

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL: SB 814

INTRODUCER: Senator Broxson

SUBJECT: Florida Life and Health Insurance Guaranty Association

DATE: March 13, 2017 REVISED: 03/14/2017

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<u>Favorable</u>
2.	<u> </u>	<u> </u>	<u>AGG</u>	<u> </u>
3.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>

I. Summary:

SB 814 revises coverage and assessment provisions relating to the Florida Life and Health Insurance Guaranty Association (association). In 1979, the Legislature created the association to protect policyholders against failure in the performance of contractual obligations under life and health insurance policies and annuity contracts due to the impairment or insolvency of the member insurer that issued the policies or contracts.

The bill increases the limit on coverage for specified health insurance policies from \$300,000 to \$500,000 for any one person. The bill expands the association's scope of coverage to include annuities issued by an insurer pursuant to an individual retirement annuity and annuities issued by an insurer and held by a third party custodian or trustee pursuant to an individual retirement account. The bill also increases the cap on Class A assessments on member insurers from \$250 to \$500, which are used to fund administrative and general expenses

II. Present Situation:

Insurer Insolvency

States primarily regulate insurance companies, and the state of domicile serves as the primary regulator for insurers. Solvency regulations are designed to protect policyholders against the risk that insurers will not be able to meet their financial responsibilities. In Florida, the Office of Insurance Regulation (OIR) licenses and regulates the activities of insurers and other risk-bearing entities.¹ The OIR is primarily responsible for monitoring the solvency of regulated insurers and examining insurers to determine compliance with applicable laws, and taking administrative action, if necessary. The Division of Rehabilitation and Liquidation of the

¹ Section 20.121(3), F.S.

Department of Financial Services (DFS) is responsible for rehabilitating or liquidating insurance companies.²

Chapter 631, F.S., relating to insurer insolvency and guaranty payment, governs the receivership process for insurance companies in Florida.³ Federal law specifies that insurance companies cannot file for bankruptcy. Instead, they are either "rehabilitated" or "liquidated" by the state. Florida has five insurance guaranty funds that protect policyholders of liquidated insurers from financial losses and delays in claim payment and settlement, up to limits provided by law.⁴ A guaranty association generally is a not-for-profit corporation created by law directed to protect policyholders from financial losses and delays in claim payment and settlement due to the insolvency of an insurance company. A guaranty association accomplishes its mission by assuming responsibility for settling claims and refunding unearned premiums⁵ to policyholders. As a condition of transacting business in Florida, all insurers are required to participate in a guaranty association.

Florida Life and Health Insurance Guaranty Association

Part III of ch. 631, F.S., governs the powers and duties of the Florida Life and Health Insurance Guaranty Association (association).⁶ All insurers licensed to write life and health insurance policies or annuities (with exceptions) in Florida are required, as a condition of doing business in the state, to be members of the association.⁷ The board of directors is composed of nine member insurers.⁸

In the event a member insurer is found to be insolvent and is ordered to be liquidated by a court, a receiver takes over the insurer under court supervision and processes the assets and liabilities through liquidation. Upon liquidation, the association automatically becomes liable for the policy obligations that the liquidated insurer owed to its Florida policyholders.⁹ The association services the policies, collects premiums and pays valid claims under the policies. The rights of the

² Typically, insurers are placed into liquidation when the company is insolvent whereas insurers are put into rehabilitation for numerous reasons, one of which is an unsound financial condition. The goal of rehabilitation is to return the insurer to a sound financial condition. The goal of liquidation, however, is to dissolve the insurer. *See* s. 631.051, F.S., for the grounds for rehabilitation and s. 631.061, F.S., for the grounds for liquidation.

³ The Bankruptcy Code expressly provides that "a domestic insurance company" may not be the subject of a federal bankruptcy proceeding. 11 U.S.C. s. 109(b)(2). The exclusion of insurers from the federal bankruptcy court process is consistent with federal policy generally allowing states to regulate the business of insurance. *See* 15 U.S.C. ss. 1011- 1012.

⁴ The Florida Life and Health Insurance Guaranty Association generally is responsible for claims settlement and premium refunds for health and life insurers who are impaired or insolvent. The Florida Health Maintenance Organization Consumer Assistance Plan assists members of insolvent health maintenance organizations, and the Florida Workers' Compensation Insurance Guaranty Association protects policyholders of insolvent workers' compensation insurers. The Florida Self-Insurers Guaranty Association protects policyholders of insolvent individual self-insured employers for workers' compensation claims. The Florida Insurance Guaranty Association is responsible for paying claims for insolvent insurers for most remaining lines of insurance, including residential and commercial property insurance, automobile insurance, and liability insurance, among others.

⁵ The term "unearned premium" refers to that portion of a premium that is paid in advance, typically for 6 months or 1 year, and which is still owed on the unexpired portion of the policy.

⁶ *Florida Life and Health Insurance Guaranty Association Act*, s. 1, ch. 79-189, Laws of Fla.

⁷ Section 631.713(3), F.S.

⁸ Section 631.716(1), F.S.

⁹ Generally, FLAHIGA covers only policyholders and certificate holders who were Florida residents on the date that a member insurer is declared insolvent and liquidated with some exceptions. (s. 631.713(2), F.S.).

association under the policies are those that applied to the insurer prior to liquidation. The association may cancel the policy if the insurer could have done so, but generally, the association continues the policies until the association can transfer or substitute the policies to a new, stable insurer with approval of the OIR.¹⁰

The National Organization of Life and Health Insurance Guaranty Associations (NOLHGA) is a voluntary association comprised of the life and health insurance guaranty associations of all 50 states and the District of Columbia. The NOLHGA assembles a task force of guaranty association officials to address situations where insurers licensed in multiple states are facing insolvency or are declared insolvent. This task force analyzes the companies' policies, ensures that covered claims are paid, and arranges for the transfer of covered policies to another insurer (when possible). This allows the receiver and potential assuming carriers to deal with a single point of contact and contracting instead of having to engage in multiple discussions, negotiations, and contracts with a variety of different associations.¹¹ The NOLGHA allocates these expenses¹² to affected guaranty associations for payment.¹³

Covered Policies

Generally, direct life insurance policies, health insurance policies, individual and allocated¹⁴ annuity contracts, and supplemental contracts¹⁵ issued by member insurers are covered. A policy must meet coverage requirements, and association payments are limited for any one person as follows:

- Life Insurance Death Benefit: \$300,000 per insured life.
- Life Insurance Cash Surrender: \$100,000 per insured life.
- Health Insurance Claims: \$300,000 per insured life.
- Annuity Cash Surrender: \$250,000 for deferred annuity contracts per contract owner.
- Annuity in Benefit: \$300,000 per contract owner.¹⁶

In addition, s. 631.713(3), F.S., excludes all of the following from coverage by the association:

- any portion or part of a variable life insurance contract or a variable annuity contract that is not guaranteed by a licensed insurer;
- any portion or part of any policy or contract under which the risk is borne by the policyholder;
- any policy or contract or part thereof assumed by the failed insurer under a contract of reinsurance, unless assumption certificates were issued;
- fraternal benefit society products;
- health maintenance insurance;
- dental service plan insurance;

¹⁰ See <http://www.flahiga.org/aboutus.cfm> (last viewed Mar. 10, 2017)

¹¹ See <https://www.nolhga.com/resource/file/costs/Report16.pdf> (last viewed Mar. 12, 2017).

¹² <https://www.nolhga.com/aboutnolhga/main.cfm/location/whatisnolhga> (last viewed Mar. 12, 2017).

¹³ Section 631.721, F.S.

¹⁴ Allocated annuity contracts are directly issued to and owned by individuals or annuities that directly guarantee benefits to individuals by the insurer.

¹⁵ Section 631.713(1), F.S.

¹⁶ Section 631.717(9), F.S., and FLAHIGA, *Frequently Asked Questions*, available at <http://www.flahiga.org/faq.cfm> (last viewed Mar. 1, 2017).

- pharmaceutical service plan insurance;
- optometric service plan insurance;
- ambulance service association insurance;
- preneed funeral merchandise or service contract insurance;
- prepaid health clinic insurance;
- certain federal employees group policies;
- any annuity contract or group annuity contract that is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed directly and not through an intermediary to an individual by an insurer under such contract or certificate.¹⁷

Assessments

The association has three operating accounts: health insurance, life insurance, and annuity for purposes of administration and assessments. The association may impose two classes of assessments: Class A for administrative costs and general expenses and Class B to carry out the powers and duties of the association with regard to an impaired or insolvent domestic insurer.¹⁸ Class A assessments may not exceed \$250 per year per member insurer. Class B assessments are calculated based on the premiums collected by each assessed member insurer on policies or contracts covered for each account in proportion to premiums collected by all assessed member insurers for the 3 most recent years. Florida law limits assessments on a member insurer to a maximum of 1 percent of the insurer's premiums written in the state regarding business covered by the account received during the 3 calendar years preceding the year in which the assessment is made, divided by 3.¹⁹

The National Association of Insurance Commissioners

The National Association of Insurance Commissioners (NAIC) is an association of insurance regulators that coordinates regulation and examination of multistate insurers, provides a forum for addressing major insurance issues, and promotes uniform model laws among the states. In 2017, the NAIC released and updated the Life and Health Insurance Guaranty Association Act.²⁰ The model act is designed to protect policy owners, insureds, beneficiaries, annuitants, payees and assignees against losses (both in terms of payment of claims and continuation of coverage), which might otherwise occur due to an impairment or insolvency of an insurer. The limit on the Class A non-pro rata assessment is currently \$300. Further, the model provides a maximum liability of \$500,000 for basic hospital medical and surgical insurance or major medical insurance.

¹⁷ The association provides coverage for an annuity contract or certificate if the insurer issues an annuity to an individual and guarantees annuity benefits directly to the individual and does not guarantee through an intermediary. Under federal law, annuities of a custodial individual retirement account (IRA) are deemed owned by the individuals and are subject to control of the individuals. [26 United States Code ss. 408(a) and (b).] Currently, the association does not provide coverage of custodial IRA annuities because of the inclusion of “*guaranteed directly and not through an intermediary*” in the annuity coverage language provided in s. 631.713(3)(l), F.S. See DFS and association correspondence (on file with Banking and Insurance Committee).

¹⁸ Section 631.718(2), F.S.

¹⁹ Section 631.718(5)(a), F.S.

²⁰ NAIC, Life and Health Insurance Guaranty Association Model Act 520-1 (1st Quarter 2017) available at: <http://www.naic.org/store/free/MDL-520.pdf> (last viewed Feb. 9, 2017).

III. Effect of Proposed Changes:

Section 1 revises the types of policies covered by the association. The bill would increase coverage to include annuities issued by an insurer under 26 U.S.C. s. 408(b), relating to individual retirement annuities, and annuities issued by an insurer and held by a custodian or trustee in accordance with the requirements of 26 U.S.C. s. 408 (a), relating to individual retirement accounts.

Section 2 increases the association's liability for the contractual obligations of an insolvent insurer for basic hospital expense health insurance policies, basic medical-surgical health insurance policies, or major medical expense health insurance policies from \$300,000 to \$500,000 with respect to any one life.

Section 3 increases the Class A assessment cap from \$250 to \$500 per member insurer in any one calendar year.

Section 4 provides this act will take effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill increases the association's liability for health insurance benefits from \$300,000 to \$500,000, which will provide greater protections for insureds who exceed the current limit and who are covered by an insolvent insurer. Further, the added coverage of annuities under an individual retirement account (IRA) or individual retirement annuity may provide additional consumer protections to beneficiaries of such annuities in the event of an insolvency.

Member insurers could be subject to additional Class A assessments since the bill increases the limit on the Class A assessments from \$250 to \$500. Further, the increase in

the health insurance coverage limits from \$300,000 to \$500,000 and coverage of annuities under an IRA may lead to additional assessments on member insurers in the event of the insolvency of an insurer. The bill does not change the current 1 percent annual assessment cap.

C. **Government Sector Impact:**

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 631.713, 631.717, and 631.718.

IX. Additional Information:

A. **Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. **Amendments:**

None.