policy or contract. These subrogation rights, in turn, entitle the association to enforce whatever claims the person may have against the assets of the insurer.

The association may, at its discretion, discharge its duties under the act by transferring its obligations to a member insurer through a reinsurance agreement.

If the association fails to act within a reasonable period of time with respect to an insolvent insurer, the commissioner may intervene in order to enforce the provisions of the act. In this event, the commissioner has the same powers and duties as does the association.

Funding the Association. In order to carry out the powers and duties of the association, the board is granted the authority to raise funds through the imposition of monetary assessments on its members. Although subject to certain limitations, the board is given considerable discretion with respect to the frequency and the amount of the assessments.

There are two classes of assessments that may be imposed. "Class A" assessments are imposed in order to meet administrative and legal expenses. "Class B" assessments are those imposed as necessary for the association to fulfill its obligations with respect to impaired or insolvent insurers. 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.

Tax Credits for Assessments. 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 is required to submit to the commissioner a plan of operation setting forth its methods of operation, procedures for handling assets, election procedures for board members, as well as numerous administrative details. The plan must be approved in writing by the commissioner. Should the association fail to submit the plan in a timely fashion, the commissioner is empowered to implement his own plan.

The plan may allow for the association to delegate most of its duties to an outside corporation. In the event that such a delegation takes place, the board is responsible for ensuring that the duties of the association are fulfilled.

Role of the Commissioner. In addition to his role as a board member, the commissioner is given broad authority to oversee the operation of the association. Specific duties are assigned to the commissioner with respect to the prevention and detection of impairments and insolvencies. When an impairment is detected, the commissioner is required to demand that the insurer cure the impairment within a reasonable time. In any liquidation or rehabilitation proceeding, the commissioner is to be appointed as the "liquidator" or "rehabilitator". The commissioner is also granted the authority to suspend or revoke the license of any insurer who fails pay the assessment or fails to comply with the plan of operation.

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 substitute 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, continue to apply to those insurers and those proceedings.

Appropriation: None.

Fiscal Note: Available.

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