

CHAPTER 904

H.B. No. 1433

An Act relating to certain insurance company insolvencies and limitations on covered claims.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 3, Texas Property and Casualty Insurance Guaranty Act (Article 21.28-C, Insurance Code), is amended to read as follows:

Sec. 3. SCOPE. This Act shall apply to all kinds of insurance, *including workers' compensation insurance*, written by stock and mutual fire insurance companies, casualty insurance companies and fire and casualty insurance companies licensed to do business in this State; and shall also include all kinds of insurance written by county mutual insurance companies, Lloyd's and reciprocal exchanges licensed to do business in this State; but shall not apply to insurance written by farm mutual insurance companies or title insurance companies or title insurance written by any insurer; and shall not apply to mortgage guaranty insurance companies or mortgage guaranty insurance, nor to ocean marine insurance, nor to credit insurance that insures a lender against loss due to default by a borrower in the repayment of a loan secured by a second or junior lien mortgage, *nor to insurance that insures a municipal bond holder against loss due to default of a political subdivision in the repayment of a municipal bond, nor to fidelity, surety, and guaranty bonds*, nor to home warranty insurance; and shall not apply to Mexican casualty insurance companies or to policies of insurance issued by Mexican casualty insurance companies.

SECTION 2. Subdivision (2), Section 5, Texas Property and Casualty Insurance Guaranty Act (Article 21.28-C, Insurance Code), is amended to read as follows:

(2) "Covered claim" is an unpaid claim of an insured or third party liability claimant which arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this Act applies, issued or assumed (whereby an assumption certificate is issued to the insured) by an insurer licensed to do business in this State, if such insurer becomes an "impaired insurer" after the effective date of this Act and (a) the third party claimant or liability claimant or insured is a resident of this State at the time of the insured event; or (b) the property from which the claim arises is permanently located in this State. "Covered claim" shall also include seventy-five percent (75%) of unearned premiums but in no event shall a "covered claim" for unearned premiums exceed *One Thousand Dollars (\$1,000)* [~~Five Hundred Dollars (\$500)~~]. Individual "covered claims" shall be limited to *One Hundred Thousand Dollars (\$100,000)*, *except that the association shall pay the full amount of any "covered claim" arising out of a workers' compensation policy [Fifty Thousand Dollars (\$50,000) and shall not include any amount in excess of Fifty Thousand Dollars (\$50,000)].* "Covered claim" shall not include any amount due any reinsurer, insurer, insurance pool or underwriting association, as subrogation recoveries or otherwise. "Covered claim" shall not include supplementary

payment obligations, including but not limited to adjustment fees and expenses, attorneys fees and expenses, court costs, interest and bond premiums, incurred prior to the determination that an insurer is an "impaired insurer" under this Act. With respect to a "covered claim" for unearned premiums, both persons who were residents of this State at the time the policy was issued and persons who are residents of this State at the time the company is found to be an "impaired insurer" shall be considered to have "covered claims" under this Act. Where the impaired insurer has no assets within the State of Texas, or has insufficient assets to pay the expenses of administering the receivership or conservatorship estate, that portion of the expenses of administration incurred in the processing and payment of claims against the estate shall also be a "covered claim" under this Act.

SECTION 3. Section (c), Article 5.76, Insurance Code, is amended to read as follows:

(c) It shall be the duty of the pool to provide insurance, in the manner herein provided, for any risk under the Workers' Compensation Law of Texas, the Longshoremen's and Harbor Workers' Compensation Act, and/or the Federal Coal Mine Health and Safety Act of 1969, as amended, or for any city, county or any other political subdivision, agency or department of the State authorized to provide workers' compensation insurance for its employees under any laws of the State of Texas, heretofore or hereafter enacted, which risk shall have been tendered to and rejected by any of its members. ~~[It shall be the further duty of the pool to provide insurance in the manner herein provided on all policies and claims in existence for any insurance company which has been declared insolvent by the courts of this State or any other state in the same manner as if said policies have been written by its servicing companies. With respect to said claims in existence at the time of said declaration of insolvency and paid by the pool, the pool shall have the same rights against the receiver of said insolvent company as are provided by the laws of this State for workers' compensation loss claimants of the insolvent insurance company.]~~ From and after the date the rules made and adopted under Section (e) of this Article have been approved by the Board the procedures and remedies established under this article shall be the sole and exclusive procedure and remedies, either at law or in equity, of any applicant for such insurance whose insurance has been rejected or cancelled by any member.

SECTION 4. Article 21.28, Insurance Code, is amended by adding Section 3A, to read as follows:

Sec. 3A. WORKERS' COMPENSATION CARRIER: NOTIFICATION OF INDUSTRIAL ACCIDENT BOARD. (a) *The liquidator shall notify the Industrial Accident Board immediately upon a finding of insolvency or impairment upon any insurance company which has in force any workers' compensation coverage in Texas.*

(b) *The Industrial Accident Board shall, upon said notice, submit to the liquidator a list of active cases pending before the Industrial Accident Board in which there has been an acceptance of liability by the carrier, where it appears that no bona fide dispute exists and where payments were commenced prior to the finding of insolvency or impairment and where future or past indemnity or medical payments are due.*

(c) *Notwithstanding the provisions of Section 3 of this Article, the liquidator is authorized to commence or continue the payment of claims based upon the list submitted in Subsection (b) above.*

(d) *In order to avoid undue delay in the payment of covered workers' compensation claims, the liquidator shall contract with the Texas Workers' Compensation Assigned Risk Pool or any other qualified organization for claims adjusting. Files and information delivered by the Industrial Accident Board to the liquidator may be delivered to the Texas Workers' Compensation Assigned Risk Pool or any organization with which the liquidator has contracted for claims adjusting services.*

(e) *The Industrial Accident Board shall report to the State Board of Insurance any occasion when a workers' compensation insurer has committed acts that may indicate insurer financial impairment, delinquency or insolvency.*

SECTION 5. Subdivision C, Section 14, Texas Property and Casualty Insurance Guaranty Act (Article 21.28-C, Insurance Code), is amended to read as follows:

C. Powers and Duties of Association. In addition to the powers and duties enumerated in other sections of this article, the association:

(1) May render assistance and advice to the Commissioner, upon his request, concerning rehabilitation, payment of claims, continuations of coverage, or the performance of other contractual obligations of any impaired insurer;

(2) Shall have the standing to appear before any court in this State with jurisdiction over an impaired insurer concerning which the association is or may become obligated under this Act;

(3) May enter into such contracts as are necessary or proper, *including the power to borrow money*, to carry out the provisions and purposes of this article;

(4) May sue or be sued, including taking any legal actions necessary or proper for recovery of any unpaid assessments;

(5) May employ or retain such persons as are necessary to handle the financial transactions of the association, and to perform such other functions as become necessary or proper under this Act;

(6) May negotiate and contract with any liquidator, rehabilitator, conservator, receiver, or ancillary receiver to carry out the powers and duties of the association; and

(7) May take such legal action as may be necessary to avoid the payment of improper claims.

SECTION 6. This Act applies only to covered claims that accrue on or after the effective date of this Act. Covered claims that accrue before the effective date of this Act are governed by the law as it existed at the time the covered claim accrued and that law is continued in effect for that purpose.

SECTION 7. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on April 15, 1985, by the following vote: Yeas 133, Nays 1, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 1433 on May 17, 1985, by the following vote: Yeas 133, Nays 0, 1 present, not voting; passed by the Senate, with amendments, on May 15, 1985, by the following vote: Yeas 30, Nays 0.

Approved: June 15, 1985

Effective: Immediately