

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 40

BY BUSINESS COMMITTEE

AN ACT

1 RELATING TO THE IDAHO LIFE AND HEALTH INSURANCE GUARANTY  
 2 ASSOCIATION ACT; AMENDING SECTION 41-4303, IDAHO CODE, TO PROVIDE  
 3 THAT THE IDAHO LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION  
 4 ACT APPLIES TO STRUCTURED SETTLEMENT ANNUITIES, TO PROVIDE THAT  
 5 THE IDAHO LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION ACT  
 6 DOES NOT APPLY TO CERTAIN POLICIES OR CONTRACTS AND SHALL NOT  
 7 PROVIDE COVERAGE TO CERTAIN PERSONS WHO RECEIVE COVERAGE  
 8 BY AN ASSOCIATION OF ANOTHER STATE; AMENDING SECTION 41-4305,  
 9 IDAHO CODE, TO REVISE A DEFINITION, TO DEFINE A TERM AND TO MAKE  
 10 TECHNICAL CORRECTIONS; AMENDING SECTION 41-4308, IDAHO CODE, TO  
 11 REVISE PROVISIONS RELATING TO THE DUTIES AND LIABILITY OF THE  
 12 ASSOCIATION AND TO MAKE TECHNICAL CORRECTIONS; AND AMENDING  
 13 SECTION 41-4319, IDAHO CODE, TO REVISE PROVISIONS RELATING TO  
 14 PROHIBITED ADVERTISEMENT IN THE SALE OF INSURANCE AND TO  
 15 SPECIFY THAT CERTAIN WRITTEN MATERIAL IS NOT PROHIBITED.  
 16

17 Be It Enacted by the Legislature of the State of Idaho:

18 SECTION 1. That Section 41-4303, Idaho Code, be, and the same is hereby amended to  
 19 read as follows:

20 41-4303. APPLICATION OF CHAPTER. (1) This chapter shall apply to direct life  
 21 insurance policies, contractual obligations of managed care plans to members of such plans  
 22 only, disability insurance policies, annuity contracts, and contracts supplemental to life and  
 23 disability insurance policies, annuity contracts, and contracts supplemental to life and disability  
 24 insurance policies and annuity contracts issued by persons licensed to transact insurance in  
 25 this state at any time. Covered policies shall include annuities owned by a trust for a money  
 26 purchase pension plan, profit sharing plan, 401(k) thrift plan or any other defined contribution  
 27 plan, ~~and~~ annuities owned by a custodian of an individual retirement account and structured  
 28 settlement annuities.

29 (2) This chapter shall not apply to:

30 (a) That portion or part of a variable life insurance or variable annuity contract not  
 31 guaranteed by an insurer;

32 (b) That portion or part of any policy or contract under which the risk is borne by the  
 33 policyholder;

34 (c) Any policy or contract or part thereof assumed by the impaired or insolvent insurer  
 35 under a contract of reinsurance, other than reinsurance for which assumption certificates  
 36 have been issued;

1 (d) Any such policy or contract issued by a reciprocal insurer, mutual benefit association,  
2 fraternal benefit society, hospital and medical service corporation, limited managed care  
3 plan, or self-funded health care plan;

4 (e) Any unallocated annuity contract, including an annuity owned by a defined benefit  
5 pension plan or trust;

6 (f) A portion of a policy or contract to the extent that the rate of interest on which it is  
7 based, or the interest rate, crediting rate or similar factor determined by use of an index or  
8 other external reference stated in the policy or contract employed in calculating returns or  
9 exchanges in value:

10 (i) Averaged over the period of four (4) years prior to the date on which the  
11 member insurer becomes an impaired or insolvent insurer under this chapter,  
12 whichever is earlier, exceeds the rate of interest determined by subtracting two (2)  
13 percentage points from Moody's Corporate Bond Yield Average averaged for that  
14 same four (4) year period or for such lesser period if the policy or contract was  
15 issued less than four (4) years before the member insurer becomes an impaired or  
16 insolvent insurer under this chapter, whichever is earlier; ~~and~~

17 (ii) On and after the date on which the member insurer becomes an impaired  
18 or insolvent insurer under this chapter, whichever is earlier, exceeds the rate  
19 of interest determined by subtracting three (3) percentage points from Moody's  
20 Corporate Bond Yield Average as most recently available; and

21 (iii) For purposes of this section, "Moody's Corporate Bond Yield Average" means  
22 the monthly average corporates as published by Moody's Investors Service, Inc.,  
23 or any successor thereto; ~~or~~

24 (g) An obligation that does not arise under the express written terms of the policy or  
25 contract issued by the insurer to the contract owner or policyowner, including without  
26 limitation:

27 (i) Claims based on marketing materials;

28 (ii) Claims based on side letters, riders or other documents that were issued by the  
29 insurer without meeting applicable policy form filing or approval requirements;

30 (iii) Misrepresentations of or regarding policy benefits;

31 (iv) Extra-contractual claims; or

32 (v) A claim for penalties or consequential or incidental damages; or

33 (h) A policy or contract providing any hospital, medical, prescription drug or other  
34 health care benefits pursuant to 42 U.S.C. chapter 7, subchapter XVIII, parts C and D,  
35 commonly known as medicare part C and D, or any regulations issued pursuant thereto.

36 (3) This chapter shall not provide coverage to a person who is a payee or beneficiary of  
37 a contract owner resident of this state if the payee or beneficiary receives any coverage by the  
38 association of another state.

39 (4) In order to avoid duplicate coverage, a person who is eligible for coverage under  
40 the provisions of this chapter and is currently provided coverage under the laws of any other  
41 state shall not be provided coverage under this chapter. This chapter shall be construed in  
42 conjunction with other states' laws in order to ensure coverage by only one (1) association.

43 SECTION 2. That Section 41-4305, Idaho Code, be, and the same is hereby amended to  
44 read as follows:

45 41-4305. DEFINITIONS. As used in this ~~act~~ chapter:

1 (1) "Account" means either of the three (3) accounts created under section 41-4306,  
2 Idaho Code.

3 (2) "Association" means the Idaho life and health insurance guaranty association created  
4 under section 41-4306, Idaho Code.

5 ~~(3) "Director" means director of the department of insurance of this state.~~

6 ~~(4) "Contractual obligation" means any obligation under covered policies.~~

7 ~~(5) "Covered policy" means any policy or contract within the scope of this ~~act~~ chapter~~  
8 under section 41-4303, Idaho Code.

9 (5) "Director" means director of the department of insurance of this state.

10 (6) "Impaired insurer" means a member insurer deemed by the director after the effective  
11 date of this ~~act~~ chapter to be potentially unable to fulfill its contractual obligations and not an  
12 insolvent insurer.

13 (7) "Insolvent insurer" means a member insurer which after the effective date of this ~~act~~  
14 chapter, becomes insolvent and is placed under a final order of liquidation, rehabilitation or  
15 conservation by a court of competent jurisdiction.

16 (8) "Member insurer" means any person licensed to transact in this state any kind of  
17 insurance to which this ~~act~~ chapter applies under section 41-4303, Idaho Code.

18 ~~(9) "Premiums" means direct gross insurance premiums and annuity considerations~~  
19 ~~received on covered policies, less return premiums and considerations thereon and dividends~~  
20 ~~paid or credited to policyholders on such direct business. "Premiums" do not include premiums~~  
21 ~~and considerations on contracts between insurers and reinsurers.~~

22 ~~(10) "Person" means any individual, corporation, partnership, association or voluntary~~  
23 ~~organization.~~

24 (10) "Premiums" means direct gross insurance premiums and annuity considerations  
25 received on covered policies, less return premiums and considerations thereon and dividends  
26 paid or credited to policyholders on such direct business. "Premiums" do not include premiums  
27 and considerations on contracts between insurers and reinsurers.

28 (11) "Resident" means any person who resides in this state at the time a member insurer  
29 is determined to be an impaired or insolvent insurer and to whom contractual obligations are  
30 owed.

31 (12) "Structured settlement annuity" means an annuity purchased in order to fund periodic  
32 payments to a plaintiff or other claimant for or with respect to personal injury suffered by the  
33 plaintiff or other claimant.

34 (13) "Unallocated annuity contract" means any annuity contract or group annuity  
35 certificate which is not issued to and owned by an individual, except to the extent of any  
36 annuity benefits guaranteed to an individual by an insurer under the contract or certificate.

37 SECTION 3. That Section 41-4308, Idaho Code, be, and the same is hereby amended to  
38 read as follows:

39 41-4308. POWERS AND DUTIES OF THE ASSOCIATION. In addition to the powers  
40 and duties enumerated in other sections of this ~~act~~ chapter:

41 (1) If a domestic insurer is an impaired insurer, the association may, subject to any  
42 conditions imposed by the association, other than those which impair the contractual obligations  
43 of the impaired insurer, and approved by the impaired insurer and the director:

44 (a) Guarantee or reinsure, or cause to be guaranteed, assumed, or reinsured, any or all of  
45 the covered policies of residents of the impaired insurers;

1 (b) Provide such moneys, pledges, notes, guarantees, or other means as are proper to  
 2 effectuate and assure payment of the contractual obligations to residents of the impaired  
 3 insurer pending action under paragraph (a) of this subsection;

4 (c) Loan money to the impaired insurer.

5 (d) This chapter shall provide coverage for the policies and contracts specified in  
 6 subsection (1) of this section, for persons who are not residents, but only under the  
 7 following conditions:

8 (i) The insurers which issued such policies or contracts are domiciled in this  
 9 state;

10 (ii) The director has determined that by statute, similar protection is not available  
 11 for such nonresidents as that provided in this chapter for residents of this state; and

12 (iii) The policy or contract establishing or creating the obligation is not a managed  
 13 care plan.

14 (2) If a domestic insurer is an insolvent insurer, the association shall, subject to the  
 15 approval of the director:

16 (a) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured the  
 17 covered policies of residents of the insolvent insurer;

18 (b) Assume payment of the contractual obligations to residents of the insolvent insurer;  
 19 and;

20 (c) Provide such moneys, pledges, notes, guarantees, or other means as are reasonably  
 21 necessary to discharge such duties.

22 (d) This chapter shall provide coverage for the policies and contracts specified in  
 23 subsection (2) of this section, for persons who are not residents, but only under the  
 24 following conditions:

25 (i) The insurers which issued such policies or contracts are domiciled in this  
 26 state;

27 (ii) The director has determined that by statute, similar protection is not available  
 28 for such nonresidents as that provided by this chapter for residents of this state;

29 and

30 (iii) The policy or contract establishing or creating the obligation is not a managed  
 31 care plan.

32 (3) If a foreign or alien insurer is an insolvent insurer, the association shall, subject to the  
 33 approval of the director:

34 (a) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured the  
 35 covered policies of residents;

36 (b) Assure payment of the contractual obligations of the insolvent insurer to residents;  
 37 and

38 (c) Provide such moneys, pledges, notes, guarantees, or other means as are reasonably  
 39 necessary to discharge such duties.

40 Provided, however, that this subsection shall not apply where the director has determined that  
 41 the foreign or alien insurer's domiciliary jurisdiction or state of entry provides, by statute,  
 42 protection substantially similar to that provided by this ~~act~~ chapter for residents of this state.

43 (4) (a) In carrying out its duties under subsections (2) and (3) of this section, permanent  
 44 policy liens, or contract liens may be imposed in connection with any guarantee,  
 45 assumption or reinsurance agreement, if the court:

1 (i) Finds that the amounts which can be assessed under this ~~act~~ chapter are less  
2 than the amounts needed to assure full and prompt performance of the insolvent  
3 insurer's contractual obligations, or that the economic or financial conditions as  
4 they affect member insurers are sufficiently adverse to render the imposition of  
5 policy or contract liens; to be in the public interest; and

6 (ii) Approves the specific policy liens or contract liens to be used.

7 (b) Before being obligated under subsections (2) and (3) of this section, the association  
8 may request that there be imposed temporary moratoriums or liens on payments of cash  
9 values and policy loans in addition to any contractual provisions for deferral of cash or  
10 policy loan values and such temporary moratoriums and liens may be imposed if they are  
11 approved by the court.

12 (5) If the association fails to act within a reasonable period of time as provided in  
13 subsections (2) and (3) of this section, the director shall have the powers and duties of the  
14 association under this ~~act~~ chapter with respect to insolvent insurers.

15 (6) The association may render assistance and advice to the director upon his request,  
16 concerning rehabilitation, payment of claims, continuance of coverage, or the performance of  
17 other contractual obligations of any impaired or insolvent insurer.

18 (7) The association shall have standing to appear before any court in this state with  
19 jurisdiction over an impaired or insolvent insurer concerning which the association is or may  
20 become obligated under this ~~act~~ chapter. Such standing shall extend to all matters germane to  
21 the powers and duties of the association, including, but not limited to, proposals for reinsuring  
22 or guaranteeing the covered policies of the impaired or insolvent insurer and the determination  
23 of the covered policies and contractual obligations.

24 (8) (a) Any person receiving benefits under this ~~act~~ chapter shall be deemed to have  
25 assigned the rights under the covered policy to the association to the extent of the benefits  
26 received because of this ~~act~~ chapter whether the benefits are payments of contractual  
27 obligations or continuation of coverage. The association may require an assignment to it  
28 of such rights by any payee, policy or contract owner, beneficiary, insured or annuitant as  
29 a condition precedent to the receipt of any rights or benefits conferred by this ~~act~~ chapter  
30 upon such person. The association shall be subrogated to these rights against the assets of  
31 any insolvent insurer.

32 (b) The subrogation rights of the association under this subsection shall have the same  
33 priority against the assets of the insolvent insurer as that possessed by the person entitled  
34 to receive benefits under this ~~act~~ chapter.

35 (9) The contractual obligations of the insolvent insurer for which the association becomes  
36 or may become liable shall be the lesser of:

37 (a) The contractual obligations for which the insolvent insurer would have been liable in  
38 the absence of an insolvency; or

39 (b) Unless such obligations are reduced as permitted by subsection (4) of this section, the  
40 aggregate liability of the association shall not exceed the following per policy:

41 (i) One hundred thousand dollars (\$100,000) in net cash surrender in net cash  
42 withdrawal values for life insurance, or three hundred thousand dollars (\$300,000)  
43 in life insurance death benefits;

44 (ii) Three hundred thousand dollars (\$300,000) in disability insurance claims  
45 or benefit payments, or one hundred thousand dollars (\$100,000) in net cash  
46 surrender and net cash withdrawal values for disability benefits;

1           (iii) ~~Three hundred thousand dollars (\$300,000) of annuity benefit payments for~~  
 2 ~~annuities for which periodic annuity benefits, for a period of not less than the~~  
 3 ~~annuitant's lifetime or for a period certain of not less than ten (10) years, have~~  
 4 ~~begun to be paid on or before the date of the impairment or insolvency, or one~~  
 5 Two hundred fifty thousand dollars (\$250,000) in the present value of annuity  
 6 benefits, including net cash surrender or net cash withdrawal values; or

7           (iv) Where no coverage limit has been specified for a covered policy or benefit,  
 8 the coverage limit shall be three hundred thousand dollars (\$300,000).

9           (c) In no event shall the association be liable to expend more than three hundred  
 10 thousand dollars (\$300,000) in the aggregate for all benefits, including cash values, with  
 11 respect to any one (1) life.

12           (10) The association may:

13           (a) Enter into such contracts as are necessary or proper to carry out the provisions and  
 14 purposes of this ~~act~~ chapter;

15           (b) Sue or be sued, including taking any legal actions necessary or proper for recovery of  
 16 any unpaid assessments under section 41-4309, Idaho Code;

17           (c) Borrow money to effect the purposes of this ~~act~~ chapter. Any notes or other evidence  
 18 of indebtedness of the association not in default shall be legal investments for domestic  
 19 insurers and may be carried as admitted assets;

20           (d) Employ or retain such persons as are necessary to handle the financial transactions of  
 21 the association and to perform such other functions as become necessary or proper under  
 22 this ~~act~~ chapter;

23           (e) Negotiate and contract with any liquidator, rehabilitator, conservator, or ancillary  
 24 receiver to carry out the powers and duties of the association;

25           (f) Take such legal action as may be necessary to avoid payment of improper claims;

26           (g) Exercise, for the purposes of this ~~act~~ chapter and to the extent approved by  
 27 the director, the powers of a domestic life or health insurer, but in no case may the  
 28 association issue insurance policies or annuity contracts other than those issued to  
 29 perform the contractual obligations of the impaired or insolvent insurer.

30           SECTION 4. That Section 41-4319, Idaho Code, be, and the same is hereby amended to  
 31 read as follows:

32           41-4319. PROHIBITED ADVERTISEMENT OF INSURANCE GUARANTY  
 33 ASSOCIATION ACT IN SALE OF INSURANCE. No person, including an insurer, agent, or  
 34 affiliate of an insurer shall make, publish, disseminate, circulate, or place before the public, or  
 35 cause directly or indirectly, to be made, published, disseminated, circulated or placed before the  
 36 public, in any newspaper, magazine or other publication, or in the form of a notice, circular,  
 37 pamphlet, letter or poster, or over any radio station or television station, or in any other way,  
 38 any advertisement, announcement or statement, written or oral, which uses the existence of the  
 39 insurance guaranty association of this state for the purpose of sales, solicitation, or inducement  
 40 to purchase any form of insurance covered by the Idaho life and health insurance guaranty  
 41 association act. Provided, however, that this section shall not apply to the Idaho life and health  
 42 insurance guaranty association or any other entity which does not sell or solicit insurance. This  
 43 section shall also not prohibit the furnishing of written information that is in a form prepared by  
 44 the association and approved by the director upon request of the policyowner.