

As Reported by the House Insurance Committee

126th General Assembly

Regular Session

2005-2006

Sub. S. B. No. 279

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

**Representatives Smith, G., Daniels, Evans, D., Faber, Gibbs, Patton, T.,
Raussen, Wolpert**

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A B I L L

To amend sections 3955.01, 3955.05, and 3955.12 of 1
the Revised Code to exempt the Ohio Insurance 2
Guaranty Association from being obligated to pay 3
more than a single three hundred thousand dollar 4
claim for injury or death to any one person and a 5
claim of an insured whose net worth exceeds fifty 6
million dollars and to exempt certain reciprocal 7
insurers from participation in the Ohio Insurance 8
Guaranty Association. 9

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 10
Revised Code be amended to read as follows: 11

Sec. 3955.01. As used in sections 3955.01 to 3955.19 of the 12
Revised Code: 13

(A) "Account" means either of the two accounts created by 14
division (B) of section 3955.06 of the Revised Code. 15

(B) "Affiliate" means a person that, directly or indirectly, 16
through one or more intermediaries, controls, is controlled by, or 17

is under common control with, an insolvent insurer on the 18
thirty-first day of December of the year next preceding the date 19
the insurer becomes an insolvent insurer. 20

(C) "Control" means the possession, direct or indirect, of 21
the power to direct or cause the direction of the management and 22
policies of a person, whether through the ownership of voting 23
securities, by contract other than a commercial contract for goods 24
or nonmanagement services, or otherwise, unless the power is the 25
result of an official position with, or corporate office held by, 26
the person. 27

"Control" shall be presumed to exist if any person, directly 28
or indirectly, owns, controls, holds with the power to vote, or 29
holds proxies representing, ten per cent or more of the voting 30
securities of any other person. This presumption may be rebutted 31
by a showing that control does not exist in fact. 32

(D)(1) "Covered claim" means an unpaid claim, including one 33
for unearned premiums, which arises out of and is within the 34
coverage of an insurance policy or policies to which sections 35
3955.01 to 3955.19 of the Revised Code apply, when issued by an 36
insurer which becomes an insolvent insurer on or after September 37
4, 1970, and either of the following applies: 38

(a) The claimant or insured is a resident of this state at 39
the time of the insured event, provided that for the purpose of 40
determining the place of residence of a claimant or insured that 41
is an entity other than a natural person, the state in which its 42
principal place of business is located at the time of the insured 43
event shall be considered the residence of such claimant or 44
insured. 45

(b) The claim is a first-party claim for property damage to 46
an insured's property that is permanently located in this state. 47

(2) "Covered claim" does not include any amount: 48

(a) In excess of ten thousand dollars on any unearned premium claim;	49 50
(b) In excess of three hundred thousand dollars on any claim. <u>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.</u>	51 52 53 54 55 56 57
(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;	58 59 60 61 62 63 64
(d) Awarded as punitive or exemplary damages;	65
(e) Sought as a return of premium under any retrospective rating plan;	66 67
(f) Due any person that is an affiliate of the insolvent insurer;	68 69
(g) Due on any one claim that does not exceed one hundred dollars;	70 71
(h) <u>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:</u>	72 73 74 75 76 77 78

<u>(i) The insured has applied for or consented to the</u>	79
<u>appointment of a receiver, trustee, or liquidator for all or a</u>	80
<u>substantial part of the insured's assets.</u>	81
<u>(ii) The insured has filed a voluntary petition in</u>	82
<u>bankruptcy.</u>	83
<u>(iii) The insured has filed a petition or answer seeking a</u>	84
<u>reorganization or arrangement with creditors or seeking to take</u>	85
<u>advantage of any insolvency law.</u>	86
<u>(iv) A court of competent jurisdiction has entered an order,</u>	87
<u>judgment, or decree concerning the insured's bankruptcy,</u>	88
<u>insolvency, or reorganization petition.</u>	89
(E) "Insolvent insurer" means an insurer licensed to transact	90
insurance in this state either at the time the policy was issued	91
or when the insured event occurred, decreed by a court of	92
competent jurisdiction of the state of such insurer's domicile to	93
be insolvent, and ordered by or pursuant to the authority of such	94
court to be liquidated.	95
(F) "Member insurer" means any person that writes any kind of	96
insurance to which this chapter applies, as prescribed in section	97
3955.05 of the Revised Code, including the exchange of reciprocal	98
or interinsurance contracts, and is licensed to transact any	99
insurance in this state.	100
(G) "Net direct written premiums" means direct gross premiums	101
written in this state on insurance policies to which sections	102
3955.01 to 3955.19 of the Revised Code apply, less return premiums	103
thereon and dividends paid or credited to policyholders on such	104
direct business, but does not include premiums on contracts	105
between insurers or reinsurers.	106
(H) <u>"Net worth" means the amount by which the value of all</u>	107
<u>assets exceeds all liabilities and includes, but is not limited</u>	108

to, such accounting terms as owners equity, partnership equity, 109
shareholders equity, net assets, and fund balances. 110

(I) "Person" has the same meaning as in section 1.59 of the 111
Revised Code. 112

Sec. 3955.05. Sections 3955.01 to 3955.19 of the Revised Code 113
apply to all kinds of direct insurance, except: 114

(A) Title insurance; 115

(B) Fidelity or surety bonds, or any other bonding 116
obligations; 117

(C) Credit insurance, vendors' single interest insurance, 118
collateral protection insurance, or any similar insurance 119
protecting the interests of a creditor arising out of a 120
creditor-debtor transaction; 121

(D) Mortgage guaranty, financial guaranty, residual value, or 122
other forms of insurance offering protection against investment 123
risks; 124

(E) Ocean marine insurance; 125

(F) Any insurance provided by or guaranteed by government, 126
including, but not limited to, any department, board, office, 127
commission, agency, institution, or other instrumentality or 128
entity of any branch of state government, any political 129
subdivision of this state, the United States or any agency of the 130
United States, or any separate or joint governmental 131
self-insurance or risk-pooling program, plan, or pool; 132

(G) Contracts of any corporation by which health services are 133
to be provided to its subscribers; 134

(H) Life, annuity, health, or disability insurance, including 135
sickness and accident insurance written pursuant to Chapter 3923. 136
of the Revised Code; 137

(I) Fraternal benefit insurance;	138
(J) Mutual protective insurance of persons or property;	139
(K) Reciprocal or interinsurance contracts written pursuant to Chapter 3931. of the Revised Code for medical malpractice insurance <u>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.</u> 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.	140 141 142 143 144 145 146 147 148 149 150 151 152
(L) Any political subdivision self-insurance program or joint political subdivision self-insurance pool established under Chapter 2744. of the Revised Code;	153 154 155
(M) Warranty or service contracts, or the insurance of those contracts;	156 157
(N) Any state university or college self-insurance program established under section 3345.202 of the Revised Code;	158 159
(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;	160 161 162 163 164
(P) Credit union share guaranty insurance issued pursuant to Chapter 1761. of the Revised Code;	165 166
(Q) Insurance issued by risk retention groups as defined in	167

Chapter 3960. of the Revised Code;	168
(R) Workers' compensation insurance, including any contract indemnifying an employer who pays compensation directly to employees.	169 170 171
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 <u>the person's</u> 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.	172 173 174 175 176 177 178 179 180 181 182
(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:	183 184 185
(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;	186 187 188 189 190 191
(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;	192 193 194 195
(e) <u>(b)</u> Any person that is an affiliate of the insolvent insurer.	196 197

(2) The association has the right to recover from any insured 198
of an insolvent insurer for any sums the association has paid out 199
as the result of an error. 200

(C) The receiver, liquidator, or statutory successor of an 201
insolvent insurer shall be bound by settlements of covered claims 202
by the association or a similar organization in another state. The 203
court having jurisdiction shall grant such claim priority equal to 204
that which the claimant would have been entitled in the absence of 205
sections 3955.01 to 3955.19 of the Revised Code against the assets 206
of the insolvent insurer. The expenses of the association or 207
similar organization in handling claims shall be accorded the same 208
priority as the liquidator's expenses. 209

(D) The association periodically shall file with the receiver 210
or liquidator of an insolvent insurer reports of the covered 211
claims paid by the association and estimates of anticipated claims 212
on the association, which shall preserve the right to the 213
association against the assets of the insolvent insurer. 214

Section 2. That existing sections 3955.01, 3955.05, and 215
3955.12 of the Revised Code are hereby repealed. 216