

**As Passed by the Senate**

**126th General Assembly**

**Regular Session**

**2005-2006**

**Am. S. B. No. 279**

**Senators Stivers, Cates, Spada, Armbruster, Goodman, Mumper,  
Wachtmann**

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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.

**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:

**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 49  
claim~~r~~. For purposes of this division, all claims arising out of 50  
bodily injury or death to any one person shall constitute a single 51  
claim regardless of the number of insurance policies issued or the 52  
number of derivative claims made, including, but not limited to, 53  
claims for loss of consortium, for injury to the relationship, for 54  
survivorship, or arising out of wrongful death. 55

(c) Due any reinsurer, insurer, insurance pool, or 56  
underwriting association through subrogation or otherwise; 57  
provided, that when such reinsurer, insurer, insurance pool, or 58  
underwriting association has paid a claim and thereby becomes 59  
subrogated to the amount of that claim, such subrogated claim may 60  
be asserted only against the receiver of the insolvent insurer and 61  
in no event against the insured of the insolvent insurer; 62

(d) Awarded as punitive or exemplary damages; 63

(e) Sought as a return of premium under any retrospective 64  
rating plan; 65

(f) Due any person that is an affiliate of the insolvent 66  
insurer; 67

(g) Due on any one claim that does not exceed one hundred 68  
dollars; 69

(h) Due under any policy of insurance issued to an insured 70  
whose net worth exceeds fifty million dollars on the last day of 71  
the insured's fiscal year next preceding the date the insurer 72  
becomes an insolvent insurer. An insured's net worth described in 73  
this division shall equal the aggregate of the net worth of the 74  
insured and all of the insured's subsidiaries. The exclusion under 75  
this division shall not apply in any of the following situations: 76

(i) The insured has applied for or consented to the 77  
appointment of a receiver, trustee, or liquidator for all or a 78

<u>substantial part of the insured's assets.</u>	79
<u>(ii) The insured has filed a voluntary petition in bankruptcy.</u>	80 81
<u>(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.</u>	82 83 84
<u>(iv) A court of competent jurisdiction has entered an order, judgment, or decree concerning the insured's bankruptcy, insolvency, or reorganization petition.</u>	85 86 87
(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.	88 89 90 91 92 93
(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.	94 95 96 97 98
(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.	99 100 101 102 103 104
(H) <u>"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.</u>	105 106 107 108

(I) "Person" has the same meaning as in section 1.59 of the Revised Code. 109  
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**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. 111  
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(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: 122  
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~~(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;~~ 125  
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~~(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; 131  
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~~(c)~~(b) Any person that is an affiliate of the insolvent insurer. 135  
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(2) The association has the right to recover from any insured of an insolvent insurer for any sums the association has paid out 137  
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as the result of an error.

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(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.

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(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.

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**Section 2.** That existing sections 3955.01 and 3955.12 of the Revised Code are hereby repealed.

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