

AN ACT

relating to the operation of the Texas Property and Casualty Insurance Guaranty Association.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subdivisions (8) and (9), Section 5, Article 21.28-C, Insurance Code, are amended to read as follows:

(8) "Covered claim" means an unpaid claim of an insured or third-party liability claimant that arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this Act applies, issued or assumed (whereby an assumption certificate is issued to the insured) by an insurer licensed to do business in this state, if that insurer becomes an impaired insurer and the third-party claimant or liability 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 that is permanently located in this state. A corporation or other entity that is not an individual is considered to be a resident of the state in which the entity's principal place of business is located. "Covered claim" shall also include unearned premiums, but in no event shall a covered claim for unearned premiums exceed \$25,000. Individual covered claims (including any and all derivative claims by more than one person which arise from the same occurrence, which shall be considered collectively as a single claim under this Act) shall be limited to

1 \$300,000, except that the association shall pay the full amount of
2 any covered claim arising out of a workers' compensation claim made
3 under a workers' compensation policy. "Covered claim" shall not
4 include any amount sought as a return of premium under a
5 retrospective rating plan or any amount due any reinsurer, insurer,
6 self-insurer, insurance pool, or underwriting association, as
7 subrogation recoveries, reinsurance recoveries, contribution,
8 indemnification, or otherwise, and the insured of an impaired
9 insurer is not liable, and the reinsurer, insurer, self-insurer,
10 insurance pool, or underwriting association is not entitled to sue
11 or continue a suit against that insured, for any subrogation
12 recovery, reinsurance recovery, contribution, or indemnity
13 [~~asserted by a reinsurer, insurer, insurance pool, or underwriting~~
14 ~~association~~] to the extent of the applicable liability limits of
15 the policy written and issued to the insured by the insolvent
16 insurer. "Covered claim" shall not include supplementary payment
17 obligations, including adjustment fees and expenses, attorney's
18 fees and expenses, court costs, interest and penalties, and
19 interest and bond premiums incurred prior to the determination that
20 an insurer is an impaired insurer under this Act. "Covered claim"
21 shall not include any prejudgment or postjudgment interest that
22 accrues subsequent to the determination that an insurer is an
23 impaired insurer under this Act. "Covered claim" shall not include
24 any claim for recovery of punitive, exemplary, extracontractual, or
25 bad-faith damages, whether sought as a recovery against the
26 insured, insurer, guaranty association, receiver, special deputy
27 receiver, or commissioner, awarded in a court judgment against an

1 insured or insurer. Notwithstanding any other provision of this
2 Act, the association's liability for shareholder derivative
3 actions or other claims for economic loss incurred by a claimant in
4 the claimant's capacity as a shareholder under an insurance policy
5 placed in force on or after January 1, 1992, is limited to \$300,000
6 for each policy, inclusive of defense costs, regardless of the
7 number of claimants under each policy. "Covered claim" shall not
8 include, and the association shall not have any liability to an
9 insured or third-party liability claimant, for its failure to
10 settle a liability claim within the limits of a covered claim under
11 this Act. With respect to a covered claim for unearned premiums,
12 both persons who were residents of this state at the time the policy
13 was issued and persons who are residents of this state at the time
14 the company is found to be an impaired insurer shall be considered
15 to have covered claims under this Act. If the impaired insurer has
16 insufficient assets to pay the expenses of administering the
17 receivership or conservatorship estate, that portion of the
18 expenses of administration incurred in the processing and payment
19 of claims against the estate shall also be a covered claim under
20 this Act.

21 (9) "Impaired insurer" means:

22 (A) a member insurer that is placed in temporary
23 or permanent receivership or liquidation under an order of a court
24 of competent jurisdiction, including the courts of any other state,
25 based on a finding of insolvency and that has been designated an
26 impaired insurer by the commissioner; or

27 (B) a member insurer placed in conservatorship

1 after it has been determined by the commissioner to be insolvent and
2 that has been designated an impaired insurer by the commissioner.

3 SECTION 2. Subsections (a) and (d), Section 8, Article
4 21.28-C, Insurance Code, are amended to read as follows:

5 (a) The association shall pay covered claims that exist
6 before the designation of impairment or that arise within 30 days
7 after the date of the designation of impairment, before the policy
8 expiration date if the policy expiration date is within 30 days
9 after the date of the designation of impairment, or before the
10 insured replaces the policy or causes its cancellation if the
11 insured does so within 30 days after the date of the designation.
12 The obligation is satisfied by paying to the claimant the full
13 amount of a covered claim for benefits. The association's
14 liability is limited to the payment of covered claims. The
15 association has no liability for any other claim or damages,
16 including claims for recovery of attorney's fees, prejudgment or
17 postjudgment interest, or penalties, extracontractual damages,
18 multiple damages, or exemplary damages, or any other amount sought
19 by or on behalf of any insured or claimant or any other provider of
20 goods or services retained by any insured or claimant in connection
21 with the assertion or prosecution of any claims, without regard to
22 whether the claims are covered, against the insured or an impaired
23 insurer, the impaired insurer, the guaranty association, the
24 receiver, the special deputy receiver, the commissioner, or the
25 liquidator. This subsection does not exclude the payment of
26 workers' compensation benefits or other liabilities or penalties
27 authorized by Title 5, Labor Code, arising from the association's

1 processing and payment of workers' compensation benefits after the
2 designation of impairment.

3 (d) The association shall investigate and adjust,
4 compromise, settle, and pay covered claims to the extent of the
5 association's obligation and deny all other claims. The
6 association may review settlements, releases, and judgments to
7 which the impaired insurer or its insureds were parties to
8 determine the extent to which those settlements, releases, and
9 judgments may be properly contested. Any judgment taken before the
10 designation of impairment in which an insured under a liability
11 policy or the insurer failed to exhaust all appeals, any judgment
12 taken by default or consent against an insured or the impaired
13 insurer, and any settlement, release, or judgment entered into by
14 the insured or the impaired insurer, is not binding on the
15 association, and may not be considered as evidence of liability or
16 of damages in connection with any claim brought against the
17 association or any other party under this Act. Notwithstanding any
18 other provision of this Act, a covered claim shall not include any
19 claim filed with the guaranty association on a date that is later
20 than [~~after the later of the final date for filing claims against~~
21 ~~the liquidator or receiver of an insolvent insurer or~~] eighteen
22 months after the date of the order of liquidation, except that a
23 claim for workers' compensation benefits is governed by Title 5,
24 Labor Code, and the applicable rules of the Texas Workers'
25 Compensation Commission.

26 SECTION 3. Subsection (b), Section 11, Article 21.28-C,
27 Insurance Code, is amended to read as follows:

1 (b) The association is entitled to recover from the
2 following persons the amount of any covered claim and costs of
3 defense paid on behalf of that person under this Act:

4 (1) any insured, other than an insured who is exempt
5 from federal income tax under Section 501(a) of the Internal
6 Revenue Code of 1986 (26 U.S.C. Section 501(a)) by being described
7 by Section 501(c)(3) of that code, whose net worth on December 31 of
8 the year next preceding the date the insurer becomes an impaired
9 insurer exceeds \$50 million, provided that an insured's net worth
10 on that date is considered to include the aggregate net worth of the
11 insured and all the insured's parent, subsidiary, and affiliated
12 companies as computed on a consolidated basis, and whose
13 [~~liability~~] obligations under a liability [~~to other persons under~~
14 ~~a~~] policy or contract of insurance written, issued, and placed in
15 force after January 1, 1992, are satisfied in whole or in part by
16 payments made under this Act; and

17 (2) any person who is an affiliate of the impaired
18 insurer and whose liability obligations to other persons are
19 satisfied in whole or in part by payments made under this Act.

20 SECTION 4. Article 21.28-C, Insurance Code, is amended by
21 adding Section 11A to read as follows:

22 Sec. 11A. NET WORTH EXCLUSION. (a) The association is not
23 liable to pay a first-party claim of an insured whose net worth on
24 December 31 of the year next preceding the date the insurer becomes
25 an impaired insurer exceeds \$50 million.

26 (b) The net worth of an insured for purposes of this section
27 includes the aggregate net worth of the insured and all the

1 insured's parent, subsidiary, and affiliated companies computed on
2 a consolidated basis.

3 (c) This section does not exclude the payment of a covered
4 claim for workers' compensation benefits otherwise payable under
5 this Act.

6 SECTION 5. Section 12, Article 21.28-C, Insurance Code, is
7 amended to read as follows:

8 Sec. 12. NONDUPLICATION OF RECOVERY. (a) Any [A] person
9 who has a claim [~~against an insurer~~] under [~~any provision in~~] an
10 insurance policy, without regard to whether the policy is issued by
11 a member insurer, other than a policy of an impaired insurer, that
12 arises from the same facts, injury, or loss that gave rise to a
13 claim against an impaired insurer or its insured, is required to
14 first [~~is also a covered claim shall~~] exhaust [~~first~~] the person's
15 rights under the policy, including any claim for indemnity or
16 medical benefits under any workers' compensation, health,
17 disability, uninsured motorist, personal injury protection,
18 medical payment, liability, or other policy, and the right to
19 defense under the policy. An amount payable as a covered claim
20 under this Act is reduced by the full applicable limits of the other
21 insurance policy and the association shall receive a full credit in
22 the amount of the full applicable limits, except that a covered
23 claim for workers' compensation benefits is subject only to
24 reduction by a third-party liability recovery under Section
25 417.002, Labor Code [~~The association shall have a credit or setoff~~
26 against any amount of benefits which would otherwise be payable by
27 the association to the claimant under this Act, in the amount of the

1 ~~claimant's recovery under any policy issued by an unimpaired~~
2 ~~insurer~~]. Subject to the provisions of Subsection (a-1) below, the
3 association's credit or setoff under this section shall be deducted
4 from damages incurred by the claimant, and the remaining sum shall
5 be the maximum amount payable by the association, except that the
6 association's liability shall not exceed \$300,000 [~~\$100,000~~] or the
7 limits of the policy under which the claim is made, whichever is
8 less. To the extent that the association's obligation is reduced by
9 the application of this subsection, the liability of the person
10 insured by the impaired insurer's policy for the claim is reduced in
11 the same amount.

12 (a-1) Notwithstanding Subsection (a) of this section, if a
13 claimant is seeking recovery of policy benefits that, but for the
14 insolvency of the impaired insurer, would be subject to lien or
15 subrogation by a workers' compensation insurer, health insurer or
16 any other insurer, whether impaired or not, then the association's
17 credit or offset shall be deducted from the damages incurred by the
18 claimant or the limits of the policy under which the claim is made,
19 whichever is less. In no event shall a claimant's recovery under
20 this Act result in a total recovery to the claimant that is greater
21 than that which would have resulted but for the insolvency of the
22 impaired insurer. Subject to Section 5(8) of this Act and Title 5,
23 Labor Code, a claim for workers' compensation benefits [~~claimant's~~
24 ~~recovery~~] under this Act may not result in a recovery to the
25 claimant that is less than that which would have resulted but for
26 the insolvency of the impaired insurer.

27 (b) A person who has a claim that may be recovered under more

1 than one insurance guaranty association or its equivalent shall
2 seek recovery first from the association of the place of residence
3 of the insured, except that if it is a first-party claim for damage
4 to property with a permanent location, the person shall seek
5 recovery first from the association of the location of the
6 property, and if it is a workers' compensation claim the person
7 shall seek recovery first from the association of the residence of
8 the claimant. The association shall have a credit or setoff against
9 any amount of benefits under this Act, in the amount of the
10 claimant's recovery from the guaranty association or equivalent.
11 Subject to the provisions of Subsection (b-1) below, the
12 association's credit or setoff under this Section shall be deducted
13 from the damages incurred by the claimant, and the remaining sum
14 shall be the maximum amount payable by the association, except that
15 the association's liability shall not exceed \$300,000 [~~\$100,000~~].

16 (b-1) Notwithstanding Subsection (b) of this section, if a
17 claimant is seeking recovery of policy benefits that, but for the
18 insolvency of the impaired insurer, would be subject to lien or
19 subrogation by a workers' compensation insurer, health insurer or
20 any other insurer, whether impaired or not, then the association's
21 credit or offset shall be deducted from the damages incurred by the
22 claimant or the limits of the policy under which the claim is made,
23 whichever is less. In no event shall a claimant's recovery under
24 this Act result in a total recovery to the claimant that is greater
25 than that which would have resulted but for the insolvency of the
26 impaired insurer. Subject to Section 5(8) of this Act and Title 5,
27 Labor Code, a claim for workers' compensation benefits [~~claimant's~~

1 ~~recovery]~~ under this Act shall not result in a recovery to the
2 claimant that is less than that which would have resulted but for
3 the insolvency of the impaired insurer.

4 SECTION 6. Section 17, Article 21.28-C, Insurance Code, is
5 amended to read as follows:

6 Sec. 17. STAY OF PROCEEDINGS. (a) All proceedings in
7 which an impaired insurer is a party or is obligated to defend a
8 party in any court in this state, except proceedings directly
9 related to the receivership or instituted by the receiver, shall be
10 stayed as to all parties and for all purposes for six months and any
11 additional time thereafter as may be determined by the court from
12 the date of the designation of impairment or an ancillary
13 proceeding is instituted in the state, whichever is later, to
14 permit proper defense by [~~the receiver or~~] the association of all
15 pending causes of action. A deadline imposed under the Texas Rules
16 of Civil Procedure or the Texas Rules of Appellate Procedure is
17 tolled during the stay. The court in which the delinquency
18 proceeding is pending has exclusive jurisdiction regarding the
19 application, enforcement, and extension of the stay and may issue
20 injunctions or other similar orders to enforce the stay. If the
21 impaired insurer is not domiciled in this state, the commissioner
22 may bring an ancillary delinquency proceeding under Section 13,
23 Article 21.28 of this code, for the limited purpose of determining
24 the application, enforcement, and extension of the stay.

25 (b) As to any covered claims arising from a judgment under
26 any decision, verdict, or finding based on the default of the
27 impaired insurer or its failure to defend an insured, the

1 association either on its own behalf or on behalf of the insured
2 shall be entitled, upon application, to have the judgment, order,
3 decision, verdict, or finding set aside by the same court or
4 administrator that made the judgment, order, decision, verdict, or
5 finding and shall be permitted to defend the claim on the merits.
6 The receiver or statutory successor of an impaired insurer covered
7 by this Act shall permit access by the board or its authorized
8 representative to records of the impaired insurer as are necessary
9 for the board in carrying out its functions under this Act with
10 regard to covered claims. In addition, the receiver or statutory
11 successor shall provide the board or its representative with copies
12 of the records on request of the board and at the expense of the
13 board.

14 SECTION 7. Subsection (b), Section 25, Article 21.28-C,
15 Insurance Code, is amended to read as follows:

16 (b) This section does not apply to a conflict between this
17 Act and:

18 (1) Subtitle A, Title 5, Labor Code, except that this
19 Act controls with respect to subrogation rights of an insurance
20 carrier under Chapter 417, Labor Code, against an insured of an
21 impaired insurer or the association [the Texas Workers'
22 Compensation Act (Article 8308-1.01, et seq., Vernon's Texas Civil
23 Statutes)];

24 (2) Subchapter D, Chapter 5, of this code; or

25 (3) Article 5.76-2, 5.76-3, 5.76-4, or 5.76-5 of this
26 code.

27 SECTION 8. This Act applies only to a liquidation or

1 receivership of an impaired insurer that is begun on or after the
2 effective date of this Act.

3 SECTION 9. This Act takes effect immediately if it receives
4 a vote of two-thirds of all the members elected to each house, as
5 provided by Section 39, Article III, Texas Constitution. If this
6 Act does not receive the vote necessary for immediate effect, this
7 Act takes effect September 1, 2003.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1192 passed the Senate on May 16, 2003, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 30, 2003, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 1192 passed the House, with amendment, on May 28, 2003, by the following vote: Yeas 144, Nays 0, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor