

bond within ten days from the date at which he is notified that he is the successful bidder, the check or money order and the amount thereof shall be forfeited to the port district or the port district shall recover the amount of the surety bid bond.

NEW SECTION. Sec. 3. If any provision of this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected.

Passed the Senate April 28, 1971.

Passed the House May 7, 1971.

Approved by the Governor May 21, 1971.

Filed in Office of Secretary of State May 21, 1971.

CHAPTER 259

[Engrossed Senate Bill No. 17]

WASHINGTON LIFE AND DISABILITY INSURANCE GUARANTY ASSOCIATION ACT

AN ACT Relating to insurance; creating the Washington Life and Disability Insurance Guaranty Association; providing for a board of directors thereof; setting out certain powers, duties, and functions; providing for certain assessments and funds; providing for the termination of the association and for the disposition of funds thereupon; exempting the association from certain taxes; adding certain sections as a new chapter to Title 48 RCW; providing penalties; and declaring an emergency.

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

NEW SECTION. Section 1. PURPOSE. The purpose of this act is the creation of funds arising from assessments upon all insurers authorized to transact life or disability insurance business in the state of Washington, to be used to assure to the extent prescribed herein the performance of the insurance contractual obligations of insurers becoming insolvent to residents of this state and, in the case of domestic insurers, to residents of other jurisdictions as well; and to promote thereby the stability of domestic insurers. In the judgment of the legislature, the foregoing purpose not being capable of accomplishment by a corporation created under general laws, the creation of the nonprofit association hereinafter in this act described is deemed essential for the protection of the general welfare.

NEW SECTION. Sec. 2. SCOPE, PERSONAL INSURANCES. This act shall apply as follows to life insurance policies, disability insurance policies, and annuity contracts of liquidating insurers,

other than separate account variable policies and contracts authorized by chapter 48.18A RCW:

(1) To all such policies and contracts of a domestic insurer, without regard to the place of residence or domicile of the policy or contract owner, insured, annuitant, beneficiary, or payee.

(2) To all such policies and contracts of a foreign or alien insurer authorized to transact such insurance or annuity business in this state at the time such policies or contracts were issued or at the time of entry of the order of liquidation of the insolvent insurer, and of which the policy or contract owner, insured, annuitant, beneficiary, or payee is a resident of and domiciled within this state. With respect to group policies or group contracts of such foreign or alien insurers, this act shall apply only as to the insurance or annuities thereunder of individuals who are residents of and domiciled within this state. The place of residence or domicile shall be determined as of the date of entry of the order of liquidation against the insurer.

(3) To policies and contracts only of insolvent insurers with respect to which an order of liquidation is entered after the effective date of this act.

(4) The obligations of the association created under this act shall apply only as to contractual obligations of the insurer under insurance policies and annuity contracts, and shall be no greater than such obligations of the insolvent insurer at the time of entry of the order of liquidation; except, that the association shall have no liability with respect to any portions of such policies or contracts to the extent that the death benefit coverage on any one life exceeds an aggregate of three hundred thousand dollars.

(5) This act shall not apply to fraternal benefit societies, health care service contractors, or to insurance or liability assumed by the liquidating insurer under a contract of reinsurance other than of bulk reinsurance.

NEW SECTION. Sec. 3. DEFINITIONS. Within the meaning of this act:

(1) "Association" means "the Washington life and disability insurance guaranty association".

(2) "Board" means the board of directors of the Washington life and disability insurance guaranty association.

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

(4) "Policies" means life or disability insurance policies; "contracts" means annuity contracts and contracts supplemental to such insurance policies and annuity contracts.

(5) "Liquidating insurer" means an insurer with respect to which an order of liquidation has been entered by a court of

competent jurisdiction.

(6) "Fund" means a guaranty fund provided for in section 8 of this act.

(7) "Account" means any one of the three guaranty fund accounts created under section 8(1) of this act.

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

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

(10) "Certificate" means a certificate of contribution provided for in section 9 of this act.

NEW SECTION. Sec. 4. GUARANTY ASSOCIATION CREATED. (1) There is hereby created a nonprofit unincorporated legal entity to be known as the Washington life and disability insurance guaranty association, which shall be composed of the commissioner, ex officio, and of each insurer authorized to transact life insurance, or disability insurance, or annuity business in this state. All such insurers shall be and remain members of the association during the continuance of, and as a condition to, their authority to transact such business in this state.

(2) The association shall be managed by a board of directors composed of the commissioner, ex officio, and of not less than five nor more than nine member insurers, each of whom shall initially be appointed by the commissioner to serve for terms of one, two, or three years. After the initial board is appointed, the board shall provide in its bylaws for selection of board members by member insurers subject to the commissioner's approval; members so selected shall serve for three year terms, acceding to office upon expiration of the terms of the respective initial board members; and board members shall thereafter serve for three year terms and shall continue in office until their respective successors be selected, approved, and have qualified. At least a majority of the members of the board shall be domestic insurers. In case of a vacancy for any reason on the initial board appointed, the commissioner shall appoint a member insurer to fill the unexpired term; vacancies on the board thereafter shall be filled in the same manner as in the original selection and approval. Board members may be reimbursed for reasonable and necessary expenses incurred in connection with the performance of their duties.

(3) A director, officer, employee, agent or other representative of the association or of a member insurer, or the commissioner or his representative shall in no event be individually liable to any person, including the association, for any act or omission to act, or for any liability incurred or assumed, on behalf

of the association or by virtue thereof, any such liability so incurred or assumed to be collectible only out of a fund; nor shall any insurer member of the association be subject to any liability except for assessment as in this act provided.

(4) The association shall be under the immediate supervision of the commissioner and shall be subject to such provisions of the insurance code of the state of Washington as may be applicable and not inconsistent with the provisions of this act.

(5) The board may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer insolvencies.

NEW SECTION. Sec. 5. POWERS OF THE ASSOCIATION. The association shall have the power:

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

(2) With the approval of the commissioner and as provided in section 6 of this act, to assume, reinsure or guarantee or cause to be assumed, reinsured, or guaranteed, partially or wholly, any or all of the policies or contracts of any liquidating domestic life or disability insurer or any policy or contract to which this act applies, and to make available from a fund, the creation of which is hereinafter in section 8 of this act provided, such sum or sums as may be necessary for such purpose.

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

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

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

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

NEW SECTION. Sec. 6. REINSURANCE, GUARANTY OF POLICIES,

CONTRACTS. (1) The association shall, subject to such terms and conditions as it may impose with the approval of the commissioner, assume, reinsure, or guarantee the performance of the policies and contracts of any domestic life or disability insurer with respect to which an order of liquidation has been entered by any court of general jurisdiction in the state of Washington, and shall have power to receive, own, and administer any assets acquired in connection with such assumption, reinsurance, or guaranty. The association, as to any such policy or contract under which there is no default in payment of premiums subsequent to such assumption, reinsurance, or guaranty, shall make or cause to be made prompt payment of the benefits due under the terms of the policy or contract.

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

(3) In determining benefits to be paid with respect to the policies and contracts of a particular liquidating insurer the board may give due consideration to amounts reasonably recoverable or deductible because of the contingent liability, if any, of policyholders of the insurer (if a mutual insurer) or recoverable because of the assessment liability, if any, of the insurer's stockholders (if a stock insurer).

(4) With respect to an insolvent domestic insurer, the board shall have power to petition the court in which the delinquency proceedings are pending for, and the court shall have authority to order and effectuate, such modifications in the terms, benefits, values, and premiums thereafter to be in effect of policies and contracts of the insurer as may reasonably be necessary to effect a bulk reinsurance of such policies and contract in a solvent insurer.

(5) In addition to any other rights of the association acquired by assignment or otherwise, the association shall be subrogated to the rights of any person entitled to receive benefits under this act against the liquidating insurer, or the receiver, rehabilitator, liquidator, or conservator, as the case may be, under the policy or contract with respect to which a payment is made or guaranteed, or obligation assumed by the association pursuant to this section, and the association may require an assignment to it of such rights by any such persons as a condition precedent to the receipt by such person of payment of any benefits under this act.

(6) For the purpose of carrying out its obligations under this

act, the association shall be deemed to be a creditor of the liquidating insurer to the extent of assets attributable to covered policies and contracts reduced by any amounts to which the association is entitled as a subrogee. All assets of the liquidating insurer attributable to covered policies and contracts shall be used to continue all covered policies and contracts and pay all contractual obligations of the liquidating insurer as required by this act. Assets attributable to covered policies and contracts, as used in this subsection, are those in that proportion of the assets which the reserves that should have been established for such policies and contracts bear to the reserves that should have been established for all insurances written by the liquidating insurer.

NEW SECTION. Sec. 7. DUPLICATION OF BENEFITS PROHIBITED. Whenever a guaranty or payment of proceeds or benefits of a policy or contract otherwise provided for under this act is also provided for by a similar law of another jurisdiction, there shall be only one recovery of values or benefits, and the association or their entity established by such law in the domiciliary jurisdiction or state of entry of the liquidating insurer shall be solely responsible for such guaranty and payment.

NEW SECTION. Sec. 8. GUARANTY FUNDS. (1) For purposes of administration and assessment, the association shall establish and maintain three guaranty fund accounts: (a) the life insurance account; (b) the disability insurance account; and (c) the annuity account.

(2) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board shall assess the member insurers, separately for each account, at such times and for such amounts as the board finds necessary. The board shall collect the assessment after thirty days written notice to the member insurers before payment is due.

(3) (a) The amount of any assessment for each account shall be determined by the board, and shall be divided among the accounts in the proportion that the premiums received by the liquidating insurer on the policies or contracts covered by each account bears to the premiums received by such insurer on all covered policies and contracts.

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

(c) Assessments for funds to meet the requirements of the association with respect to a particular liquidating insurer shall not be made until necessary, in the board's opinion, to implement the

purposes of this act; and in no event shall such an assessment be made with respect to such insurer until an order of liquidation has been entered against the insurer by a court of competent jurisdiction of the insurer's state or country of domicile. Computation of assessments under this subsection shall be made with a reasonable degree of accuracy, recognizing that exact determination may not always be possible.

(4) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the insurer to fulfill its contractual obligations. The total of all assessments upon a member insurer for each account shall not in any one calendar year exceed two percent of such insurer's premiums in this state on the policies or contracts covered by the account.

(5) In the event an assessment against a member insurer is abated or deferred, in whole or in part, because of the limitations set forth in subsection (4) of this section, the amount by which such assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. If the maximum assessment, together with the other assets of the association in an account, does not provide in any one year an amount sufficient to carry out the responsibilities of the association with respect to such account, the necessary additional funds shall be assessed as soon thereafter as permitted by this act.

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

(7) As used in this section, "premiums" are those for the calendar year preceding the entry of the order of liquidation as to a particular liquidating insurer, and shall be direct gross insurance premiums and annuity considerations received on policies and contracts to which this act applies, less return premiums and considerations and less dividends paid or credited to policy-holders.

(8) Upon dissolution of a fund by the repeal of this act or otherwise, the fund shall be distributed in the same manner as is provided for the repayment or retirement of certificates. If the

amount in the fund at the time of dissolution is in excess of outstanding certificates issued against the fund, such excess shall be distributed among contributing member insurers in such equitable manner as is approved by the commissioner.

NEW SECTION. Sec. 9. CERTIFICATES OF CONTRIBUTION; ALLOWANCE AS ASSET. (1) The association shall issue to each insurer paying an assessment under this act certificates of contribution, in appropriate form and terms as prescribed or approved by the commissioner, for the amounts so paid into the respective funds. All outstanding certificates against a particular fund shall be of equal dignity and priority without reference to amounts or dates of issue.

(2) An outstanding certificate of contribution shall be shown by the insurer in its financial statements as an admitted asset for such amount and period of time as the commissioner may approve: PROVIDED, That unless a longer period has been allowed by the commissioner the insurer shall in any event at its option have the right to so show a certificate of contribution as an admitted asset at percentages of original face amount for calendar years as follows:

100% for the calendar year of issuance;

80% for the first calendar year after the year of issuance;

60% for the second calendar year after the year of issuance;

40% for the third calendar year after the year of issuance;

20% for the fourth calendar year after the year of issuance;

and

0% for the fifth and subsequent calendar years after the year of issuance.

(3) No distribution to stockholders, if any, of a liquidating insurer shall be made unless and until the total amount of assessments levied by the association with respect to such insurer have been fully recovered by the association.

NEW SECTION. Sec. 10. TAXATION. (1) The association shall be exempt from premium tax. Any domestic insurer whose policies or contracts have been assumed, reinsured, or guaranteed by the association under this act shall remain liable for premium taxes on all premiums received on policies and contracts issued by it, but payment of such taxes shall be suspended. Payment of or on account of such taxes shall be made under such terms and conditions as the commissioner may prescribe. No distribution to stockholders, if any, of the liquidating insurer shall be made unless all premium taxes, the payment of which has been suspended hereunder, have been fully paid.

(2) The association shall be exempt from all taxes and fees now or hereafter imposed by the state of Washington or by any county, municipality, or local authority or subdivision; except that any real property owned by the association shall be subject to taxation to the

same extent according to its value as other real property is taxed.

(3) Assessments made upon domestic insurers pursuant to a law of another jurisdiction similar to this act, shall be excluded from the application of RCW 48.14.040 (retaliatory provision).

NEW SECTION. Sec. 11. PROHIBITED USE OF ACT. No person shall make use in any manner of the protection afforded under this act in the solicitation of insurance or annuity business.

NEW SECTION. Sec. 12. RECAPTURE OF EXCESSIVE DIVIDENDS TO AFFILIATES. (1) If an order for liquidation or rehabilitation of a domestic insurer has been entered, the receiver appointed or existing under such order shall have a right to recover, and upon request of the board or without such request shall take such action as he deems advisable to recover, on behalf of the insurer from any affiliate that controlled it the amount of distributions, other than stock dividends paid by the insurer on its capital stock, at any time during the five years preceding the petition for liquidation or rehabilitation of the insurer subject to the limitations of subsections (2) through (4) of this section.

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

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

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

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

NEW SECTION. Sec. 13. SHORT TITLE. This chapter shall be known and may be cited as the Washington Life and Disability Insurance Guaranty Association Act.

NEW SECTION. Sec. 14. CONSTRUCTION. This chapter shall be liberally construed to effect the purpose stated in section 1 of this act, which shall constitute an aid and guide to interpretation.

NEW SECTION. Sec. 15. SECTION HEADINGS NOT PART OF LAW.

Section headings in this act do not constitute any part of the law.

NEW SECTION. Sec. 16. NEW CHAPTER. Sections 1 through 14 of this act shall be added to Title 48 RCW as a new chapter thereof.

NEW SECTION. Sec. 17. SEVERABILITY. If any clause, sentence, paragraph, section or part of this act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment has been rendered.

NEW SECTION. Sec. 18. EMERGENCY. This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate May 3, 1971.

Passed the House May 9, 1971.

Approved by the Governor May 21, 1971.

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CHAPTER 260

[Engrossed Senate Bill No. 144]

TAXATION OF PROPERTY ACQUIRED BY PUBLIC AGENCIES

AN ACT Relating to the acquisition of property by public agencies; amending section 1, chapter 34, Laws of 1969 and RCW 84.36.010; amending section 84.60.050, chapter 15, Laws of 1961 as amended by section 36, chapter 145, Laws of 1967 ex.sess. and RCW 84.60.050; amending section 84.60.070, chapter 15, Laws of 1961 and RCW 84.60.070; and repealing section 84.60.060, chapter 15, Laws of 1961, section 37, chapter 145, Laws of 1967 ex.sess. and RCW 84.60.060.

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

Section 1. Section 1, chapter 34, Laws of 1969 and RCW 84.36.010 are each amended to read as follows:

All property belonging exclusively to the United States, the state, any county or municipal corporation, and all property under a recorded agreement granting immediate possession and use to said public bodies or under an order of immediate possession and use pursuant to RCW 8.04.090, shall be exempt from taxation. All property belonging exclusively to a foreign national government shall be exempt from taxation if such property is used exclusively as an office or residence for a consul or other official representative of such foreign national government, and if the consul or other official