

CHAPTER 2021-109

House Bill No. 797

An act relating to the Florida Life and Health Insurance Guaranty Association; amending s. 631.714, F.S.; defining the term “Moody’s Corporate Bond Yield Average” and redefining the term “person,” to apply to provisions relating to life and health insurance guaranty of payments; amending s. 631.717, F.S.; authorizing the Florida Life and Health Insurance Guaranty Association to assume, reissue, and cause to be reissued covered policies of impaired insurers under certain circumstances; revising the association’s standing before a court; providing that the association has the right to appear or intervene before a court or agency in another state under certain circumstances; authorizing the association to join certain organizations for specified purposes; amending s. 631.718, F.S.; authorizing the board of directors of the association to credit specified assessments against certain future assessments under certain circumstances; deleting provisions prohibiting credits against future insolvency assessments and provisions limiting the amount assessed; requiring member insurers to pay deferred assessments under certain circumstances; deleting provisions limiting the amount that may be assessed against specified member insurers; amending s. 631.721, F.S.; providing additional requirements for the association’s plan of operation; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (8), (9), and (10) of section 631.714, Florida Statutes, are renumbered as subsections (9), (10), and (11), respectively, present subsection (9) is amended, and a new subsection (8) is added to that section, to read:

631.714 Definitions.—As used in this part, the term:

(8) “Moody’s Corporate Bond Yield Average” means the monthly average corporate bond yields published by Moody’s Investors Service, Inc., or any successor thereto.

(10)(9) “Person” means any individual, corporation, limited liability company, partnership, association, governmental body or entity, or voluntary organization.

Section 2. Paragraph (a) of subsection (1), subsection (7), and paragraph (f) of subsection (13) of section 631.717, Florida Statutes, are amended, and paragraph (h) is added to subsection (13) of that section, to read:

631.717 Powers and duties of the association.—

(1) If a domestic insurer is an impaired insurer, the association may, subject to the approval of the impaired insurer and the department:

(a) Guarantee, assume, reissue, or reinsure, or cause to be guaranteed, assumed, reissued, or reinsured, any or all of the covered policies of the impaired insurer;

(7) The association shall have standing to appear before any court in this state which has jurisdiction over an impaired or insolvent insurer to which the association is or may become obligated under this part. Such standing shall extend to all matters germane to the powers and duties of the association, including but not limited to, proposals for reinsuring, reissuing, modifying, or guaranteeing the covered policies of the impaired or insolvent insurer and the determination of the covered policies and contractual obligations. The association also has the right to appear or intervene before a court or agency in another state which has jurisdiction over:

(a) An impaired or insolvent insurer for which the association is or may become obligated; or

(b) A person or property against whom the association may have rights through subrogation or otherwise.

(13) The association may:

(f) Take such legal action as may be necessary to avoid or recover payment of improper claims.

(h) Join an organization of other state guaranty associations to further the purposes and to carry out the powers and duties of the association.

Section 3. Paragraph (a) of subsection (3) and subsections (4) and (9) of section 631.718, Florida Statutes, are amended, and paragraphs (b) and (c) of subsection (3) of that section are republished, to read:

631.718 Assessments.—

(3)(a) The amount of any Class A assessment shall be determined by the board and may be made on a pro rata or non-pro rata basis. If on a pro rata basis, the board may credit the assessment against future Class B assessments ~~The assessment may not be credited against future insolvency assessments and may not exceed \$250 per member insurer in any one calendar year.~~

(b)1. The amount of any Class B assessment, except for assessments related to long-term care insurance, must be allocated for assessment purposes among the accounts pursuant to an allocation formula, which may be based on the premiums or reserves of the impaired or insolvent insurer.

2. The amount of the Class B assessment for long-term care insurance written by the impaired or insolvent insurer must be allocated according to a methodology included in the plan of operation and approved by the department. The methodology must provide for 50 percent of the assessment

to be allocated to health member insurers and 50 percent to be allocated to life and annuity member insurers.

3. For the purposes of the methodology outlined in subparagraph 2. and included in the plan of operation, the health member insurers' share of the assessment must be calculated by including the assessable premiums of member health maintenance organizations of the Florida Health Maintenance Organization Consumer Assistance Plan.

(c) Class B assessments against member insurers for each account must be based upon the premiums received on business in this state by each assessed member insurer on policies or contracts covered by each account for the 3 most recent calendar years for which information is available preceding the year of the assessment in proportion to premiums received on business in this state for those calendar years by all assessed member insurers. If the most recent 3 years of premium information is not available for each member insurer, the board of directors may use the premium information that is reasonably available.

(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 member insurer to fulfill its contractual obligations. In the event an assessment against a member insurer is abated, or deferred in whole or in part, 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. Once the conditions that caused a deferral have been removed or rectified, the member insurer shall pay all assessments that were deferred pursuant to a repayment plan approved by the association.

~~(9) Notwithstanding any provision to the contrary, no member insurer that is a nonprofit insurance company which issues annuity contracts or group annuity contracts pursuant to s. 121.35, or for the benefit of employees of educational institutions situated in this state may be assessed in any one calendar year an amount greater than the amount which it paid to this state in the previous year as premium tax and corporate tax on the business to which this part applies or 0.1 percent of written premium on such business in this state, whichever is greater.~~

Section 4. Paragraphs (h) and (i) are added to subsection (3) of section 631.721, Florida Statutes, and subsections (1) and (2) of that section are republished, to read:

631.721 Plan of operation.—

(1)(a) The association shall submit to the department a proposed plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The proposed plan of operation and any amendments thereto shall become effective upon approval in writing by the department.

(b) If at any time the association fails to submit suitable amendments to the plan, the department shall, after notice and hearing, adopt such reasonable rules as are necessary to effectuate the provisions of this part. Such rules shall continue in force until modified by the department or superseded by a proposed plan submitted by the association and approved by the department.

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

(3) The plan of operation shall, in addition to requirements enumerated elsewhere in this part:

(h) Establish a procedure for removing a member of the board of directors when that member becomes an impaired or insolvent insurer.

(i) Require the board of directors to establish a policy and procedures for addressing conflicts of interest.

Section 5. This act shall take effect July 1, 2021.

Approved by the Governor June 16, 2021.

Filed in Office Secretary of State June 16, 2021.