

**As Introduced**

**126th General Assembly  
Regular Session  
2005-2006**

**S. B. No. 279**

**Senators Stivers, Cates, Spada**

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**A B I L L**

To amend sections 3955.01 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. 1  
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**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 3955.01 and 3955.12 of the Revised Code be amended to read as follows: 8  
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**Sec. 3955.01.** As used in sections 3955.01 to 3955.19 of the Revised Code: 10  
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(A) "Account" means either of the two accounts created by division (B) of section 3955.06 of the Revised Code. 12  
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(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. 14  
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(C) "Control" means the possession, direct or indirect, of 19

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

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. 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, 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 80  
bankruptcy. 81

(iii) The insured has filed a petition or answer seeking a 82  
reorganization or arrangement with creditors or seeking to take 83  
advantage of any insolvency law. 84

(iv) A court of competent jurisdiction has entered an order, 85  
judgment, or decree concerning the insured's bankruptcy, 86  
insolvency, or reorganization petition. 87

(E) "Insolvent insurer" means an insurer licensed to transact 88  
insurance in this state either at the time the policy was issued 89  
or when the insured event occurred, decreed by a court of 90  
competent jurisdiction of the state of such insurer's domicile to 91  
be insolvent, and ordered by or pursuant to the authority of such 92  
court to be liquidated. 93

(F) "Member insurer" means any person that writes any kind of 94  
insurance to which this chapter applies, as prescribed in section 95  
3955.05 of the Revised Code, including the exchange of reciprocal 96  
or interinsurance contracts, and is licensed to transact any 97  
insurance in this state. 98

(G) "Net direct written premiums" means direct gross premiums 99  
written in this state on insurance policies to which sections 100  
3955.01 to 3955.19 of the Revised Code apply, less return premiums 101  
thereon and dividends paid or credited to policyholders on such 102  
direct business, but does not include premiums on contracts 103  
between insurers or reinsurers. 104

(H) "Net worth" means the amount by which the value of all 105  
assets exceeds all liabilities and includes, but is not limited 106  
to, such accounting terms as owners equity, partnership equity, 107  
shareholders equity, net assets, and fund balances. 108

(I) "Person" has the same meaning as in section 1.59 of the 109

Revised Code. 110

**Sec. 3955.12.** (A) The Ohio insurance guaranty association 111  
shall be subrogated to the rights of any person recovering under 112  
sections 3955.01 to 3955.19 of the Revised Code to the extent of 113  
~~his~~ the person's recovery from the association. Every insured or 114  
claimant seeking the protection of sections 3955.01 to 3955.19 of 115  
the Revised Code shall cooperate with the association to the same 116  
extent as such person would have been required to cooperate with 117  
the insolvent insurer. Except as provided in division (B) of this 118  
section, the association shall have no cause of action against the 119  
insured of the insolvent insurer for any sums the association has 120  
paid out. 121

(B)(1) The association has the right to recover from the 122  
following insureds or persons the amount of any covered claim paid 123  
to or on behalf of those insureds or persons: 124

~~(a) Any insured whose net worth exceeds fifty million dollars 125  
on the last day of the insured's fiscal year next preceding the 126  
date the insurer becomes an insolvent insurer and whose liability 127  
obligations to other persons are satisfied in whole or in part by 128  
payments made under sections 3955.01 to 3955.19 of the Revised 129  
Code; 130~~

~~(b)~~ Any insured who is not a resident of this state at the 131  
time of the insured event, except for first-party claims for 132  
property damage to an insured's property that is permanently 133  
located in this state; 134

~~(e)~~(b) Any person that is an affiliate of the insolvent 135  
insurer. 136

(2) The association has the right to recover from any insured 137  
of an insolvent insurer for any sums the association has paid out 138  
as the result of an error. 139

(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 and 3955.12 of the Revised Code are hereby repealed.