

GENERAL ASSEMBLY OF NORTH CAROLINA  
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SENATE BILL DRS45144-NE-52

Short Title: Insurance Guaranty Association Act Revisions.-AB (Public)

Sponsors: Senators Johnson, Britt, and Settle (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED  
AN ACT ENACTING REVISIONS TO THE INSURANCE GUARANTY ASSOCIATION  
ACT, AS RECOMMENDED BY THE DEPARTMENT OF INSURANCE.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 58-48-10 reads as rewritten:

"§ 58-48-10. Scope.

This Article shall apply to all kinds of direct insurance, but shall not be applicable to:

...

(5) ~~Insurance~~ Other than coverages that may be set forth in a cybersecurity insurance policy, insurance of warranties or service contracts;

...."

**SECTION 2.** G.S. 58-48-20 reads as rewritten:

"§ 58-48-20. Definitions.

As used in this Article:

...

(4) Covered claim. – An unpaid claim, including one of unearned premiums, which is in excess of fifty dollars (\$50.00) and arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this Article applies ~~as issued by an insurer, if that insurer~~ if the policy was issued by an insurer that becomes an insolvent insurer after the effective date of this Article and (i) the claimant or insured is a resident of this State at the time of the insured event; or (ii) the property from which the claim arises is permanently located in this State. "Covered claim" includes claim obligations that arose through the issuance of an insurance policy by a member insurer, which are later allocated, transferred, merged into, novated, assumed by, or otherwise made the sole responsibility of a member or nonmember insurer if (i) the original member insurer has no remaining obligations on the policy after the transfer, (ii) a final order of liquidation with a finding of insolvency has been entered against the insurer that assumed the member's coverage obligations by a court of competent jurisdiction in the insurer's state of domicile, (iii) the claim would have been a covered claim, as defined in this subdivision, if the claim had remained the responsibility of the original member insurer and the order of liquidation had been entered against the original member insurer, with the same claim submission date and liquidation date, and (iv) in cases where the member's coverage obligations were assumed by a nonmember insurer, the transaction received prior regulatory or judicial



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approval. "Covered claim" shall not include any amount awarded (i) as punitive or exemplary damages; (ii) sought as a return of premium under any retrospective rating plan; or (iii) due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation or contribution recoveries or otherwise. "Covered claim" also shall not include fines or penalties, including attorneys' fees, imposed against an insolvent insurer or its insured or claims of any claimant whose net worth exceeds fifty million dollars (\$50,000,000) on December 31 of the year preceding the date the insurer becomes insolvent.

(4a) Cybersecurity insurance. – Includes first and third-party coverage, in a policy or endorsement, written on a direct, admitted basis by a member insurer for losses and loss mitigation arising out of or relating to data privacy breaches, unauthorized information network security intrusions, computer viruses, ransomware, cyber extortion, identity theft, and similar exposures.

...."

**SECTION 3.** G.S. 58-48-35 reads as rewritten:

**"§ 58-48-35. Powers and duties of the Association.**

(a) The Association shall:

(1) Be obligated to the extent of the covered claims existing prior to the determination of insolvency and arising within 30 days after the determination of insolvency, or before the policy expiration date if less than 30 days after the determination, or before the insured replaces the policy or causes its cancellation, if he does so within 30 days of the determination. This obligation includes only the amount of each covered claim that is in excess of fifty dollars (\$50.00) and is less than five hundred thousand dollars (\$500,000). However, the Association shall pay the full amount of a covered claim for benefits under a workers' compensation insurance coverage, and shall pay an amount not exceeding ten thousand dollars (\$10,000) per policy for a covered claim for the return of unearned premium. In no event shall the Association be obligated to pay an amount in excess of five hundred thousand dollars (\$500,000) for all first and third-party claims under a policy or endorsement providing, or that is found to provide, cybersecurity insurance coverage and arising out of or related to a single insured event, regardless of the number of claims made or the number of claimants. The Association has no obligation to pay a claimant's covered claim, except a claimant's workers' compensation claim, if:

...

(4) Investigate claims brought against the Association and adjust, compromise, settle, and pay covered claims to the extent of the Association's obligation and deny all other claims and may review settlements, releases and judgments to which the insolvent insurer or its insureds were parties to determine the extent to which such settlements, releases and judgments may be properly contested claims. This requirement is subject to the following provisions:

a. When investigating, adjusting, compromising, or settling claims, the Association may appoint, substitute, and direct legal counsel for the defense of covered claims and appoint and direct other service providers for covered services.

b. The Association may pay in any order that it deems reasonable, including the payment of claims as they are received from the claimants or in groups or categories of claims.

...

(8) Have the right to review and contest settlements, releases, compromises, waivers, and judgments to which the insolvent insurer or its insureds were

parties prior to the entry of the order of liquidation. This right is subject to the following provisions:

- a. In addition to any defenses available to the insurer, the Association may assert any statutory defenses or rights of offset against any settlement, release, compromise, or waiver executed by an insured or the insurer or any judgment taken against the insured or the insurer.
- b. The Association is not bound by a settlement, release, compromise, or waiver executed by an insured or the insurer or any judgment entered against an insured or the insurer by consent or through a failure to exhaust all appeals if the settlement, release, compromise, waiver, or judgment was:
  1. Executed or entered within 120 days prior to the entry of an order of liquidation, and the insured or the insurer did not use reasonable care in entering into the settlement, release, compromise, waiver, or judgment, or did not pursue all reasonable appeals of an adverse judgment; or
  2. Executed by or taken against an insured or the insurer based on default, fraud, collusion, or the insurer's failure to defend.
- c. If a court of competent jurisdiction finds that the Association is not bound by a settlement, release, compromise, waiver, or judgment for any of the reasons described in sub-subdivision b. of this subdivision, the settlement, release, compromise, waiver, or judgment shall be set aside, and the Association shall be permitted to defend any covered claim on the merits. The settlement, release, compromise, waiver, or judgment may not be considered as evidence of liability or damages in connection with any claim brought against the Association or any other party under this Article.
- d. Any covered claims arising from any judgment under any decision, verdict, or finding based on the default of the insolvent insurer or its failure to defend an insured shall, upon application and notice by the Association, be vacated and set aside by the same court in which such judgment, order, decision, verdict, or finding is entered, and the Association either on its own behalf or on behalf of any insured or an insolvent insurer shall be permitted to defend against such claim on the merits. Any party who has obtained any such judgment or order shall have the right, upon application and notice, to have the judgment or order restored if within 90 days following the entry of the judgment or order the Association has not notified such party and the court that it intends to defend the matter on the merits.

...."

**SECTION 4. G.S. 58-48-50 reads as rewritten:**

**"§ 58-48-50. Effect of paid claims.**

...

(a1) The Association shall have the right to recover from the following persons the amount of any "covered claim" paid and any and all expenses incurred, including attorneys' fees and costs of defense, in connection with any claim against the person or the person's affiliate pursuant to this Article:

- (1) Any insured whose net worth on December 31 of the year next preceding the date the insurer becomes insolvent exceeds fifty million dollars (\$50,000,000) and whose liability obligations to other persons are satisfied in whole or in part by payments under this ~~Article~~, Article, provided that an insured's net

worth on that date shall be deemed to include the aggregate net worth of the insured and all of its subsidiaries and affiliates as calculated on a consolidated basis; or

...."

**SECTION 5.** G.S. 58-48-85 reads as rewritten:

**"§ 58-48-85. Stay of ~~proceedings; reopening of default judgments.~~ proceedings.**

All proceedings in which the insolvent insurer is a party or is obligated to defend a party in any court or before any administrative agency or the North Carolina Industrial Commission shall be stayed automatically for 120 days and such additional time thereafter as may be determined by the court from the date the insolvency is determined or any ancillary proceedings are initiated in this State, whichever is later, to permit proper defense by the Association of all pending causes of action. Any party to any proceeding which is stayed pursuant to this section shall have the right, upon application and notice, to seek a vacation or modification of such stay. ~~Any covered claims arising from any judgment under any decision, verdict or finding based on the default of the insolvent insurer or its failure to defend an insured, shall, upon application and notice by the Association be vacated and set aside by the same court in which such judgment, order, decision, verdict, or finding is entered and the Association either on its own behalf or on behalf of any insured or an insolvent insurer, shall be permitted to defend against such claim on the merits. Any party who has obtained any such judgment or order shall have the right, upon application and notice, to have the judgment or order restored if within 90 days following the entry of the judgment or order the Association has not notified such party and the court that it intends to defend the matter on the merits."~~

**SECTION 6.** This act is effective when it becomes law.