

CHAPTER 34

INSURANCE

HOUSE BILL 99-1201

BY REPRESENTATIVES King, Lee, Decker, Hefley, Plant, and Swenson;
also SENATOR Epps.

AN ACT

CONCERNING THE AUTHORITY OF THE COLORADO INSURANCE GUARANTY ASSOCIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 10-4-503 (4), Colorado Revised Statutes, is amended to read:

10-4-503. Definitions. As used in this part 5, unless the context otherwise requires:

(4) "Covered claim" means an unpaid claim, including one for unearned premiums, which arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this part 5 applies issued by an insurer if such insurer becomes an insolvent insurer after July 1, 1971, and the claimant or insured is a resident of this state at the time of the insured event or the ~~property from which the claim arises is permanently located in this state~~ CLAIM IS A FIRST-PARTY CLAIM FOR DAMAGE TO PROPERTY WITH A PERMANENT LOCATION IN THIS STATE. "Covered claim" does not include any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise, but a claim for any such amount asserted against a person insured under a policy issued by an insurer which has become insolvent which, if it were not a claim by or for the benefit of a reinsurer, insurer, insurance pool, or underwriting association, would be a covered claim may be filed directly with the receiver or the insolvent insurer; except that in no event may any such claim be asserted in any legal action against the insured of such insolvent insurer. "COVERED CLAIM" DOES NOT INCLUDE ANY FIRST-PARTY CLAIM BY AN INSURED WHOSE NET WORTH EXCEEDS TEN MILLION DOLLARS ON DECEMBER 31 OF THE YEAR IMMEDIATELY PRECEDING THE DATE THE INSURER BECOMES AN INSOLVENT INSURER. AN INSURED'S NET WORTH ON SUCH DATE SHALL BE DEEMED TO INCLUDE THE AGGREGATE NET WORTH OF THE INSURED AND ALL OF ITS

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

SUBSIDIARIES AS CALCULATED ON A CONSOLIDATED BASIS.

SECTION 2. 10-4-504, Colorado Revised Statutes, is amended to read:

10-4-504. Scope. This part 5 shall apply to all kinds of direct insurance, except life, title, surety, sickness and accident, disability, credit, mortgage guaranty, financial guaranty, and ocean marine insurance. ~~In addition, this part 5 shall not apply to any person who has a net worth in excess of fifty million dollars as of December 31 of the year next preceding the date the insurer becomes an insolvent insurer.~~

SECTION 3. Part 5 of article 4 of title 10, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

10-4-508.5. Aggregate liability of association. (1) (a) NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS PART 5, EXCEPT IN THE CASE OF A CLAIM FOR BENEFITS UNDER WORKERS' COMPENSATION COVERAGE, ANY OBLIGATION OF THE ASSOCIATION TO ANY AND ALL PERSONS SHALL CEASE WHEN TEN MILLION DOLLARS SHALL HAVE BEEN PAID IN THE AGGREGATE BY THE ASSOCIATION AND ANY ONE OR MORE ASSOCIATIONS SIMILAR TO THE ASSOCIATION OF ANY OTHER STATE OR STATES OR ANY PROPERTY/CASUALTY INSURANCE SECURITY FUND THAT OBTAINS CONTRIBUTIONS FROM INSURERS ON A PRE-INSOLVENCY BASIS, TO OR ON BEHALF OF ANY INSURED AND ITS AFFILIATES ON COVERED CLAIMS OR ALLOWED CLAIMS ARISING UNDER THE POLICY OR POLICIES OF ANY ONE INSOLVENT INSURER.

(b) FOR PURPOSES OF THIS SECTION, THE TERM "AFFILIATE" SHALL MEAN A PERSON WHO DIRECTLY OR INDIRECTLY, THROUGH ONE OR MORE INTERMEDIARIES, CONTROLS, IS CONTROLLED BY, OR IS UNDER COMMON CONTROL WITH ANOTHER PERSON.

(2) IF THE ASSOCIATION DETERMINES THAT THERE MAY BE MORE THAN ONE CLAIMANT HAVING A COVERED CLAIM OR ALLOWED CLAIM AGAINST THE ASSOCIATION OR ANY ASSOCIATIONS SIMILAR TO THE ASSOCIATION OR ANY PROPERTY/CASUALTY INSURANCE SECURITY FUND IN OTHER STATES, UNDER THE POLICY OR POLICIES OF ANY ONE INSOLVENT INSURER, THE ASSOCIATION MAY ESTABLISH A PLAN TO ALLOCATE AMOUNTS PAYABLE BY THE ASSOCIATION IN SUCH MANNER AS THE ASSOCIATION IN ITS DISCRETION DEEMS EQUITABLE.

SECTION 4. 10-4-508 (2) (c), Colorado Revised Statutes, is amended to read:

10-4-508. Powers and duties of the association. (2) The association may:

(c) Sue or be sued, AND SUCH POWER TO SUE INCLUDES THE POWER AND RIGHT TO INTERVENE AS A PARTY BEFORE ANY COURT IN THIS STATE THAT HAS JURISDICTION OVER AN INSOLVENT INSURER, AS DEFINED IN SECTION 10-4-503 (5);

SECTION 5. 10-4-511, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

10-4-511. Effect of paid claims. (4) (a) THE ASSOCIATION SHALL HAVE THE RIGHT TO RECOVER FROM THE FOLLOWING PERSONS THE AMOUNT OF ANY COVERED CLAIM PAID ON BEHALF OF SUCH PERSON PURSUANT TO THIS PART 5:

(I) ANY INSURED WHOSE NET WORTH ON DECEMBER 31 OF THE YEAR IMMEDIATELY PRECEDING THE DATE THE INSURER BECOMES AN INSOLVENT INSURER EXCEEDS TWENTY-FIVE MILLION DOLLARS AND WHOSE LIABILITY OBLIGATIONS TO OTHER PERSONS ARE SATISFIED IN WHOLE OR IN PART BY PAYMENTS MADE UNDER THIS PART 5. AN INSURED'S NET WORTH ON SUCH DATE SHALL BE DEEMED TO INCLUDE THE AGGREGATE NET WORTH OF THE INSURED AND ALL OF ITS SUBSIDIARIES AS CALCULATED ON A CONSOLIDATED BASIS; AND

(II) ANY PERSON WHO IS AN AFFILIATE OF THE INSOLVENT INSURER AND WHOSE LIABILITY OBLIGATIONS TO OTHER PERSONS ARE SATISFIED IN WHOLE OR IN PART BY PAYMENTS MADE UNDER THIS PART 5.

(b) THE ASSOCIATION AND ANY SIMILAR ORGANIZATION IN ANOTHER STATE SHALL BE RECOGNIZED AS CLAIMANTS IN THE LIQUIDATION OF AN INSOLVENT INSURER FOR ANY AMOUNTS PAID BY THEM ON COVERED CLAIMS OBLIGATIONS AS DETERMINED UNDER THIS PART 5 OR SIMILAR LAWS IN OTHER STATES AND SHALL RECEIVE DIVIDENDS AND ANY OTHER DISTRIBUTIONS AT THE PRIORITY SET FORTH IN PART 5 OF ARTICLE 3 OF THIS TITLE. THE RECEIVER, LIQUIDATOR, OR STATUTORY SUCCESSOR OF AN INSOLVENT INSURER SHALL BE BOUND BY DETERMINATIONS OF COVERED CLAIM ELIGIBILITY UNDER THIS PART 5 AND BY SETTLEMENTS OF CLAIMS MADE BY THE ASSOCIATION OR A SIMILAR ORGANIZATION IN ANOTHER STATE. THE COURT HAVING JURISDICTION SHALL GRANT SUCH CLAIMS PRIORITY EQUAL TO THAT WHICH THE CLAIMANT WOULD HAVE BEEN ENTITLED IN THE ABSENCE OF THIS PART 5 AGAINST THE ASSETS OF THE INSOLVENT INSURER. THE EXPENSES OF THE ASSOCIATION OR SIMILAR ORGANIZATION IN HANDLING CLAIMS SHALL BE ACCORDED THE SAME PRIORITY AS THE LIQUIDATOR'S EXPENSES.

SECTION 6. 10-4-512 (2), Colorado Revised Statutes, is amended to read:

10-4-512. Nonduplication of recovery. (2) Any person having a claim which may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the ~~claimant or first-party insurance policyholder~~ INSURED; except that, if it is a first-party claim for damage to property with a permanent location, recovery shall be sought from the association of the location of the property, and, if it is a workers' compensation claim, recovery shall be sought from the association of the residence of the claimant. A claimant or first-party insured who has received a recovery from any other guaranty association or its equivalent in an amount equal to or greater than the recovery allowed under this part 5 shall not be eligible to receive any recovery from the Colorado insurance guaranty association. In addition, any recovery under this part 5 shall be reduced by the amount of the recovery from any other insurance guaranty association or its equivalent.

SECTION 7. Effective date - applicability. (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to activities of the Colorado insurance guaranty association on or after the applicable effective date of this act.

Approved: March 23, 1999