

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

H

1

HOUSE BILL 1093

Short Title: Technical Amendments/Insurance Guaranty Assoc. (Public)

Sponsors: Representative Culpepper.

Referred to: Rules, Calendar, and Operations of the House.

April 10, 2003

A BILL TO BE ENTITLED
AN ACT TO MAKE TECHNICAL AMENDMENTS TO THE NORTH CAROLINA
INSURANCE GUARANTY ASSOCIATION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 58-48-20 reads as rewritten:

"§ 58-48-20. Definitions.

As used in this Article:

(1) "Account" means any one of the three accounts created by G.S. 58-48-25.

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

(2) "Association" means the North Carolina Insurance Guaranty Association created under G.S. 58-48-25.

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

(3) Repealed by Session Laws 1991, c. 720, s. 6.

(3a) "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by ~~contract~~ contract, other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly owns, controls, holds with the power to vote, or holds proxies representing ten percent (10%) or more of the voting securities of any

1 other person. This presumption may be rebutted by a showing that
2 control does not exist in fact.

3 (4) "Covered claim" means an unpaid claim, including one of unearned
4 premiums, which is in excess of fifty dollars (\$50.00) and arises out of
5 and is within the coverage and not in excess of the applicable limits of
6 an insurance policy to which this Article applies as issued by an
7 insurer, if such insurer becomes an insolvent insurer after the effective
8 date of this Article and (i) the claimant or insured is a resident of this
9 State at the time of the insured event; or (ii) the property from which
10 the claim arises is permanently located in this State. "Covered claim"
11 shall not include any amount awarded (i) as punitive or exemplary
12 damages; (ii) sought as a return of premium under any retrospective
13 rating plan; or (iii) due any reinsurer, insurer, insurance pool, or
14 underwriting association, as subrogation or contribution recoveries or
15 otherwise. "Covered claim" also shall not include fines or penalties,
16 including attorneys fees, imposed against an insolvent insurer or its
17 insured or claims of any claimant whose net worth exceeds fifty
18 million dollars (\$50,000,000) on December 31 of the year preceding
19 the date the insurer becomes insolvent.

20 (5) "Insolvent insurer" means (i) an insurer licensed and authorized to
21 transact insurance in this State either at the time the policy was issued
22 or when the insured event occurred and (ii) against whom an order of
23 liquidation with a finding of insolvency has been entered after the
24 effective date of this Article by a court of competent jurisdiction in the
25 insurer's state of domicile or of this State under the provisions of
26 Article 30 of this Chapter, and which order of liquidation has not been
27 stayed or been the subject of a writ of supersedeas or other comparable
28 order.

29 (6) "Member insurer" means any person who (i) writes any kind of
30 insurance to which this Article applies under G.S. 58-48-10, including
31 the exchange of reciprocal or interinsurance contracts, and (ii) is
32 licensed and authorized to transact insurance in this State.

33 (7) "Net direct written premiums" means direct gross premiums written in
34 this State on insurance policies to which this Article applies, less
35 return premiums thereon and dividends paid or credited to
36 policyholders on such direct business. "Net direct written premiums"
37 does not include premiums on contracts between insurers or reinsurers.

38 (7a) "Ocean marine insurance" includes (i) marine insurance as defined in
39 G.S. 58-7-15(20)a., except for inland marine, (ii) marine protection
40 and indemnity insurance as defined in G.S. 58-7-15(21), and (iii) any
41 other form of insurance, regardless of the name, label, or marketing
42 designation of the insurance policy, which insures against maritime
43 perils or risks and other related perils or risks, which are usually
44 insured by traditional marine insurance such as hull and machinery,

1 marine builders' risks, and marine protection and indemnity. The perils
2 and risks insured against include loss, damage, or expense, or legal
3 liability of the insured for loss, damage, or expense, arising out of, or
4 incident to, ownership, operation, chartering, maintenance, use, repair,
5 or construction of any vessel, craft, or instrumentality in use in ocean
6 or inland waterways, including liability of the insured for personal
7 injury, illness, death, or for loss or damage to the property of the
8 insured or another person. "Ocean marine insurance" does not include
9 insurance on vessels or vehicles under five tons gross weight.

- 10 (8) "Person" means any individual, corporation, partnership, association or
11 voluntary organization.
- 12 (9) "Policyholder" means the person to whom an insurance policy to
13 which this Article applies was issued by an insurer which has become
14 an insolvent insurer.
- 15 (10) "Resident" means:
- 16 a. An individual domiciled in this State;
- 17 b. An individual formerly domiciled in this State at the time the
18 applicable policy was issued or renewed and the term of the
19 policy had not expired at the time of the insured event, and who
20 at the time of the insured event had complied with the laws of
21 the current domicile necessary to allow maintenance in force
22 and effect of the applicable policy; or
- 23 c. In the case of a corporation or other entity that is not a natural
24 person, a corporation or entity whose principal place of
25 business is located in this State at the time of the insured event."

26 **SECTION 2.** G.S. 58-48-50(a1) reads as rewritten:

27 "(a1) The Association shall have the right to recover from the following persons the
28 amount of any "covered claim" paid and any and all expenses incurred, including
29 attorneys' fees and costs of defense, on behalf of such person in connection with any
30 claim against the person or the person's affiliate pursuant to this Article:

- 31 (1) Any insured whose net worth on December 31 of the year next
32 preceding the date the insurer becomes insolvent exceeds fifty million
33 dollars (\$50,000,000) and whose liability obligations to other persons
34 are satisfied in whole or in part by payments under this Article; or
- 35 (2) Any person who is an affiliate of the insolvent insurer and whose
36 liability obligations to other persons are satisfied in whole or in part by
37 payments made under this Article."

38 **SECTION 3.** G.S. 58-48-55(a) reads as rewritten:

39 "(a) Any person having a right to a defense or a claim against an insurer under any
40 provision in an insurance policy other than a policy of an insolvent insurer which is also
41 a covered claim, shall be required to exhaust first his rights under such policy. Any
42 amount payable on a covered claim under this Article shall be reduced by the amount of
43 any recovery under ~~such that~~ insurance policy. For purposes of this section, a claim
44 under an insurance policy shall include a claim under or covered by any kind of

1 insurance, whether it is a first-party or a third-party claim, and whether it is a policy
2 covering the policyholder or another person liable to the claimant, and shall include,
3 without limitation, policies of accident and health insurance, workers' compensation
4 insurance, medical expense coverage, and all other coverage except for policies of an
5 insolvent insurer."

6 **SECTION 4.** G.S. 58-48-85 reads as rewritten:

7 "**§ 58-48-85. Stay of proceedings; reopening of default judgments.**

8 All proceedings in which the insolvent insurer is a party or is obligated to defend a
9 party in any ~~court~~ court or before any administrative agency or the North Carolina
10 Industrial Commission in this State shall be stayed automatically for 120 days and such
11 additional time thereafter as may be determined by the court from the date the
12 insolvency is determined or any ancillary proceedings are initiated in this State,
13 whichever is later, to permit proper defense by the Association of all pending causes of
14 action. Any party to any proceeding which is stayed pursuant to this section shall have
15 the right, upon application and notice, to seek a vacation or modification of such stay.
16 Any covered claims arising from any judgment under any decision, verdict or finding
17 based on the default of the insolvent insurer or its failure to defend an insured, shall,
18 upon application and notice by the Association be vacated and set aside by the same
19 court in which such judgment, order, decision, verdict, or finding is entered and the
20 Association either on its own behalf or on behalf of any insured or an insolvent insurer,
21 shall be permitted to defend against such claim on the merits. Any party who has
22 obtained any such judgment or order shall have the right, upon application and notice, to
23 have the judgment or order restored if within 90 days following the entry of the
24 judgment or order the Association has not notified such party and the court that it
25 intends to defend the matter on the merits."

26 **SECTION 5.** This act becomes effective October 1, 2003.