

GENERAL ASSEMBLY OF NORTH CAROLINA  
1985 SESSION

CHAPTER 613  
HOUSE BILL 1282

AN ACT TO AMEND ARTICLE 17B OF CHAPTER 58 OF THE GENERAL  
STATUTES SO AS TO CLARIFY AND REFORM THE LAWS PERTAINING TO  
THE NORTH CAROLINA INSURANCE GUARANTY ASSOCIATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-155.45(4) is amended in the second line by inserting between the word "which" and the word "arises" the phrase "is in excess of fifty dollars (\$50.00) and".

Sec. 2. G.S. 58-155.45(5) is amended by inserting before the word "authorized" the words "licensed and".

Sec. 3. G.S. 58-155.45 is amended by adding a new subsection to read:

"(9) 'Policyholder' means the person to whom an insurance policy to which this Article applies was issued by an insurer which has become an insolvent insurer."

Sec. 4. G.S. 58-155.46 is amended by adding the following sentence to the end:

"Each person becoming a member insurer after October 1, 1985, shall pay to the Association upon demand a nonrefundable initial membership fee of fifty dollars (\$50.00)."

Sec. 5. G.S. 58-155.48(a)(1) is amended by deleting the phrase from the seventh and eighth lines that reads "is in excess of one hundred dollars (\$100.00) and".

Sec. 6. G.S. 58-155.48(a)(2) is amended by substituting the words "the Association's" for the word "its".

Sec. 7. G.S. 58-155.52(b) is amended by substituting the word "policyholder" for the word "insured".

Sec. 8. G.S. 58-155.52 is amended by adding the following subsections:

"(c) No claim held by an insurer, reinsurer, insurance pool, or underwriting association, based on an assignment or on rights of subrogation, may be asserted in any legal action against a person insured under a policy issued by an insolvent insurer except to the extent the amount of such claim exceeds the obligation of the Association under G.S. 58-155.48(a)(1).

(d) Any person that has liquidated by settlement or judgment a claim against an insured under a policy issued by an insolvent insurer, which claim is a covered claim and is also a claim within the coverage of any policy issued by a solvent insurer, shall be required to exhaust first his rights under such policy issued by the solvent insurer before execution, levy, or any other proceedings are commenced to enforce any judgment obtained against or the settlement with the insured of the insolvent insurer."

Sec. 9. Article 17B of Chapter 58 of the North Carolina General Statutes is amended by adding a new section to read:

**"§ 58-155.61. Statute of repose; guardians ad litem; notice.** – (a) Notwithstanding any other provision of law, a covered claim with respect to which settlement is not effected with the Association, or suit is not instituted against the insured of an insolvent insurer or the Association, within five years after the date of entry of the order by a court of competent jurisdiction determining the insurer to be insolvent, shall thenceforth be barred forever as a claim against the Association.

(b) As to any person under a disability described in G.S. 1- 17, the Association may not invoke the bar of the period of repose provided in subsection (a) of this section unless the Association has petitioned for the appointment of a guardian ad litem for such person and the disposition of that petition has become final. If a guardian ad litem is appointed pursuant to this subsection more than four years after the date of entry of the order by a court of competent jurisdiction determining the insurer to be insolvent, the period of repose under subsection (a) of this section shall be extended for such person one year after the date of the appointment.

(c) Within six months after the Association has been activated as to an insolvent insurer, the Commissioner may request that the Association submit an amendment to the plan of operation in accordance with G.S. 58-155.49, which amendment shall be applicable only to that insolvent insurer and shall prescribe a fair, reasonable, and equitable procedure for notice to insureds and to the public."

Sec. 10. G.S. 58-155.60 is amended in the fourth and fifth lines of the third paragraph by substituting "the total amount of the claims against the insolvent insurer that are not covered claims under this Article solely by reason that the amount of the claim is fifty dollars (\$50.00) or less" for "an amount computed by adding the lesser of the amount of the covered claim or one hundred dollars (\$100.00) for each covered claim".

Sec. 11. In the event any section, subsection, sentence, clause or phrase of this act shall be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the other sections, subsections, sentences, clauses or phrases of this act, which shall remain in full force and effect, as if the section, subsection, sentence, clause or phrase so declared or adjudged invalid or unconstitutional was not originally a part hereof.

Sec. 12. This act is effective upon ratification, and shall apply to all covered claims existing as of that date or arising thereafter, to the extent allowed by law.

In the General Assembly read three times and ratified, this the 4th day of July, 1985.