

Senate Bill No. 416

CHAPTER 386

An act to amend Sections 1067.02 and 1067.09 of the Insurance Code, relating to insurance.

[Approved by Governor August 3, 1995. Filed with
Secretary of State August 4, 1995.]

LEGISLATIVE COUNSEL'S DIGEST

SB 416, Lewis. Health insurance: guarantee association.

Existing law provides for the California Life and Health Insurance Guarantee Association to provide coverage for persons for direct, nongroup life, health, annuity, and supplemental policies or contracts of insurance, except as specified, in case of failure in the performance of contractual obligations under life and health policies and contracts because of the impairment or insolvency of the member insurer that issued the policies or contracts.

Existing law provides that coverage is not provided for unallocated annuity contracts except that coverage may be provided for unallocated annuity contracts sold by an insurer as to which an order of liquidation, which contained a finding of insolvency and which later became final, was entered by a court of competent jurisdiction during a certain time period, and other conditions are met.

This bill would also provide that coverage may be provided for unallocated annuity contracts sold by a mutual insurer as to which an order of liquidation that contained a finding of insolvency and that later became final was entered by a court of competent jurisdiction in the state of its domicile after December 1, 1991, but prior to December 31, 1991, if other conditions are met.

Under existing law, the association is required to submit to the Insurance Commissioner a plan of operation that may provide for delegation of the powers and duties of the association, as specified.

This bill would provide that those powers and duties of the association that may be delegated include its administration.

The people of the State of California do enact as follows:

SECTION 1. Section 1067.02 of the Insurance Code is amended to read:

1067.02. (a) This article shall provide coverage for the policies and contracts specified in subdivision (b) to all of the following:

(1) To persons who, regardless of where they reside (except for nonresident certificate holders under group policies or contracts),



are the beneficiaries, assignees, or payees of the persons covered under paragraph (2).

(2) To persons who are owners of or certificate holders under those policies or contracts, and who either:

(A) Are residents of this state.

(B) Are not residents, but only under all of the following conditions:

(i) The insurers that issued the policies or contracts are domiciled in this state.

(ii) The insurers never held a license or certificate of authority in the states in which the persons reside.

(iii) The states in which the persons reside have associations similar to the association created by this article.

(iv) The persons are not eligible for coverage by those associations.

(b) (1) This article shall provide coverage to the persons specified in subdivision (a) for direct, nongroup life, health, annuity, and supplemental policies or contracts and for certificates under direct group life, health, annuity, and supplemental policies and contracts, except as limited by this article. Annuity contracts and certificates under group annuity contracts include, but are not limited to, structured settlement agreements, allocated annuity contracts, and any immediate or deferred annuity contracts, and unallocated annuity contracts except those expressly excluded pursuant to subparagraph (D) of paragraph (2) of this subdivision.

(2) This article shall not provide coverage for any of the following:

(A) Any portion of a policy or contract not guaranteed by the insurer, or under which the risk is borne by the policyholder or contractholder.

(B) Any policy or contract of reinsurance, unless assumption certificates have been issued.

(C) Any portion of a policy or contract to the extent that the rate of interest on which it is based exceeds either or both of the following:

(i) The extent to which the rate of interest, averaged over the period of four years prior to the date on which the association becomes obligated with respect to the policy or contract, exceeds a rate of interest determined by subtracting six percentage points from Moody's Corporate Bond Yield Average averaged for that same four-year period or for such lesser period if the policy or contract was issued less than four years before the association became obligated, not to go below a minimum of 0 percent.

(ii) The extent to which the rate of interest, on and after the date on which the association becomes obligated with respect to the policy or contract, exceeds the rate of interest determined by subtracting six percentage points from Moody's Corporate Bond Yield Average as most recently available, not to go below a minimum of 3 percent.



(D) Guaranteed investment contracts, guaranteed interest contracts, funding agreements, deposit administration contracts, and all other unallocated annuity contracts; provided however, coverage may be provided for unallocated annuity contracts sold (i) by an insurer as to which an order of liquidation, which contained a finding of insolvency and which later became final, was entered by a court of competent jurisdiction in the state of its domicile, after December 20, 1991, but prior to December 20, 1992, and sold to an employer or a trustee or other plan fiduciary in connection with a plan or program of an employer prior to December 20, 1992, for purposes of providing the employees of the employer with deferred compensation or pension benefits and (I) the individual employees have an option to participate or not participate, in whole or in part, in the contract, and (II) the individual employee contributes from his or her wages some portion of the funds paid into the plan or program, or (ii) sold by a mutual insurer as to which an order of liquidation that contained a finding of insolvency and that later became final was entered by a court of competent jurisdiction in the state of its domicile after December 1, 1991, but prior to December 31, 1991, and sold to an employer qualifying as an Internal Revenue Code Section 501(c)(3) employer or to a trustee or other plan fiduciary in connection with a plan or program of such an employer for purposes of providing the employees of the employer with deferred compensation or pension benefits and (I) the contract was purchased exclusively with funds of the employer in amounts computed as a uniform percentage of the compensation of each employee entitled to participate under the terms of the plan, (II) the contract has a stated maturity date occurring within 15 days prior to that order of liquidation, and (III) the employer also maintained at the time of the insolvency a tax deferred annuity plan or program described in Section 403(b) of the Internal Revenue Code.

(E) Any plan or program of an employer, association, or similar entity to provide life, health, or annuity benefits to its employees or members to the extent that the plan or program is self-funded or uninsured, including, but not limited to, benefits payable by an employer, association, or similar entity under any of the following:

(i) A multiple employer welfare arrangement as defined in Section 514 of the federal Employee Retirement Income Security Act of 1974, as amended.

(ii) A minimum premium group insurance plan.

(iii) A stop-loss group insurance plan.

(iv) An administrative services only contract.

(F) Any portion of a policy or contract to the extent that it provides dividends or experience rating credits, or provides that any fees or allowances be paid to any person, including the policyholder or contractholder, in connection with the service to or administration of the policy or contract.



(G) Any policy or contract issued in this state by a member insurer at a time when it was not licensed or did not have a certificate of authority to issue the policy or contract in this state.

(H) Any annuity issued by a charitable organization that is duly qualified as such under applicable provisions of the Internal Revenue Code, and that is not engaged in the business of insurance as its primary business.

(c) The benefits for which the association may become liable for life insurance and annuity policies shall in no event exceed the lesser of the following:

(1) Eighty percent of the contractual obligations for each policy or contract as modified pursuant to subparagraph (C) of paragraph (2) of subdivision (b), for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer.

(2) (A) With respect to any one life, regardless of the number of policies or contracts:

(i) Two hundred fifty thousand dollars (\$250,000) in life insurance death benefits, but not more than one hundred thousand dollars (\$100,000) in net cash surrender and net cash withdrawal values for life insurance.

(ii) One hundred thousand dollars (\$100,000) in the present value of annuity benefits, including net cash surrender and net cash withdrawal values.

(B) However, in no event shall the association be liable to expend more than two hundred fifty thousand dollars (\$250,000) in the aggregate with respect to any one individual under subparagraph (A).

(C) With respect to any one owner of multiple policies of individual life insurance, whether the policyowner is an individual, firm, corporation, or other legal entity, and whether the persons insured are officers, employees, or other persons in whose lives the policyowner has an insurable interest, five million dollars (\$5,000,000) in benefits regardless of the number of the policies and contracts held by the owner.

(d) The health insurance benefits for which the association may become liable shall in no event exceed the lesser of the following:

(1) The contractual obligations for which the insurer is liable or for which the insurer would have been liable if it were not an impaired or insolvent insurer.

(2) Two hundred thousand dollars (\$200,000) in health insurance benefits; an amount that shall annually increase or decrease based upon the health care cost component of the consumer price index.

(e) An unallocated annuity contract that is not covered by the association may not be offered to an employer, after January 1, 1994, unless prior to being offered to the employer, or the participation by the employee, the insurer or agent has disclosed to the employer, and



employee in writing in a conspicuous manner that the contract is not covered by the association.

SEC. 2. Section 1067.09 of the Insurance Code is amended to read:

1067.09. (a) (1) The association shall submit to the commissioner a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon the commissioner's written approval or unless he or she has not disapproved it within 30 days.

(2) If the association fails to submit a suitable plan of operation within 120 days following the effective date of this article or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt and promulgate those reasonable rules necessary or advisable to effectuate the provisions of this article. The rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

(b) All member insurers shall comply with the plan of operation.

(c) The plan of operation shall, in addition to requirements enumerated elsewhere in this article, do all of the following:

(1) Establish procedures for handling the assets of the association.

(2) Establish the amount and method of reimbursing members of the board of directors under Section 1067.06.

(3) Establish regular places and times for meetings including telephone conference calls of the board of directors.

(4) Establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors.

(5) Establish the procedure whereby selections for the board of directors will be made and submitted to the commissioner.

(6) Establish any additional procedures for assessments under Section 1067.08.

(7) Contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(d) The plan of operation may provide that any or all powers and duties of the association, including its administration, except those under paragraph (3) of subdivision (n) of Section 1067.07 and Section 1067.08, are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association, or its equivalent, in two or more states. That corporation, association, or organization shall be reimbursed for any payments made on behalf of the association and shall be paid for its performance of any function of the association. A delegation under this subdivision shall take effect only with the approval of both the board of directors and the commissioner, and may be made only to a corporation, association, or organization which extends protection



not substantially less favorable and effective than that provided by this article.

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