

CHAPTER 14

INSURANCE

HOUSE BILL 11-1041

BY REPRESENTATIVE(S) Riesberg, Gardner B., McCann, Swalm, Court, Fields, Labuda, Priola, Schafer S., Vigil, Williams A., Wilson;
also SENATOR(S) Harvey.

AN ACT

CONCERNING 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) (a) "Covered claim" means an unpaid claim, including one for unearned premiums:

(I) ~~which~~ THAT 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

(II) WITH RESPECT TO WHICH the claimant or insured is a resident of this state at the time of the insured event or the claim is a first-party claim for damage to property with a permanent location in this state.

(b) "Covered claim" does not include:

(I) Any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise; ~~but~~ EXCEPT THAT:

(A) A claim for any such amount asserted against a person insured under a policy issued by an insurer ~~which~~ THAT has become insolvent ~~which~~ AND WHICH CLAIM WOULD BE A COVERED CLAIM if it were not a claim by or for the benefit of a

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

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~~ AND

(B) In no event may any such claim be asserted in any legal action against the insured of such insolvent insurer.

(II) ~~"Covered claim" does not include any~~ A 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~~ INCLUDES the aggregate net worth of the insured and all of its subsidiaries as calculated on a consolidated basis.

(III) ANY CLAIM FOR INCURRED BUT NOT REPORTED LOSSES; EXCEPT THAT NOTHING IN THIS SUBPARAGRAPH (III) AFFECTS ANY COVERED CLAIMS OR RIGHTS UNDER THIS PART 5.

SECTION 2. 10-4-508 (1) (a), Colorado Revised Statutes, is amended to read:

10-4-508. Powers and duties of association. (1) The association shall:

(a) (I) Be obligated to the extent of the covered claims existing prior to a determination of insolvency and arising within thirty days after the determination of insolvency, or before the policy expiration date, if less than thirty days after such determination, or before the insured replaces the policy or on request effects cancellation, if ~~he~~ THE INSURED does so within thirty days ~~of~~ AFTER such determination, but such obligation ~~shall include~~ INCLUDES only that amount of each covered claim ~~which is in excess of one hundred dollars and~~ THAT is less than fifty thousand dollars; except that:

(A) For an order of liquidation with a finding of insolvency by a court of competent jurisdiction ~~on or after~~ ENTERED BETWEEN July 1, 1988, AND THE EFFECTIVE DATE OF SUB-SUBPARAGRAPH (B) OF THIS SUBPARAGRAPH (I), such obligation ~~shall include~~ INCLUDES only that amount of each covered claim ~~which is in excess of one hundred dollars and~~ THAT is less than one hundred thousand dollars; ~~and except that the association shall pay the full amount of any covered claim arising out of workers' compensation policies;~~

(B) FOR AN ORDER OF LIQUIDATION WITH A FINDING OF INSOLVENCY BY A COURT OF COMPETENT JURISDICTION ENTERED ON OR AFTER THE EFFECTIVE DATE OF THIS SUB-SUBPARAGRAPH (B), SUCH OBLIGATION INCLUDES ONLY THAT AMOUNT OF EACH COVERED CLAIM THAT IS LESS THAN THREE HUNDRED THOUSAND DOLLARS; AND

(C) NOTWITHSTANDING SUB-SUBPARAGRAPH (A) OR (B) OF THIS SUBPARAGRAPH (I), THE ASSOCIATION SHALL PAY THE FULL AMOUNT OF ANY COVERED CLAIM ARISING OUT OF WORKERS' COMPENSATION POLICIES.

(II) In no event ~~shall~~ IS the association ~~be~~ obligated to a policyholder or claimant in an amount in excess of the face amount of the policy from which the claim arises.

(III) Notwithstanding any other provision of this part 5, a covered claim ~~shall~~

DOES not include any claim filed with the guaranty fund after THE EARLIER OF:

(A) TWENTY-FOUR MONTHS AFTER THE DATE OF THE ORDER OF LIQUIDATION; OR

(B) The final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer.

SECTION 3. 10-4-512 (1), Colorado Revised Statutes, is amended to read:

10-4-512. Nonduplication of recovery. (1) Any person having a claim against ~~his~~ AN insurer under any provision in ~~his~~ ANY insurance policy ~~which~~ THAT is also a covered claim shall ~~be required to~~ exhaust first ~~his~~ THE PERSON'S right under such policy. Any amount payable on a covered claim under this part 5 ~~shall be~~ IS reduced by the amount ~~of such recovery~~ RECOVERABLE under ~~the claimant's~~ SUCH insurance policy.

SECTION 4. Act subject to petition - 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 (August 10, 2011, if adjournment sine die is on May 11, 2011); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part shall not take effect unless approved by the people at the general election to be held in November 2012 and shall take effect on the date of the official declaration of the vote thereon by the governor.

(2) The provisions of this act shall apply to new liquidations occurring on or after the applicable effective date of this act.

Approved: March 11, 2011