

1 HB401
2 190614-1
3 By Representative Rich
4 RFD: Insurance
5 First Read: 13-FEB-18

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8 SYNOPSIS: Under existing law, the Alabama Insurance
9 Guaranty Association Act provides a mechanism for
10 the payment of covered claims under certain
11 insurance policies to avoid excessive delay in
12 payments, to avoid financial loss to claimants or
13 policyholders because of the insolvency of an
14 insurer, to assist in the detection and prevention
15 of insurer insolvencies, and to provide an
16 association to assess the cost of the protection
17 among insurers.

18 This bill would conform certain provisions
19 of the act relating to the association to the most
20 recent model act, and would define additional
21 terms.

22 This bill would provide for the obligation
23 of the association to pay covered claims before an
24 order of liquidation of an insolvent insurer.

25 This bill would also raise the statutory cap
26 for statutory benefits available for a covered

1 claim from \$150,000 to \$300,000, and would provide
2 for an aggregate cap.

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4 A BILL
5 TO BE ENTITLED
6 AN ACT

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8 To amend Sections 27-42-3, 27-42-5, 27-42-8,
9 27-42-11, and 27-42-12, Code of Alabama 1975, relating to the
10 Alabama Insurance Guaranty Association; to conform certain
11 provisions relating to the association to the most recent
12 model act; to define additional terms; to provide for the
13 obligation of the association to pay covered claims before an
14 order of liquidation of an insolvent insurer; to raise the
15 statutory cap for statutory benefits available for a covered
16 claim from \$150,000 to \$300,000; and to provide for an
17 aggregate cap.

18 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

19 Section 1. Sections 27-42-3, 27-42-5, 27-42-8,
20 27-42-11, and 27-42-12 of the Code of Alabama 1975, are
21 amended to read as follows:

22 "§27-42-3.

23 "This chapter shall apply to all kinds of direct
24 insurance, ~~except life, annuities, disability, accident and~~
25 ~~health, title, surety, credit, mortgage guaranty, and ocean~~
26 ~~marine insurance.~~ excluding all of the following:

27 "(1) Life, annuity, health, or disability insurance.

1 "(2) Mortgage guaranty, financial guaranty, or other
2 forms of insurance offering protection against investment
3 risks.

4 "(3) Fidelity or surety bonds, or any other bonding
5 obligations.

6 "(4) Credit insurance, vendors' single interest
7 insurance, or collateral protection insurance or any similar
8 insurance protecting the interests of a creditor arising out
9 of a creditor-debtor transaction.

10 "(5) Insurance of warranties or service contracts,
11 including insurance that provides for the repair, replacement,
12 or service of goods or property, or indemnification for
13 repair, replacement, or service, for the operational or
14 structural failure of the goods or property due to a defect in
15 materials, workmanship, or normal wear and tear, or provides
16 reimbursement for the liability incurred by the issuer of
17 agreements or service contracts that provide such benefits.

18 "(6) Title insurance.

19 "(7) Ocean marine insurance.

20 "(8) Any insurance provided by or guaranteed by the
21 government.

22 "§27-42-5.

23 "As used in this chapter, the following terms shall
24 have the following meanings, respectively, unless the context
25 clearly indicates otherwise:

26 "(1) ACCOUNT. Any one of the three accounts created
27 by Section 27-42-6.

1 "(2) AFFILIATE. A person who directly, or
2 indirectly, through one or more intermediaries, controls, is
3 controlled by, or is under common control with another person
4 on December 31 of the year immediately preceding the date the
5 insurer becomes an insolvent insurer.

6 "(3) ASSOCIATION. The Alabama Insurance Guaranty
7 Association created under Section 27-42-6.

8 "(4) CLAIMANT. Any insured making a first party
9 claim or any person instituting a liability claim. The term
10 does not include a person who is an affiliate of an insolvent
11 insurer.

12 "~~(4)~~ (5) COMMISSIONER. The Commissioner of Insurance
13 of the State of Alabama.

14 "~~(5)~~ (6) CONTROL. The possession, direct or indirect,
15 of the power to direct or cause the direction of the
16 management and policies of a person, whether through the
17 ownership of voting securities, by contract other than a
18 commercial contract for goods or nonmanagement services, or
19 otherwise, unless the power is the result of an official
20 position with or corporate office held by the person. Control
21 shall be presumed to exist if a person, directly or
22 indirectly, owns, controls, holds with the power to vote, or
23 holds proxies representing, 10 percent or more of the voting
24 securities of any other person. This presumption may be
25 rebutted by a showing that control does not exist in fact.

26 "~~(6)~~ (7) COVERED CLAIM. An unpaid claim, including
27 one of unearned premiums, which arises out of, and is within

1 the coverage and not in excess of, the applicable limits of an
2 insurance policy to which this chapter applies, issued by an
3 insurer, if such insurer becomes an insolvent insurer after
4 January 1, 1981, and (i) the claimant or insured is a resident
5 of this state at the time of the insured event; or (ii) the
6 property from which the claim arises is permanently located in
7 this state. ~~"Covered claim" shall~~ The term does not include
8 any of the following:

9 "a. Any amount due any reinsurer, insurer, insurance
10 pool, self-insurer, or underwriting association, as
11 subrogation recoveries or otherwise, ~~nor shall "covered claim"~~
12 ~~include any.~~

13 "b. Any first party claims by a "high net worth
14 insured."

15 "c. Any amount awarded as punitive or exemplary
16 damages except for punitive damages awarded under the Alabama
17 Wrongful Death Act.

18 "d. Any amount sought as a return of premium under
19 any retrospective rating plan.

20 ~~"(7)(8)~~ HIGH NET WORTH INSURED. Any insured whose
21 net worth exceeds twenty-five million dollars (\$25,000,000) on
22 December 31 of the year prior to the year in which the insurer
23 becomes an insolvent insurer; provided that an insured's net
24 worth on that date shall be deemed to include the aggregate
25 net worth of the insured and all of its subsidiaries and
26 affiliates as calculated on a consolidated basis.

1 "~~(8)~~(9) INSOLVENT INSURER. An insurer licensed to
2 transact insurance in this state, either at the time the
3 policy was issued or when the insured event occurred, and
4 against whom an order of liquidation with a finding of
5 insolvency has been entered after January 1, 1981, by a court
6 of competent jurisdiction in the insurer's state of domicile
7 or of this state under the provisions of Chapter 32 of this
8 title, which order of liquidation has not been stayed or been
9 the subject of a writ of supersedeas bonds or other comparable
10 order.

11 "(10) INSURED. Any named insured, additional
12 insured, vendor, lessor, or other party identified as an
13 insured under a policy.

14 "~~(9)~~(11) MEMBER INSURER. Any person who (i) writes
15 any kind of insurance to which this chapter applies under
16 Section 27-42-3, including the exchange of reciprocal or
17 interinsurance contracts, and (ii) is licensed to transact
18 insurance in this state.

19 "~~(10)~~(12) NET DIRECT WRITTEN PREMIUMS. Direct gross
20 premiums written in this state on insurance policies to which
21 this chapter applies, less return premiums thereon and
22 dividends paid or credited to, policyholders on such direct
23 business. "Net direct written premiums" do not include
24 premiums on contracts between insurers or reinsurers.

25 "~~(11)~~(13) NET WORTH. The total assets of a person,
26 less the total liabilities against those assets as determined
27 in accordance with generally accepted accounting principles. A

1 person's net worth shall be deemed to include the aggregate
2 net worth of the person and all of its subsidiaries and
3 affiliates as calculated on a consolidated basis.

4 "~~(12)~~ (14) PERSON. Any individual or legal entity,
5 including governmental entities.

6 "~~(13)~~ (15) RESIDENCY. For purposes of determining
7 residency in this chapter, the residency of a claimant or
8 insured that is a corporation, partnership, association, or
9 voluntary organization is the state in which the claimant's or
10 insured's principal place of business is located.

11 "~~(14)~~ (16) SELF-INSURER. A person that covers its
12 liability through a qualified individual or group
13 self-insurance program or any other formal program created for
14 the specific purpose of covering liabilities typically covered
15 by insurance.

16 "§27-42-8.

17 "(a) The association shall:

18 "(1) a. Be obligated to ~~the extent of the pay~~ covered
19 claims existing prior to the ~~determination of insolvency and~~
20 order of liquidation arising within 30 days after the
21 ~~determination of insolvency~~ order of liquidation, or before
22 the policy expiration date if less than 30 days after the
23 ~~determination, on~~ order of liquidation, or before the insured
24 replaces the policy or causes its cancellation, if he or she
25 does so within 30 days of the ~~determination, but the~~
26 ~~association's obligation shall include only that amount of~~
27 ~~each covered claim which is in excess of one hundred dollars~~

1 ~~(\$100) and is less than one hundred fifty thousand dollars~~
2 ~~(\$150,000), except that the association shall pay the full~~
3 ~~amount of any covered employee benefit claim arising under~~
4 ~~Section A of workers' compensation policy. In no event shall~~
5 ~~the association be obligated to a policyholder or claimant in~~
6 ~~an amount in excess of the obligation of the insolvent insurer~~
7 ~~under the policy from which the claim arises. order of~~
8 ~~liquidation. The obligation shall be satisfied by paying to~~
9 ~~the claimant an amount as follows:~~

10 "1. The full amount of a covered claim for benefits
11 under a workers' compensation insurance coverage.

12 "2. An amount not exceeding ten thousand dollars
13 (\$10,000) per policy for a covered claim for the return of
14 unearned premium.

15 "3. An amount not exceeding three hundred thousand
16 dollars (\$300,000) or the policy limits, whichever is less,
17 per claim for all covered claims. For purposes of this
18 limitation, all claims of any kind whatsoever arising out of,
19 or related to, bodily injury or death to any one person shall
20 constitute a single claim, regardless of the number of claims
21 made or the number of claimants.

22 "b. In no event shall the association be obligated
23 to pay a claimant an amount in excess of the obligation of the
24 insolvent insurer under the policy or coverage from which the
25 claim arises.

1 "c. Notwithstanding any other provisions of this
2 chapter, a covered claim shall not include any claim filed
3 with the ~~guaranty fund~~ association after the earlier of:

4 "1. Twenty-five months after the date of the order
5 of liquidation.

6 "2. The final date set by the court for the filing
7 of claims against the liquidator or receiver of an insolvent
8 insurer.

9 "d. Any obligation of the association to defend an
10 insured on a covered claim shall cease upon the association's
11 1. payment, by settlement releasing the insured or on a
12 judgment, of an amount equal to the lesser of the
13 association's covered claim obligation limit or the applicable
14 policy limit or 2. tender of such amount.

15 "e. If the association determines that there may be
16 more than one claimant having a covered claim or allowed claim
17 against the association or any associations similar to the
18 association in other states, under the policy or policies of
19 any one insolvent insurer, the association may establish a
20 plan to allocate amounts payable by the association in such
21 manner as the association deems equitable.

22 "(2) Be deemed the insurer only to the extent of its
23 obligation on the covered claims and to such extent, subject
24 to the limitations provided in this chapter, shall have all
25 rights, duties, and obligations of the insolvent insurer as if
26 the insurer had not become insolvent including, but not
27 limited to, the right to pursue subrogation recoveries and

1 retain salvage and subrogation recoveries on paid covered
2 claims. The association shall not be deemed the insolvent
3 insurer for any purpose relating to the issue of whether the
4 association is amendable to the personal jurisdiction of the
5 courts of any jurisdiction.

6 "(3) Allocate claims paid and expenses incurred
7 among the three accounts separately, and assess member
8 insurers separately for each account amounts necessary to pay
9 the obligations of the association under subdivision (1) of
10 this subsection subsequent to an insolvency, the expenses of
11 handling covered claims subsequent to an insolvency, the cost
12 of examinations under Section 27-42-13 and other expenses
13 authorized by this chapter. The assessments of each member
14 insurer shall be in the proportion that the net direct written
15 premiums of the member insurer for the calendar year preceding
16 the assessment on the kinds of insurance in the account bears
17 to the net direct written premiums of all member insurers for
18 the calendar year preceding the assessment on the kinds of
19 insurance in the account. Each member insurer shall be
20 notified of the assessment not later than 30 days before it is
21 due. No member insurer may be assessed in any one year on any
22 account an amount greater than one percent of that member
23 insurer's net direct written premiums for the calendar year
24 preceding the assessment on the kinds of insurance in the
25 account. If the maximum assessment, together with the other
26 assets of the association in any account, does not provide in
27 any one year in any account an amount sufficient to make all

1 necessary payments from that account, the funds available
2 shall be prorated and the unpaid portion shall be paid as soon
3 thereafter as funds become available. The association shall
4 pay claims in any order which it may deem reasonable,
5 including the payment of claims as they are received from the
6 claimants or in groups or categories of claims. The
7 association may exempt or defer, in whole or in part, the
8 assessment of any member insurer, if the assessment would
9 cause the member insurer's financial statement to reflect
10 amounts of capital or surplus less than the minimum amounts
11 required for a certificate of authority by any jurisdiction in
12 which the member insurer is authorized to transact insurance;
13 provided, however, that during the period of deferment, no
14 dividends shall be paid to shareholders or policyholders.
15 Deferred assessments shall be paid when payment will not
16 reduce capital or surplus below required minimums. Payments
17 shall be refunded to those companies receiving larger
18 assessments by virtue of a deferment or, at the election of
19 any company, credited against future assessments. Each member
20 insurer may set off against any assessment, authorized
21 payments made on covered claims and expenses incurred in the
22 payment of claims by the member insurer if they are chargeable
23 to the account for which the assessment is made.

24 "(4) Investigate claims brought against the
25 association and adjust, compromise, settle, and pay covered
26 claims to the extent of the association's obligation and deny
27 all other claims and may review settlements, releases, and

1 judgments to which the insolvent insurer or its insureds were
2 parties to determine the extent to which the settlements,
3 releases, and judgments may be properly contested.

4 "(5) Notify such persons as the commissioner directs
5 under subdivision (1) of subsection (b) of Section 27-42-10.

6 "(6) Handle claims through its employees or through
7 one or more insurers or other persons designated as servicing
8 facilities. Designation of a servicing facility is subject to
9 the approval of the commissioner, but such designation may be
10 declined by a member insurer.

11 "(7) Reimburse each servicing facility for
12 obligations of the association paid by the facility and for
13 expenses incurred by the facility while handling claims on
14 behalf of the association and shall pay the other expenses of
15 the association authorized by this chapter.

16 "(b) The association may:

17 "(1) Employ or retain those persons as are necessary
18 to handle claims and perform other duties of the association.

19 "(2) Borrow funds necessary to effect the purposes
20 of this chapter in accord with the plan of operation.

21 "(3) Sue or be sued, and the power to sue includes
22 the power and right to intervene as a party before any court
23 in this state that has jurisdiction over an insolvent insurer
24 as defined by this chapter.

25 "(4) Negotiate and become a party to any contracts
26 as are necessary to carry out the purpose of this chapter.

1 "(5) Perform other acts as are necessary or proper
2 to effectuate the purpose of this chapter.

3 "(6) Refund to the member insurers, in proportion to
4 the contribution of each member insurer to that account, that
5 amount by which the assets of the account exceed the
6 liabilities if, at the end of any calendar year, the board of
7 directors finds that the assets of the association in any
8 account exceed the liabilities of that account as estimated by
9 the board of directors for the coming year.

10 "(7) Bring an action against any third party
11 administrator, agent, attorney, or other representative of the
12 insolvent insurer to obtain custody and control of all claims
13 information including, but not limited to, files, records, and
14 electronic data related to an insolvent company that are
15 appropriate or necessary for the association, or a similar
16 association in other states, to carry out its duties under
17 this chapter. In such a suit, the association shall have the
18 absolute right through emergency equitable relief to obtain
19 custody and control of all claims information in the custody
20 or control of the third party administrator, agent, attorney,
21 or other representative of the insolvent insurer, regardless
22 of where the claims information may be physically located. In
23 bringing such an action, the association shall not be subject
24 to any defense, lien, possessory or otherwise, or other legal
25 or equitable ground whatsoever for refusal to surrender claims
26 information that might be asserted against the liquidator of
27 the insolvent insurers. To the extent that litigation is

1 required for the association to obtain custody of the claims
2 information requested and litigation results in the
3 relinquishment of claims information to the association after
4 refusal to provide the same in response to a written demand,
5 the court shall award the association its costs, expenses, and
6 reasonable attorneys' fees incurred in bringing the action.
7 This section shall have no effect on the rights and remedies
8 that the custodian of such claims information may have against
9 the insolvent insurers, so long as such rights and remedies do
10 not conflict with the rights of the association to custody and
11 control of the claims information under this chapter.

12 "(c) Suit against the association:

13 "Except for actions by member insurers aggrieved by
14 final actions or decisions of the association pursuant to
15 subdivision (7) of subsection (c) of Section 27-42-9, all
16 actions against the association relating to or arising out of
17 Act 2009-716 shall be brought in the Alabama state courts.
18 Such courts shall have exclusive jurisdiction over all actions
19 relating to or arising out of Act 2009-716 against the
20 association.

21 "§27-42-11.

22 "(a) Any person recovering under this chapter shall
23 be deemed to have assigned his or her rights under the policy
24 to the association to the extent of his or her recovery from
25 the association. Every insured or claimant seeking the
26 protection of this chapter shall cooperate with the
27 association to the same extent as such person would have been

1 required to cooperate with the insolvent insurer. The
2 association shall have no cause of action against the insured
3 of the insolvent insurer for any sums it has paid out except
4 for those causes of action the insolvent insurer would have
5 had if such sums had been paid by the insolvent insurer and
6 except as provided in subsections (d), (e), (f), (g), and (h)
7 below. In the case of an insolvent insurer operating on a plan
8 with assessment liability, payments of claims of the
9 association may not operate to reduce the liability of
10 insureds to the receiver, liquidator, or statutory successor
11 for unpaid assessments.

12 "(b) The receiver, liquidator, or statutory
13 successor of an insolvent insurer shall be bound by
14 settlements of covered claims by the association or a similar
15 organization in another state. The court having jurisdiction
16 shall grant these claims priority equal to that which the
17 claimant would have been entitled in the absence of this
18 chapter against the assets of the insolvent insurer. The
19 expenses of the association or similar organization in
20 handling claims shall be accorded the same priority as the
21 liquidator's expenses.

22 "(c) The association shall periodically file with
23 the receiver or liquidator of the insolvent insurer statements
24 of the covered claims paid by the association and estimates of
25 anticipated claims on the association which shall preserve the
26 rights of the association against the assets of the insolvent
27 insurer.

1 "(d) The association shall not be obligated to pay
2 any first party claims by a high net worth insured.

3 "(e) The association shall have the right to recover
4 from a high net worth insured all amounts paid by the
5 association to or on behalf of such insured, whether for
6 indemnity, defense, or otherwise.

7 "(f) The association shall have the right to recover
8 from any person who is an affiliate of the insolvent insurer
9 all amounts paid by the association to or on behalf of such
10 person, whether for indemnity, defense, or otherwise.

11 "(g) The association shall establish procedures for
12 requesting financial information from insureds and claimants
13 on a confidential basis for purposes of applying sections
14 concerning the net worth of insureds or first party and third
15 party claimants, subject to such information being shared with
16 any other association similar to the association and the
17 liquidator for the insolvent insurer on the same confidential
18 basis. If the insured or claimant refuses to provide the
19 requested financial information, the association may deem the
20 net worth of the insured or claimant to be in excess of
21 twenty-five million dollars (\$25,000,000) at the relevant
22 time.

23 "(h) In any lawsuit contesting the applicability of
24 this section or the exclusion from covered claims of claims by
25 high net worth insureds embodied in subdivisions (6) and (7)
26 of Section 27-42-5, where the insured has refused to provide
27 financial information under the procedure established pursuant

1 to subsection (g), there shall be a rebuttable presumption
2 that the insured's net worth exceeded twenty-five million
3 dollars (\$25,000,000) at the relevant time. If the court finds
4 that the insured's net worth exceeded twenty-five million
5 dollars (\$25,000,000) at the relevant time the court may award
6 to the association attorney's fees and costs.

7 "(i) The association and any association similar to
8 the association in another state shall be recognized as
9 claimants in the liquidation of an insolvent insurer for any
10 amounts paid by them on covered claims obligations as
11 determined under this chapter, or similar laws in other
12 states, and shall receive dividends and any other
13 distributions at the priority set forth for policyholder
14 claims in the liquidation proceeding. The receiver,
15 liquidator, or statutory successor of an insolvent insurer
16 shall be bound by determinations of covered claim eligibility
17 under this chapter and by settlements of claims made by the
18 association or a similar organization in another state. The
19 court having jurisdiction shall grant such claims priority
20 equal to that which the claimant would have been entitled in
21 the absence of this chapter against the assets of the
22 insolvent insurer. The expenses of the association or similar
23 organization in handling claims shall be accorded the same
24 priority as the liquidator's expenses.

25 "§27-42-12.

26 "(a) Any person having a claim ~~against an insurer~~
27 under ~~any provision in an insurance policy other than a policy~~

1 ~~of an insolvent insurer which is also a covered claim, shall~~
2 ~~be required to exhaust first his rights under such policy. Any~~
3 ~~amount payable on a covered claim under this chapter shall be~~
4 ~~reduced by the amount of any recovery under such insurance~~
5 ~~policy.~~ an insurance policy, whether or not it is a policy
6 issued by a member insurer, where the claim under the other
7 policy arises from the same facts, injury, or loss that gave
8 rise to the covered claim against the association, shall be
9 required first to exhaust all coverage provided by any such
10 policy. Any amount payable on a covered claim under this
11 chapter shall be reduced by the full applicable limits stated
12 in the other insurance policy and the association shall
13 receive a full credit for the stated limits, or, where there
14 are no applicable stated limits, the claim shall be reduced by
15 the total recovery. Notwithstanding the foregoing, no person
16 shall be required to exhaust any right under the policy of an
17 insolvent insurer.

18 "(1) A claim under a policy providing liability
19 coverage to a person who may be jointly and severally liable
20 with, or a joint tortfeasor with, the person covered under the
21 policy of the insolvent insurer that gives rise to the covered
22 claim, shall be considered to be a claim arising from the same
23 facts, injury, or loss that gave rise to the covered claim
24 against the association.

25 "(2) A claim under an insurance policy shall also
26 include, for purposes of this section:

1 "a. A claim against a health maintenance
2 organization, a hospital plan corporation, or a professional
3 health service corporation.

4 "b. Any amount payable by or on behalf of a
5 self-insurer.

6 "(3) To the extent that the association's obligation
7 is reduced by the application of this section, the liability
8 of the person insured by the insolvent insurer's policy for
9 the claim shall be reduced in the same amount.

10 "(b) Any person having a claim which may be
11 recovered under more than one insurance guaranty association
12 or its equivalent shall seek recovery first from the
13 association of the place of residence of the insured except
14 that if it is a first party claim for damage to property with
15 a permanent location, he or she shall seek recovery first from
16 the association of the location of the property and if it is a
17 ~~workmen's~~ workers' compensation claim, he or she shall seek
18 recovery first from the association of the residence of the
19 claimant at the time of the accident giving rise to the claim.
20 Any recovery under this chapter shall be reduced by the amount
21 of recovery from any other insurance guaranty association or
22 its equivalent."

23 Section 2. This act shall become effective on the
24 first day of the third month following its passage and
25 approval by the Governor, or its otherwise becoming law.