

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 501

Short Title: Guaranty Fund Changes.

(Public)

Sponsors: Senator Johnson of Wake.

Referred to: Insurance.

March 20, 1989

A BILL TO BE ENTITLED

AN ACT TO AMEND THE POSTASSESSMENT INSURANCE GUARANTY ASSOCIATION ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-155.43 reads as rewritten:

"§ 58-155.43. Scope.

This Article shall apply to all kinds of direct insurance, ~~except life, annuities, title, surety, accident and health, credit, mortgage guaranty, ocean marine, and workmen's compensation and employer's liability insurance~~ but shall not be applicable to:

- (1) Life, annuity, accident and health or disability insurance;
- (2) Mortgage guaranty, financial guaranty or other forms of insurance offering protection against investment risks;
- (3) Fidelity or surety bonds, or any other bonding obligations;
- (4) Credit insurance, vendors' single interest insurance, collateral protection insurance, or any similar insurance protecting the interests of a creditor arising out of a creditor-debtor transaction;
- (5) Insurance of warranties or service contracts;
- (6) Title insurance;
- (7) Ocean marine insurance;
- (8) Workers' compensation and employers' liability insurance;
- (9) Any transaction or combination of transactions between a person (including affiliates of such person) and an insurer (including affiliates of such insurer) which involves the transfer of investment or credit risk unaccompanied by transfer of insurance risk;

1 (10) Insurance written on a retroactive basis to cover known or unknown
2 losses which have resulted from an event with respect to which a claim
3 has already been made, and the claim is known to the insurer at the
4 time the insurance is bound."

5 Sec. 2. G.S. 58-155.45 reads as rewritten:

6 **"§ 58-155.45. Definitions.**

7 As used in this Article:

8 (1) 'Account' means any one of the two accounts created by G.S. 58-
9 155.46.

10 (1a) 'Affiliate' means a person who directly, or indirectly, through one or
11 more intermediaries, controls, is controlled by, or is under common
12 control with an insolvent insurer on December 31 or the year next
13 preceding the date the insurer becomes an insolvent insurer.

14 (2) 'Association' means the North Carolina Insurance Guaranty
15 Association created under G.S. 58-155.46.

16 (2a) 'Claimant' means any insured making a first party claim or any person
17 instituting a liability claim; provided that no person who is an affiliate
18 of the insolvent insurer may be a claimant.

19 (3) 'Commissioner' means the Commissioner of Insurance of North
20 Carolina.

21 (3a) 'Control' means the possession, direct or indirect, of the power to
22 direct or cause the direction of the management and policies of a
23 person, whether through the ownership of voting securities, by contract
24 other than a commercial contract for goods or nonmanagement
25 services, or otherwise, unless the power is the result of an official
26 position with or corporate office held by the person. Control shall be
27 presumed to exist if any person, directly or indirectly owns, controls,
28 holds with the power to vote, or holds proxies representing ten percent
29 (10%) or more of the voting securities of any other person. This
30 presumption may be rebutted by a showing that control does not exist
31 in fact.

32 (4) 'Covered claim' means an unpaid claim, including one of unearned
33 premiums, which is in excess of fifty dollars (\$50.00) and arises out of
34 and is within the coverage and not in excess of the applicable limits of
35 an insurance policy to which this Article applies as issued by an
36 insurer, if such insurer becomes an insolvent insurer after the effective
37 date of this Article and (i) the claimant or insured is a resident of this
38 State at the time of the insured event, provided that for entities other
39 than an individual, the residence of a claimant or insured is the state in
40 which its principal place of business is located at the time of the
41 insured event; or (ii) the property from which the claim arises is
42 permanently located in this State. 'Covered claim' shall not include
43 any amount awarded as punitive or exemplary damages; sought as a
44 return of premium under any retrospective rating plan; or due any

1 reinsurer, insurer, insurance pool, or underwriting association, as
 2 subrogation or contribution recoveries or otherwise.

3 (5) 'Insolvent insurer' means (i) an insurer licensed and authorized to
 4 transact insurance in this State either at the time the policy was issued
 5 or when the insured event occurred and (ii) ~~determined to be insolvent~~
 6 against whom an order of liquidation with a finding of insolvency has
 7 been entered after the effective date of this Article by a court of
 8 competent jurisdiction in the insurer's state of domicile or of this State
 9 under the provisions of G.S. 58-155.11, and which order of liquidation
 10 has not been stayed or been the subject of a writ of supersedeas or
 11 other comparable order.

12 (6) 'Member insurer' means any person who (i) writes any kind of
 13 insurance to which this Article applies under G.S. 58-155.43, including
 14 the exchange of reciprocal or interinsurance contracts, and (ii) is
 15 licensed to transact insurance in this State.

16 (7) 'Net direct written premiums' means direct gross premiums written in
 17 this State on insurance policies to which this Article applies, less
 18 return premiums thereon and dividends paid or credited to
 19 policyholders on such direct business. 'Net direct written premiums'
 20 does not include premiums on contracts between insurers or reinsurers.

21 (8) 'Person' means any individual, corporation, partnership, association or
 22 voluntary organization.

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

26 Sec. 3. G.S. 58-155.48(a)(1) reads as rewritten:

27 "(a) (1) Be obligated to the extent of the covered claims existing
 28 prior to the determination of insolvency and arising within 30 days
 29 after the determination of insolvency, or before the policy expiration
 30 date if less than 30 days after the determination, or before the
 31 insured replaces the policy or causes its cancellation, if he does so
 32 within 30 days of the determination, ~~but such obligation shall include~~
 33 ~~only that amount of each covered claim which.~~ This obligation includes
 34 only the amount each covered claim that is in excess of fifty dollars
 35 (\$50.00) and is less than three hundred thousand dollars (\$300,000).
 36 However, the Association has no obligation to pay a claimant's
 37 covered claim, if:

38 a. The insured had primary coverage at the time of the loss with a
 39 solvent insurer equal to or in excess of three hundred thousand
 40 dollars (\$300,000) and applicable to the claimant's loss; or

41 b. The insured's coverage is written subject to a self-insured
 42 retention equal to or in excess of three hundred thousand dollars
 43 (\$300,000).

1 If the primary coverage or the self-insured retention is less than three
2 hundred thousand dollars (\$300,000), the Association's obligation to
3 the claimant is reduced by the coverage and the retention.

4 In no event shall the Association be obligated to a policyholder or
5 claimant in an amount in excess of the obligation of the insolvent
6 insurer under the policy from which the claim arises. The Association
7 shall pay only the amount of each covered claim for the return of
8 unearned premiums which is in excess of fifty dollars (\$50.00) and is
9 less than ten thousand dollars (\$10,000) per policy. Notwithstanding
10 any other provision of this Article, a covered claim shall not include
11 any claim filed with the Association after the final date set by the court
12 for the filing of claims against the liquidator or receiver of an insolvent
13 insurer."

14 Sec. 4. G.S. 58-155.48(a)(2) reads as rewritten:

15 "(a) (2) Be deemed the insurer to the extent of the Association's
16 obligation on the covered claims and to such extent shall have all
17 rights, duties, and obligations of the insolvent insurer as if the
18 insurer had not become insolvent. However, the Association has the
19 right but not the obligation to defend an insured who is not a resident
20 of this State at the time of the insured event unless the property from
21 which the claim arises is permanently located in this State in which
22 instance the Association does have the obligation to defend the
23 matter in accordance with policy."

24 Sec. 5. G.S. 58-155.51(a) is rewritten to read:

25 "(a) Any person recovering under this Article shall be deemed to have assigned
26 his rights under the policy or at law to the Association to the extent of his recovery from
27 the Association. Every insured or claimant seeking the protection of this Article shall
28 cooperate with the Association to the same extent as such person would have been
29 required to cooperate with the insolvent insurer. The Association shall have no cause of
30 action against the insured of the insolvent insurer for any sums it has paid out except
31 such causes of action as the insolvent insurer would have had if such sums had been
32 paid by the insolvent insurer. In the case of an insolvent insurer operating on a plan
33 with assessment liability, payments of claims of the Association shall not operate to
34 reduce the liability of insureds to the receiver, liquidator, or statutory successor for
35 unpaid assessments."

36 Sec. 6. G.S. 58-155.51 is amended by adding a new subsection to read:

37 "(a1) The Association shall have the right to recover from the following persons the
38 amount of any 'covered claim' paid on behalf of such person pursuant to this Article:

39 (1) Any insured whose net worth on December 31 of the year next
40 preceding the date the insurer becomes insolvent exceeds fifty million
41 dollars (\$50,000,000) and whose liability obligations to other persons
42 are satisfied in whole or in part by payments under this Article; or

1 (2) Any person who is an affiliate of the insolvent insurer and whose
2 liability obligations to other persons are satisfied in whole or in part by
3 payments made under this Article."

4 Sec. 7. G.S. 58-155.52 reads as rewritten:

5 **"§ 58-155.52. Nonduplication of recovery.**

6 (a) Any person having a claim against an insurer under any provision in an
7 insurance policy other than a policy of an insolvent insurer which is also a covered
8 claim, shall be required to exhaust first his rights under such policy. Any amount
9 payable on a covered claim under this Article shall be reduced by the amount of any
10 recovery under such insurance policy.

11 (b) Any person having a claim or legal right of recovery under any governmental
12 insurance or guaranty program which is also a covered claim shall be required to
13 exhaust first his right under such program. Any amount payable on a covered claim
14 under this Article shall be reduced by the amount of any recovery under such program.

15 (c) Any person having a claim which may be recovered under more than one
16 insurance guaranty association or its equivalent shall seek recovery first from the
17 association of the place of residence of the policyholder except that if it is a first party
18 claim for damage to property with a permanent location, he shall seek recovery first
19 from the association of the location of the property. Any recovery under this Article
20 shall be reduced by the amount of recovery from any other insurance guaranty
21 association or its equivalent.

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

27 (e) Any person that has liquidated by settlement or judgment a claim against
28 an insured under a policy issued by an insolvent insurer, which claim is a covered claim
29 and is also a claim within the coverage of any policy issued by a solvent insurer, shall
30 be required to exhaust first his rights under such policy issued by the solvent insurer
31 before execution, levy, or any other proceedings are commenced to enforce any
32 judgment obtained against or the settlement with the insured of the insolvent insurer.
33 Any amount so recovered from a solvent insurer shall be credited against the amount of
34 the judgment or settlement."

35 Sec. 8. G.S. 58-155.53 reads as rewritten:

36 **"§ 58-155.53. Prevention of insolvencies.**

37 ~~(a) To aid in the detection and prevention of insurer insolvencies, it shall be the~~
38 ~~duty of the board of directors, upon majority vote, to notify the Commissioner of any~~
39 ~~information indicating any member insurer may be insolvent or in a financial condition~~
40 ~~hazardous to the policyholders or the public. To aid in the detection and prevention of~~
41 ~~insurer insolvencies, (b) T~~ the board of directors may, upon majority vote, request that
42 the Commissioner order an examination of any member insurer which the board in good
43 faith believes may be in a financial condition hazardous to the policyholders or the
44 public. Within 30 days of the receipt of such request, the Commissioner shall begin such

1 examination. The examination may be conducted as a National Association of Insurance
2 Commissioners examination or may be conducted by such persons as the Commissioner
3 designates. The cost of such examination shall be paid by the Association and the
4 examination report shall be treated as are other examination reports. In no event shall
5 such examination report be released to the board of directors prior to its release to the
6 public, but this shall not preclude the Commissioner from complying with subsection
7 ~~(e)~~ (b) below. The Commissioner shall notify the board of directors when the
8 examination is completed. The request for an examination shall be kept on file by the
9 Commissioner but it shall not be open to public inspection prior to the release of the
10 examination report to the public.

11 ~~(e)~~ (b) It shall be the duty of the Commissioner to report to the board of directors
12 when he has reasonable cause to believe that any member insurer examined or being
13 examined at the request of the board of directors may be insolvent or in a financial
14 condition hazardous to the policyholders or the public.

15 ~~(d)~~ (c) The board of directors may, upon majority vote, make reports and
16 recommendations to the Commissioner upon any matter germane to the solvency,
17 liquidation, rehabilitation or conservation of any member insurer. Such reports and
18 recommendations shall not be considered public documents.

19 ~~(e)~~ (d) The board of directors may, upon majority vote, make recommendations
20 to the Commissioner for the detection and prevention of insurer insolvencies.

21 ~~(f)~~ (e) The board of directors ~~shall~~ may, at the conclusion of any domestic insurer
22 insolvency in which the Association was obligated to pay covered claims, prepare a
23 report on the history and causes of such insolvency, based on the information available
24 to the Association, and submit such report to the Commissioner."

25 Sec. 9. G.S. 58-155.58 reads as rewritten:

26 "**§ 58-155.58. Stay of proceedings; reopening of default judgments.**

27 All proceedings in which the insolvent insurer is a party or is obligated to defend a
28 party in any court in this State shall be stayed automatically for 60-120 days and such
29 additional time thereafter as may be determined by the court from the date the
30 insolvency is determined or any ancillary proceedings are initiated in this State,
31 whichever is later, to permit proper defense by the Association of all pending causes of
32 action. Any party to any proceeding which is stayed pursuant to this section shall have
33 the right, upon application and notice, to seek a vacation or modification of such stay. as
34 ~~to a~~ Any covered claims arising from any judgment under any decision, verdict or
35 finding based on the default of the insolvent insurer or its failure to defend an insured,
36 ~~the Association either on its own behalf or on behalf of such insured may apply to have such~~
37 ~~judgment, order, decision, verdict or finding shall, upon application and notice by the~~
38 Association be vacated and set aside by the same court in which such judgment, order,
39 decision, verdict, or finding is entered and set aside by the same court or administrator that
40 ~~made such judgment, order, decision, verdict or finding and the Association either on its~~
41 own behalf or on behalf of any insured or an insolvent insurer, shall be permitted to
42 defend against such claim on the merits. Any party who has obtained any such
43 judgment or order shall have the right, upon application and notice, to have the
44 judgment or order restored if within 90 days following the entry of the judgment or

1 order the Association has not notified such party and the court that it intends to defend
2 the matter on the merits."

3 Sec. 10. G.S. 58-155.60 reads as rewritten:

4 "**§ 58-155.60. Use of deposits made by insolvent insurer.**

5 Notwithstanding any other provision of this Chapter pertaining to the use of deposits
6 made by insurance companies for the protection of policyholders, the Commissioner
7 shall deliver to the Association, and the Association is hereby authorized to expend, any
8 deposit or deposits previously or hereinafter made, whether or not required by statute,
9 by an insolvent insurer to the extent those deposits are needed by the Association first to
10 pay the covered claims as required by this Article and then to the extent those deposits
11 are needed to pay all expenses of the Association relating to the insurer: Provided that
12 before delivering any deposit to the Association the Commissioner may retain an
13 amount of the deposit up to five thousand dollars (\$5,000) to defray administrative costs
14 to be incurred by the Commissioner in carrying out his powers and duties with respect
15 to the insolvent insurer, notwithstanding G.S. 58-185. As used in this section, the term
16 'administrative costs' does not include any salary or expenses paid to or on behalf of any
17 State employee or to any person appointed or employed pursuant to G.S. 58-155.11(f)
18 or 58- 155.36.

19 However, in the case of a deposit made by an insolvent domestic insurer, ~~only~~ the
20 portions of the deposit made for the protection of policyholders having covered claims
21 shall be delivered by the Commissioner to the Association. As for the general deposit,
22 ~~S~~aid portions shall be in the proportions that the insolvent domestic insurer's domestic
23 net direct written premiums for the preceding calendar year on the kinds of insurance in
24 the account bears to its total net direct written premiums for the preceding calendar year
25 on the kinds of insurance in the account.

26 The Association shall account to the Commissioner and the insolvent insurer for all
27 deposits received from the Commissioner hereunder, and shall repay to the
28 Commissioner a portion of the deposits received which shall be equal to the total
29 amount of the claims against the insolvent insurer that are not covered claims under this
30 Article solely by reason that the amount of the claim is fifty dollars (\$50.00) or less.
31 Said repayment shall in no way prejudice the rights of the Association with regard to the
32 portion of the deposit repaid to the Commissioner. After all of the deposits of the
33 insolvent insurer have been expended by the Association for the purposes set out in this
34 section, the member insurers shall be assessed as provided by this Article to pay any
35 remaining liabilities of the Association arising under this Article."

36 Sec. 11. This act is effective upon ratification.