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HB 797

2021 Legislature

1
2 An act relating to the Florida Life and Health
3 Insurance Guaranty Association; amending s. 631.714,
4 F.S.; defining the term "Moody's Corporate Bond Yield
5 Average" and redefining the term "person," to apply to
6 provisions relating to life and health insurance
7 guaranty of payments; amending s. 631.717, F.S.;
8 authorizing the Florida Life and Health Insurance
9 Guaranty Association to assume, reissue, and cause to
10 be reissued covered policies of impaired insurers under
11 certain circumstances; revising the association's
12 standing before a court; providing that the
13 association has the right to appear or intervene
14 before a court or agency in another state under
15 certain circumstances; authorizing the association to
16 join certain organizations for specified purposes;
17 amending s. 631.718, F.S.; authorizing the board of
18 directors of the association to credit specified
19 assessments against certain future assessments under
20 certain circumstances; deleting provisions prohibiting
21 credits against future insolvency assessments and
22 provisions limiting the amount assessed; requiring
23 member insurers to pay deferred assessments under
24 certain circumstances; deleting provisions limiting
25 the amount that may be assessed against specified

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26 member insurers; amending s. 631.721, F.S.; providing
 27 additional requirements for the association's plan of
 28 operation; providing an effective date.

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

31
 32 Section 1. Subsections (8), (9), and (10) of section
 33 631.714, Florida Statutes, are renumbered as subsections (9),
 34 (10), and (11), respectively, present subsection (9) is amended,
 35 and a new subsection (8) is added to that section, to read:

36 631.714 Definitions.—As used in this part, the term:
 37 (8) "Moody's Corporate Bond Yield Average" means the
 38 monthly average corporate bond yields published by Moody's
 39 Investors Service, Inc., or any successor thereto.

40 (10)(9) "Person" means any individual, corporation,
 41 limited liability company, partnership, association,
 42 governmental body or entity, or voluntary organization.

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

47 631.717 Powers and duties of the association.—

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

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

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

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

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

69 (13) The association may:

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

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

75 Section 3. Paragraph (a) of subsection (3) and subsections

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76 (4) and (9) of section 631.718, Florida Statutes, are amended,
 77 and paragraphs (b) and (c) of subsection (3) of that section are
 78 republished, to read:

79 631.718 Assessments.—

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

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

91 2. The amount of the Class B assessment for long-term care
 92 insurance written by the impaired or insolvent insurer must be
 93 allocated according to a methodology included in the plan of
 94 operation and approved by the department. The methodology must
 95 provide for 50 percent of the assessment to be allocated to
 96 health member insurers and 50 percent to be allocated to life
 97 and annuity member insurers.

98 3. For the purposes of the methodology outlined in
 99 subparagraph 2. and included in the plan of operation, the
 100 health member insurers' share of the assessment must be

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101 calculated by including the assessable premiums of member health
102 maintenance organizations of the Florida Health Maintenance
103 Organization Consumer Assistance Plan.

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

114 (4) The association may abate or defer, in whole or in
115 part, the assessment of a member insurer if, in the opinion of
116 the board, payment of the assessment would endanger the ability
117 of the member insurer to fulfill its contractual obligations. In
118 the event an assessment against a member insurer is abated, or
119 deferred in whole or in part, the amount by which such
120 assessment is abated or deferred may be assessed against the
121 other member insurers in a manner consistent with the basis for
122 assessments set forth in this section. Once the conditions that
123 caused a deferral have been removed or rectified, the member
124 insurer shall pay all assessments that were deferred pursuant to
125 a repayment plan approved by the association.

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

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

139 631.721 Plan of operation.—

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

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

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151 | by a proposed plan submitted by the association and approved by
152 | the department.

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

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

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

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

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