

AN ACT

To amend sections 3955.01, 3955.05, and 3955.12 of the Revised Code to exempt the Ohio Insurance Guaranty Association from being obligated to pay more than a single three hundred thousand dollar claim for injury or death to any one person and a claim of an insured whose net worth exceeds fifty million dollars and to exempt certain reciprocal insurers from participation in the Ohio Insurance Guaranty Association.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 3955.01, 3955.05, and 3955.12 of the Revised Code be amended to read as follows:

Sec. 3955.01. As used in sections 3955.01 to 3955.19 of the Revised Code:

(A) "Account" means either of the two accounts created by division (B) of section 3955.06 of the Revised Code.

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

(C) "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 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 per cent or more of the voting securities of any other person. This presumption may be rebutted by a showing that control does not exist in fact.

(D)(1) "Covered claim" means an unpaid claim, including one for

unearned premiums, which arises out of and is within the coverage of an insurance policy or policies to which sections 3955.01 to 3955.19 of the Revised Code apply, when issued by an insurer which becomes an insolvent insurer on or after September 4, 1970, and either of the following applies:

(a) The claimant or insured is a resident of this state at the time of the insured event, provided that for the purpose of determining the place of residence of a claimant or insured that is an entity other than a natural person, the state in which its principal place of business is located at the time of the insured event shall be considered the residence of such claimant or insured.

(b) The claim is a first-party claim for property damage to an insured's property that is permanently located in this state.

(2) "Covered claim" does not include any amount:

(a) In excess of ten thousand dollars on any unearned premium claim;

(b) In excess of three hundred thousand dollars on any claim; For purposes of this division, all claims arising out of bodily injury or death to any one person shall constitute a single claim regardless of the number of insurance policies issued or the number of derivative claims made, including, but not limited to, claims for loss of consortium, for injury to the relationship, for survivorship, or arising out of wrongful death.

(c) Due any reinsurer, insurer, insurance pool, or underwriting association through subrogation or otherwise; provided, that when such reinsurer, insurer, insurance pool, or underwriting association has paid a claim and thereby becomes subrogated to the amount of that claim, such subrogated claim may be asserted only against the receiver of the insolvent insurer and in no event against the insured of the insolvent insurer;

(d) Awarded as punitive or exemplary damages;

(e) Sought as a return of premium under any retrospective rating plan;

(f) Due any person that is an affiliate of the insolvent insurer;

(g) Due on any one claim that does not exceed one hundred dollars;

(h) Due under any policy of insurance issued to an insured whose net worth exceeds fifty million dollars on the last day of the insured's fiscal year next preceding the date the insurer becomes an insolvent insurer. An insured's net worth described in this division shall equal the aggregate of the net worth of the insured and all of the insured's subsidiaries. The exclusion under this division shall not apply in any of the following situations:

(i) The insured has applied for or consented to the appointment of a receiver, trustee, or liquidator for all or a substantial part of the insured's assets.

(ii) The insured has filed a voluntary petition in bankruptcy.

(iii) The insured has filed a petition or answer seeking a reorganization or arrangement with creditors or seeking to take advantage of any insolvency law.

(iv) A court of competent jurisdiction has entered an order, judgment, or decree concerning the insured's bankruptcy, insolvency, or reorganization petition.

(E) "Insolvent insurer" means an insurer licensed to transact insurance in this state either at the time the policy was issued or when the insured event occurred, decreed by a court of competent jurisdiction of the state of such insurer's domicile to be insolvent, and ordered by or pursuant to the authority of such court to be liquidated.

(F) "Member insurer" means any person that writes any kind of insurance to which this chapter applies, as prescribed in section 3955.05 of the Revised Code, including the exchange of reciprocal or interinsurance contracts, and is licensed to transact any insurance in this state.

(G) "Net direct written premiums" means direct gross premiums written in this state on insurance policies to which sections 3955.01 to 3955.19 of the Revised Code apply, less return premiums thereon and dividends paid or credited to policyholders on such direct business, but does not include premiums on contracts between insurers or reinsurers.

(H) "Net worth" means the amount by which the value of all assets exceeds all liabilities and includes, but is not limited to, such accounting terms as owners equity, partnership equity, shareholders equity, net assets, and fund balances.

(I) "Person" has the same meaning as in section 1.59 of the Revised Code.

Sec. 3955.05. Sections 3955.01 to 3955.19 of the Revised Code apply to all kinds of direct insurance, except:

(A) Title insurance;

(B) Fidelity or surety bonds, or any other bonding obligations;

(C) 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;

(D) Mortgage guaranty, financial guaranty, residual value, or other forms of insurance offering protection against investment risks;

(E) Ocean marine insurance;

(F) Any insurance provided by or guaranteed by government, including, but not limited to, any department, board, office, commission, agency, institution, or other instrumentality or entity of any branch of state government, any political subdivision of this state, the United States or any

agency of the United States, or any separate or joint governmental self-insurance or risk-pooling program, plan, or pool;

(G) Contracts of any corporation by which health services are to be provided to its subscribers;

(H) Life, annuity, health, or disability insurance, including sickness and accident insurance written pursuant to Chapter 3923. of the Revised Code;

(I) Fraternal benefit insurance;

(J) Mutual protective insurance of persons or property;

(K) Reciprocal or interinsurance contracts written pursuant to Chapter 3931. of the Revised Code for medical malpractice insurance if the reciprocal exchange or interinsurance exchange is not subject to the risk-based capital requirements in effect in the state of domicile of the reciprocal exchange or interinsurance exchange. As used in this division, "medical malpractice insurance" means insurance coverage against the legal liability of the insured and against loss, damage, or expense incident to a claim arising out of the death, disease, or injury of any person as the result of negligence or malpractice in rendering professional service by any licensed physician, podiatrist, or hospital, as those terms are defined in section 2305.113 of the Revised Code.

(L) Any political subdivision self-insurance program or joint political subdivision self-insurance pool established under Chapter 2744. of the Revised Code;

(M) Warranty or service contracts, or the insurance of those contracts;

(N) Any state university or college self-insurance program established under section 3345.202 of the Revised Code;

(O) Any transaction, or combination of transactions, between a person, including affiliates of such person, and an insurer, including affiliates of such insurer, that involves the transfer of investment or credit risk unaccompanied by a transfer of insurance risk;

(P) Credit union share guaranty insurance issued pursuant to Chapter 1761. of the Revised Code;

(Q) Insurance issued by risk retention groups as defined in Chapter 3960. of the Revised Code;

(R) Workers' compensation insurance, including any contract indemnifying an employer who pays compensation directly to employees.

Sec. 3955.12. (A) The Ohio insurance guaranty association shall be subrogated to the rights of any person recovering under sections 3955.01 to 3955.19 of the Revised Code to the extent of ~~his~~ the person's recovery from the association. Every insured or claimant seeking the protection of sections 3955.01 to 3955.19 of the Revised Code shall cooperate with the association

to the same extent as such person would have been required to cooperate with the insolvent insurer. Except as provided in division (B) of this section, the association shall have no cause of action against the insured of the insolvent insurer for any sums the association has paid out.

(B)(1) The association has the right to recover from the following insureds or persons the amount of any covered claim paid to or on behalf of those insureds or persons:

~~(a) Any insured whose net worth exceeds fifty million dollars on the last day of the insured's fiscal year next preceding the date the insurer becomes an insolvent insurer and whose liability obligations to other persons are satisfied in whole or in part by payments made under sections 3955.01 to 3955.19 of the Revised Code;~~

~~(b) Any insured who is not a resident of this state at the time of the insured event, except for first-party claims for property damage to an insured's property that is permanently located in this state;~~

~~(c)(b) Any person that is an affiliate of the insolvent insurer.~~

(2) The association has the right to recover from any insured of an insolvent insurer for any sums the association has paid out as the result of an error.

(C) The receiver, liquidator, or statutory successor of an insolvent insurer shall be bound by settlements of covered claims by the association or a similar organization in another state. The court having jurisdiction shall grant such claim priority equal to that which the claimant would have been entitled in the absence of sections 3955.01 to 3955.19 of the Revised Code against the assets of the insolvent insurer. The expenses of the association or similar organization in handling claims shall be accorded the same priority as the liquidator's expenses.

(D) The association periodically shall file with the receiver or liquidator of an insolvent insurer reports of the covered claims paid by the association and estimates of anticipated claims on the association, which shall preserve the right to the association against the assets of the insolvent insurer.

SECTION 2. That existing sections 3955.01, 3955.05, and 3955.12 of the Revised Code are hereby repealed.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

Sub. S. B. No. 279

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The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____