

By: Carona

S.B. No. 1192

A BILL TO BE ENTITLED

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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,  
7 self-insured governmental entity, or self-insurance pool or joint  
8 insurance fund created by one or more political subdivisions under  
9 Chapter 791, Government Code, or Chapter 504, Labor Code, as  
10 subrogation recoveries, reinsurance recoveries, contribution,  
11 indemnification, or otherwise, and the insured of an impaired  
12 insurer is not liable, and the reinsurer, insurer, self-insurer,  
13 insurance pool, underwriting association, self-insured  
14 governmental entity, or self-insurance pool or joint insurance fund  
15 created by one or more political subdivisions under Chapter 791,  
16 Government Code, or Chapter 504, Labor Code, is not entitled to sue  
17 or continue a suit against that insured, for any subrogation  
18 recovery, reinsurance recovery, contribution, or indemnity  
19 ~~[asserted by a reinsurer, insurer, insurance pool, or underwriting~~  
20 ~~association]~~ to the extent of the applicable liability limits of  
21 the policy written and issued to the insured by the insolvent  
22 insurer. "Covered claim" shall not include supplementary payment  
23 obligations, including adjustment fees and expenses, attorney's  
24 fees and expenses, court costs, interest and penalties, and  
25 interest and bond premiums incurred prior to the determination that  
26 an insurer is an impaired insurer under this Act. "Covered claim"  
27 shall not include any prejudgment or postjudgment interest that

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

27 (9) "Impaired insurer" means:

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

6 (B) a member insurer placed in conservatorship  
7 after it has been determined by the commissioner to be insolvent and  
8 that has been designated an impaired insurer by the commissioner.

9 SECTION 2. Subsections (a) and (d), Section 8, Article  
10 21.28-C, Insurance Code, are amended to read as follows:

11 (a) The association shall pay covered claims that exist  
12 before the designation of impairment or that arise within 30 days  
13 after the date of the designation of impairment, before the policy  
14 expiration date if the policy expiration date is within 30 days  
15 after the date of the designation of impairment, or before the  
16 insured replaces the policy or causes its cancellation if the  
17 insured does so within 30 days after the date of the designation.  
18 The obligation is satisfied by paying to the claimant the full  
19 amount of a covered claim for benefits. The association's  
20 liability is limited to the payment of covered claims. The  
21 association has no liability for any other claim or damages,  
22 including claims for recovery of attorney's fees, prejudgment or  
23 postjudgment interest, or penalties, extracontractual damages,  
24 multiple damages, or exemplary damages, or any other amount sought  
25 by or on behalf of any insured or claimant or any other provider of  
26 goods or services retained by any insured or claimant in connection  
27 with the assertion or prosecution of any claims, without regard to

1 whether the claims are covered, against the insured or an impaired  
2 insurer, the impaired insurer, the guaranty association, the  
3 receiver, the special deputy receiver, the commissioner, or the  
4 liquidator. This subsection does not exclude the payment of  
5 workers' compensation benefits or other liabilities or penalties  
6 authorized by Title 5, Labor Code, arising from the association's  
7 processing and payment of workers' compensation benefits after the  
8 designation of impairment.

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

1 months after the date of the order of liquidation, except that a  
2 claim for workers' compensation benefits is governed by Title 5,  
3 Labor Code, and the applicable rules of the Texas Workers'  
4 Compensation Commission.

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

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

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

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

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

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

5       (b) The net worth of an insured for purposes of this section  
6 includes the aggregate net worth of the insured and all the  
7 insured's parent, subsidiary, and affiliated companies computed on  
8 a consolidated basis.

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

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

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

1 the amount of the full applicable limits, except that a covered  
2 claim for workers' compensation benefits is subject only to  
3 reduction by a third-party liability recovery under Section  
4 417.002, Labor Code [~~The association shall have a credit or setoff~~  
5 ~~against any amount of benefits which would otherwise be payable by~~  
6 ~~the association to the claimant under this Act, in the amount of the~~  
7 ~~claimant's recovery under any policy issued by an unimpaired~~  
8 ~~insurer~~]. Subject to the provisions of Subsection (a-1) below, the  
9 association's credit or setoff under this section shall be deducted  
10 from damages incurred by the claimant, and the remaining sum shall  
11 be the maximum amount payable by the association, except that the  
12 association's liability shall not exceed \$300,000 [~~\$100,000~~] or the  
13 limits of the policy under which the claim is made, whichever is  
14 less. To the extent that the association's obligation is reduced by  
15 the application of this subsection, the liability of the person  
16 insured by the impaired insurer's policy for the claim is reduced in  
17 the same amount.

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



1 impaired insurer. Subject to Section 5(8) of this Act and Title 5,  
2 Labor Code, a claim for workers' compensation benefits [~~claimant's~~  
3 ~~recovery~~] under this Act may not result in a recovery to the  
4 claimant that is less than that which would have resulted but for  
5 the insolvency of the impaired insurer.

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

22 (b-1) Notwithstanding Subsection (b) of this section, if a  
23 claimant is seeking recovery of policy benefits that, but for the  
24 insolvency of the impaired insurer, would be subject to lien or  
25 subrogation by a workers' compensation insurer, health insurer or  
26 any other insurer, whether impaired or not, then the association's  
27 credit or offset shall be deducted from the damages incurred by the

1 claimant or the limits of the policy under which the claim is made,  
 2 whichever is less. In no event shall a claimant's recovery under  
 3 this Act result in a total recovery to the claimant that is greater  
 4 than that which would have resulted but for the insolvency of the  
 5 impaired insurer. Subject to Section 5(8) of this Act and Title 5,  
 6 Labor Code, a claim for workers' compensation benefits [~~claimant's~~  
 7 ~~recovery~~] under this Act shall not result in a recovery to the  
 8 claimant that is less than that which would have resulted but for  
 9 the insolvency of the impaired insurer.

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

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

1 may bring an ancillary delinquency proceeding under Section 13,  
2 Article 21.28 of this code, for the limited purpose of determining  
3 the application, enforcement, and extension of the stay.

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

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

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

24 (1) Subtitle A, Title 5, Labor Code, except that this  
25 Act controls with respect to subrogation rights of an insurance  
26 carrier under Chapter 417, Labor Code, against an insured of an  
27 impaired insurer or the association [~~the Texas Workers'~~

1 ~~Compensation Act (Article 8308-1.01, et seq., Vernon's Texas Civil~~  
2 ~~Statutes)];~~

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

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

6 SECTION 8. This Act applies only to a liquidation or  
7 receivership of an impaired insurer that is begun on or after the  
8 effective date of this Act.

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

COMMITTEE AMENDMENT NO. 1

Amend S.B. No. 1192 to read as follows:

(1) On page 2, beginning on line 7, strike "self-insured governmental entity, or self-insurance pool or joint insurance fund created by one or more political subdivisions under Chapter 791, Government Code, or Chapter 504, Labor Code,"

(2) On page 2, beginning on line 12, after "insurer," strike "self-insurer governmental entity, or self-insurance pool or joint insurance fund created by one or more political subdivisions under Chapter 791, Government Code, or Chapter 504, Labor Code,"

Seaman