

1-1 By: Eltife S.B. No. 1196  
 1-2 (In the Senate - Filed March 10, 2015; March 17, 2015, read  
 1-3 first time and referred to Committee on Business and Commerce;  
 1-4 April 9, 2015, reported adversely, with favorable Committee  
 1-5 Substitute by the following vote: Yeas 9, Nays 0; April 9, 2015,  
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 1196 By: Creighton

1-19 A BILL TO BE ENTITLED  
 1-20 AN ACT

1-21 relating to the regulation of funding agreements, guaranteed  
 1-22 investment contracts, and synthetic guaranteed investment  
 1-23 contracts issued by a life insurer; clarifying certain provisions  
 1-24 relating to insurer receivership.

1-25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-26 SECTION 1. Section [443.301](#), Insurance Code, is amended to  
 1-27 read as follows:

1-28 Sec. 443.301. PRIORITY OF DISTRIBUTION. The priority of  
 1-29 payment of distributions on unsecured claims must be in accordance  
 1-30 with the order in which each class of claims is set forth in this  
 1-31 section. Every claim in each class shall be paid in full, or  
 1-32 adequate funds retained for their payment, before the members of  
 1-33 the next class receive payment, and all claims within a class must  
 1-34 be paid substantially the same percentage of the amount of the  
 1-35 claim. Except as provided by Subsections (a)(2), (a)(3), (i), and  
 1-36 (k), subclasses may not be established within a class. No claim by  
 1-37 a shareholder, policyholder, or other creditor shall be permitted  
 1-38 to circumvent the priority classes through the use of equitable  
 1-39 remedies. The order of distribution of claims shall be:

1-40 (a) Class 1. (1) The costs and expenses of administration  
 1-41 expressly approved or ratified by the liquidator, including the  
 1-42 following:

1-43 (A) the actual and necessary costs of preserving  
 1-44 or recovering the property of the insurer;

1-45 (B) reasonable compensation for all services  
 1-46 rendered on behalf of the administrative supervisor or receiver;

1-47 (C) any necessary filing fees;

1-48 (D) the fees and mileage payable to witnesses;

1-49 (E) unsecured loans obtained by the receiver; and

1-50 (F) expenses, if any, approved by the  
 1-51 rehabilitator of the insurer and incurred in the course of the  
 1-52 rehabilitation that are unpaid at the time of the entry of the order  
 1-53 of liquidation.

1-54 (2) The reasonable expenses of a guaranty association,  
 1-55 including overhead, salaries and other general administrative  
 1-56 expenses allocable to the receivership to include administrative  
 1-57 and claims handling expenses and expenses in connection with  
 1-58 arrangements for ongoing coverage, other than expenses incurred in  
 1-59 the performance of duties under Section [462.002\(3\)](#), [463.108](#),  
 1-60 [463.111](#), [463.113](#), [463.353](#), or [2602.113](#) or similar duties under the

2-1 statute governing a similar organization in another state. In the  
 2-2 case of the Texas Property and Casualty Insurance Guaranty  
 2-3 Association and other property and casualty guaranty associations,  
 2-4 the expenses shall include loss adjustment expenses, including  
 2-5 adjusting and other expenses and defense and cost containment  
 2-6 expenses. In the event that there are insufficient assets to pay  
 2-7 all of the costs and expenses of administration under Subsection  
 2-8 (a)(1) and the expenses of a guaranty association, the costs and  
 2-9 expenses under Subsection (a)(1) shall have priority over the  
 2-10 expenses of a guaranty association. In this event, the expenses of  
 2-11 a guaranty association shall be paid on a pro rata basis after the  
 2-12 payment of costs and expenses under Subsection (a)(1) in full.

2-13 (3) For purposes of Subsection (a)(1)(E), any  
 2-14 unsecured loan obtained by the receiver, unless by its terms it  
 2-15 otherwise provides, has priority over all other costs of  
 2-16 administration. Absent agreement to the contrary, all claims in  
 2-17 this subclass share pro rata.

2-18 (4) Except as expressly approved by the receiver, any  
 2-19 expenses arising from a duty to indemnify the directors, officers,  
 2-20 or employees of the insurer are excluded from this class and, if  
 2-21 allowed, are Class 5 claims.

2-22 (b) Class 2. (1) All claims under policies of insurance,  
 2-23 including third-party claims; claims under annuity contracts,  
 2-24 including funding agreements, guaranteed investment contracts, and  
 2-25 synthetic guaranteed investment contracts; [ ] claims under  
 2-26 nonassessable policies for unearned premium; [ ] claims of obligees  
 2-27 and, subject to the discretion of the receiver, completion  
 2-28 contractors, under surety bonds and surety undertakings other than  
 2-29 bail bonds, mortgage or financial guaranties, or other forms of  
 2-30 insurance offering protection against investment risk; [ ] claims  
 2-31 by principals under surety bonds and surety undertakings for  
 2-32 wrongful dissipation of collateral by the insurer or its agents; [ ]  
 2-33 and claims incurred during the extension of coverage provided for  
 2-34 in Section 443.152. For purposes of this subdivision, "annuity  
 2-35 contract," "funding agreement," "guaranteed investment contract,"  
 2-36 and "synthetic guaranteed investment contract" have the meanings  
 2-37 assigned by Section 1154.003.

2-38 (2) All other claims incurred in fulfilling the  
 2-39 statutory obligations of a guaranty association not included in  
 2-40 Class 1, including indemnity payments on covered claims and, in the  
 2-41 case of the Life, Accident, Health, and Hospital Service Insurance  
 2-42 Guaranty Association or another life and health guaranty  
 2-43 association, all claims as a creditor of the impaired or insolvent  
 2-44 insurer for all payments of and liabilities incurred on behalf of  
 2-45 covered claims or covered obligations of the insurer and for the  
 2-46 funds needed to reinsure those obligations with a solvent insurer.

2-47 (3) Claims for benefits under a health care plan  
 2-48 issued by a health maintenance organization.

2-49 (4) Claims under insurance policies or contracts for  
 2-50 benefits issued by an unauthorized insurer.

2-51 (5) Notwithstanding any provision of this chapter, the  
 2-52 following claims are excluded from Class 2 priority:

2-53 (A) obligations of the insolvent insurer arising  
 2-54 out of reinsurance contracts;

2-55 (B) obligations, excluding unearned premium  
 2-56 claims on policies other than reinsurance agreements, incurred  
 2-57 after:

2-58 (i) the expiration date of the insurance  
 2-59 policy;

2-60 (ii) the policy has been replaced by the  
 2-61 insured or canceled at the insured's request; or

2-62 (iii) the policy has been canceled as  
 2-63 provided by this chapter;

2-64 (C) obligations to insurers, insurance pools, or  
 2-65 underwriting associations and their claims for contribution,  
 2-66 indemnity, or subrogation, equitable or otherwise;

2-67 (D) any claim that is in excess of any applicable  
 2-68 limits provided in the insurance policy issued by the insurer;

2-69 (E) any amount accrued as punitive or exemplary

3-1 damages unless expressly covered under the terms of the policy;  
 3-2 (F) tort claims of any kind against the insurer  
 3-3 and claims against the insurer for bad faith or wrongful settlement  
 3-4 practices; and

3-5 (G) claims of the guaranty associations for  
 3-6 assessments not paid by the insurer, which must be paid as claims in  
 3-7 Class 5.

3-8 (c) Class 3. Claims of the federal government not included  
 3-9 in Class 2.

3-10 (d) Class 4. Debts due employees for services or benefits  
 3-11 to the extent that the debts do not exceed \$5,000 or two months  
 3-12 salary, whichever is the lesser, and represent payment for services  
 3-13 performed within one year before the entry of the initial order of  
 3-14 receivership. This priority is in lieu of any other similar  
 3-15 priority that may be authorized by law as to wages or compensation  
 3-16 of employees.

3-17 (e) Class 5. Claims of other unsecured creditors not  
 3-18 included in Classes 1 through 4, including claims under reinsurance  
 3-19 contracts, claims of guaranty associations for assessments not paid  
 3-20 by the insurer, and other claims excluded from Class 2.

3-21 (f) Class 6. Claims of any state or local governments,  
 3-22 except those specifically classified elsewhere in this section.  
 3-23 Claims of attorneys for fees and expenses owed them by an insurer  
 3-24 for services rendered in opposing a formal delinquency proceeding.  
 3-25 In order to prove the claim, the claimant must show that the insurer  
 3-26 that is the subject of the delinquency proceeding incurred the fees  
 3-27 and expenses based on its best knowledge, information, and belief,  
 3-28 formed after reasonable inquiry, indicating opposition was in the  
 3-29 best interests of the insurer, was well grounded in fact, and was  
 3-30 warranted by existing law or a good faith argument for the  
 3-31 extension, modification, or reversal of existing law, and that  
 3-32 opposition was not pursued for any improper purpose, such as to  
 3-33 harass or to cause unnecessary delay or needless increase in the  
 3-34 cost of the litigation.

3-35 (g) Class 7. Claims of any state or local government for a  
 3-36 penalty or forfeiture, but only to the extent of the pecuniary loss  
 3-37 sustained from the act, transaction, or proceeding out of which the  
 3-38 penalty or forfeiture arose, with reasonable and actual costs  
 3-39 occasioned thereby. The balance of the claims must be treated as  
 3-40 Class 9 claims under Subsection (i).

3-41 (h) Class 8. Except as provided in Sections 443.251(b) and  
 3-42 (d), late filed claims that would otherwise be classified in  
 3-43 Classes 2 through 7.

3-44 (i) Class 9. Surplus notes, capital notes or contribution  
 3-45 notes or similar obligations, premium refunds on assessable  
 3-46 policies, and any other claims specifically assigned to this class.  
 3-47 Claims in this class are subject to any subordination agreements  
 3-48 related to other claims in this class that existed before the entry  
 3-49 of the liquidation order.

3-50 (j) Class 10. Interest on allowed claims of Classes 1  
 3-51 through 9, according to the terms of a plan proposed by the  
 3-52 liquidator and approved by the receivership court.

3-53 (k) Class 11. Claims of shareholders or other owners  
 3-54 arising out of their capacity as shareholders or other owners, or  
 3-55 any other capacity, except as they may be qualified in Class 2, 5,  
 3-56 or 10. Claims in this class are subject to any subordination  
 3-57 agreements related to other claims in this class that existed  
 3-58 before the entry of the liquidation order.

3-59 SECTION 2. Subtitle C, Title 7, Insurance Code, is amended  
 3-60 by adding Chapter 1154 to read as follows:

3-61 CHAPTER 1154. FUNDING AGREEMENTS, GUARANTEED INVESTMENT  
 3-62 CONTRACTS, AND SYNTHETIC GUARANTEED INVESTMENT CONTRACTS

3-63 SUBCHAPTER A. GENERAL PROVISIONS

3-64 Sec. 1154.001. SHORT TITLE. This chapter may be cited as  
 3-65 the Act for the Regulation of Funding Agreements, Guaranteed  
 3-66 Investment Contracts, and Synthetic Guaranteed Investment  
 3-67 Contracts.

3-68 Sec. 1154.002. PURPOSE; LEGISLATIVE INTENT; CONSTRUCTION.

3-69 (a) The purpose of this chapter is to:

4-1 (1) promote the public welfare by regulating funding  
 4-2 agreements, guaranteed investment contracts, and synthetic  
 4-3 guaranteed investment contracts; and

4-4 (2) clarify and codify the existing law pertaining to  
 4-5 funding agreements, guaranteed investment contracts, and synthetic  
 4-6 guaranteed investment contracts.

4-7 (b) This chapter shall be liberally construed.

4-8 Sec. 1154.003. DEFINITIONS. In this chapter:

4-9 (1) "Allocated group annuity contract" means a group  
 4-10 annuity contract or group annuity certificate under which the life  
 4-11 insurer establishes and maintains individual account records and  
 4-12 investment account balances for the group participants to allocate  
 4-13 and guarantee a specific payment amount to each group member.

4-14 (2) "Annuity contract" means a contract, including a  
 4-15 funding agreement, guaranteed investment contract, and synthetic  
 4-16 guaranteed investment contract, issued by a life insurer, with or  
 4-17 without a mortality or morbidity contingency, under which:

4-18 (A) the owner deposits cash or assets in one or  
 4-19 more installments with the life insurer; and

4-20 (B) the owner or a beneficiary designated by the  
 4-21 owner has a right to receive periodic payments for a specified  
 4-22 future term.

4-23 (3) "Funding agreement" means a type of annuity  
 4-24 contract under which a life insurer:

4-25 (A) accepts and accumulates funds, including  
 4-26 noncash assets; and

4-27 (B) makes one or more payments at a future date in  
 4-28 amounts that are not based on mortality or morbidity contingencies.

4-29 (4) "Governmental body" means a federal, state,  
 4-30 municipal, local, or foreign court, tribunal, governmental  
 4-31 department, commission, board, bureau, agency, authority,  
 4-32 instrumentality, regulatory body, or quasi-regulatory body.

4-33 (5) "Group" means a group to which a group life  
 4-34 insurance policy may be issued under Subchapter B, Chapter 1131.

4-35 (6) "Group annuity certificate" means a certificate  
 4-36 issued to a group member in connection with the group member's group  
 4-37 annuity contract.

4-38 (7) "Group annuity contract" means an annuity contract  
 4-39 issued to a group and not an individual.

4-40 (8) "Guaranteed investment contract" means a type of  
 4-41 annuity contract issued by a life insurer:

4-42 (A) that is a funding vehicle typically issued to  
 4-43 a retirement plan; and

4-44 (B) under which the life insurer accepts a  
 4-45 deposit or series of deposits from the purchaser and guarantees to  
 4-46 pay a specified interest rate of return on the funds deposited  
 4-47 during a specified period.

4-48 (9) "Life insurer" means an insurance company  
 4-49 authorized to engage in the business of life insurance, including  
 4-50 issuing annuity contracts, in this state.

4-51 (10) "Synthetic guaranteed investment contract" means  
 4-52 a group annuity contract or other agreement issued by a life insurer  
 4-53 that, wholly or partly, establishes the life insurer's obligations  
 4-54 by reference to a segregated portfolio of assets that the life  
 4-55 insurer does not own.

4-56 (11) "Unallocated group annuity contract" means a  
 4-57 group annuity contract or group annuity certificate that is not  
 4-58 issued to and owned by an individual, except to the extent of any  
 4-59 annuity benefits guaranteed to an individual by an insurer under  
 4-60 the contract or certificate.

4-61 Sec. 1154.004. APPLICABILITY OF CERTAIN OTHER LAW.  
 4-62 Chapters 521, 1107, 1115, and 1131 do not apply to funding  
 4-63 agreements, guaranteed investment contracts, or synthetic  
 4-64 guaranteed investment contracts without mortality or morbidity  
 4-65 contingencies.

4-66 Sec. 1154.005. RULES. The commissioner may adopt rules to  
 4-67 implement or clarify this chapter.

4-68 SUBCHAPTER B. FUNDING AGREEMENTS

4-69 Sec. 1154.051. ESTABLISHMENT OF FUNDING AGREEMENTS. (a) A

5-1 life insurer may issue a funding agreement to generate an income  
5-2 stream for the purchaser of the agreement or fund a future liability  
5-3 or program of the purchaser or the purchaser's designee. A life  
5-4 insurer may issue a funding agreement to:

5-5 (1) an accredited investor, as defined by 17 C.F.R.  
5-6 Section 230.501;

5-7 (2) a governmental body; or

5-8 (3) an institution with assets in excess of \$25  
5-9 million.

5-10 (b) A life insurer that issues a funding agreement in this  
5-11 state engages in the business of insurance for the purpose of  
5-12 regulation.

5-13 SUBCHAPTER C. GUARANTEED INVESTMENT CONTRACTS

5-14 Sec. 1154.101. ESTABLISHMENT OF GUARANTEED INVESTMENT  
5-15 CONTRACTS. A life insurer may issue a guaranteed investment  
5-16 contract to provide a benefit in a fixed amount or a variable amount  
5-17 or a fixed amount and a variable amount. A life insurer may issue a  
5-18 guaranteed investment contract to a group as an allocated or  
5-19 unallocated group annuity contract.

5-20 SECTION 3. This Act takes effect September 1, 2015.

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