

CHAPTER 92

HOUSE BILL No. 2326
(Amended by Chapter 186)

AN ACT concerning insurance; pertaining to the Kansas Insurance Guaranty Association; relating to claims; amending K.S.A. 40-2903, 40-2906, 40-2909, 40-2910 and 40-3641 and repealing the existing sections.

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

Section 1. K.S.A. 40-2903 is hereby amended to read as follows: 40-2903. As used in this act: (a) "Association" means the Kansas insurance guaranty association created by this act.

(b) "Commissioner" means the commissioner of insurance of this state.

(c) "Covered claim" means an unpaid claim, including one for unearned premiums, 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 by an insurer, if such insurer becomes an insolvent insurer after the effective date of this act and:

(1) The claimant or insured is a resident of this state at the time of the insured event. *For entities other than an individual, the residence of a claimant, insured or policyholder is the state in which the principal place of business of such claimant, insured or policyholder is located at the time of the insured events;* or

(2) ~~the property from which the claim arises~~ *claim is a first party claim for damage to property that is permanently located in this state.*

"Covered claim" shall not include ~~any~~:

(1) ~~Amount~~ *Any amount* due any reinsurer, insurer, insurance pool or underwriting association, as subrogation recoveries or otherwise.

(2) *any amount awarded as punitive or exemplary damages unless such damages were covered under the policy of the insolvent insurer;*

(3) *any claim by an affiliate of the insolvent insurer.*

(d) "Insolvent insurer" means ~~(1) an~~:

(1) An insurer licensed by the commissioner to transact insurance in this state either at the time the policy was issued or when the insured event occurred; and

(2) determined to be insolvent by a court of competent jurisdiction *and against whom a final order of liquidation has been entered by a court of competent jurisdiction in the insured's home state.*

(e) "Member insurer" means any person who (1) is authorized to write any kind of insurance to which this act applies under K.S.A. 40-2902, *and amendments thereto*, including the exchange of reciprocal or inter-insurance contracts; and

(2) is licensed by the commissioner to transact insurance in this state: ~~Provided~~. This act shall not apply to those persons transacting business pursuant to the provisions of K.S.A. 40-202, *and amendments thereto.*

(f) "Net direct written premiums" means first gross premiums written in this state on insurance policies to which this act applies, less return premiums thereon and dividends paid or credited to policyholders on such direct business. "Net direct written premiums" does not include premiums on contracts between insurers or reinsurers.

(g) "Person" means any individual, corporation, partnership, association or voluntary organization.

Sec. 2. K.S.A. 40-2906 is hereby amended to read as follows: 40-2906. (a) In the event of the determination of insolvency *and order of liquidation* of a licensed insurer after the effective date of this act, the association shall:

(1) Be obligated to the extent of the covered claims existing prior to the determination of insolvency and arising within ~~thirty (30)~~ 30 days after the determination of insolvency, or before the policy expiration date if less than ~~thirty (30)~~ 30 days after the determination, or before the insured replaces the policy or causes its cancellation, if such insured does so within ~~thirty (30)~~ 30 days of the determination, but such obligation shall include only that amount of each covered claim which ~~is more than one hundred dollars (\$100) and less than three hundred thousand dollars (\$300,000)~~ *does not exceed the first \$300,000 of any claim*, except that the association shall pay the full amount of any covered claim arising out of a workmen's compensation policy. In no event shall the association be obligated to the policyholder or claimant in an amount in excess of the face amount of the

policy from which the claim arises.

(2) Be deemed the insurer to the extent of its obligation on the covered claims and to such extent shall have all rights, duties and obligations of the insolvent insurer as if the insurer had not become insolvent.

(3) Assess insurers amounts necessary to pay the obligations of the association under subsection (1) subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, and the cost of examinations under K.S.A. 40-2911, *and amendments thereto*, and other expenses authorized by this act. The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the preceding calendar year bears to the net direct written premiums of all member insurers for the preceding calendar year. Each member insurer shall be notified of the assessment not later than ~~thirty (30)~~ 30 days before it is due. No member insurer may be assessed in any year an amount greater than ~~two percent (2%)~~ 2% of that member insurer's net direct written premiums for the preceding calendar year. If the maximum assessment, together with the other assets of the association, does not provide in any one year an amount sufficient to make all necessary payments, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available. The association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance, or if the commissioner advises the association that such assessment would in such commissioner's opinion, be detrimental to the solvency of a member insurer. Each member insurer may set off against any assessment, authorized payments made on covered claims and expenses incurred in the payment of such claims by the member insurer.

(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.

(5) Notify such persons as the commissioner directs under K.S.A. 40-2908 (b)(1), *and amendments thereto*.

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

(7) Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and shall pay the other expenses of the association authorized by this act.

(b) The association may:

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

(2) Borrow funds necessary to effect the purposes of this act in accordance with the plan of operation.

(3) Sue or be sued.

(4) Negotiate and become a party to such contracts as are necessary to carry out the purposes of this act.

(5) Perform such other acts as are necessary or proper to effectuate the purposes of this act.

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

(c) The association shall issue to each insurer paying an assessment under this act a certificate of contribution, in a form prescribed by the commissioner, for the amount so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in such form and for such amount, if any, and period of time as the commissioner may approve.

(d) *Notwithstanding any other provisions of this act:*

(1) *A covered claim shall not include a claim filed with the association after the earlier of:*

(A) *Eighteen months after the date of the order of liquidation; or*

(B) *the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer.*

(2) *A covered claim shall not include any claim filed with the association or a liquidator for protection afforded under the insured's policy for incurred-but-not-reported losses.*

(3) *Any obligation of the association to defend an insured on a covered claim shall cease upon the association's:*

(A) *Payment, by settlement or on a judgment, of an amount equal to the lesser of the association's covered claim obligation limit or the applicable policy limit; or*

(B) *tender of such amount.*

Sec. 3. K.S.A. 40-2909 is hereby amended to read as follows: 40-2909. (a) Any person recovering under this act shall be deemed to have assigned his rights under the policy to the association to the extent of his recovery from the association. Every insured or claimant seeking the protection of this act shall cooperate with the association to the same extent as such person would have been required to cooperate with the insolvent insurer. The association shall have no cause of action against the insured of the insolvent insurer for any sums it has paid out, except such causes of action as the insolvent insurer would have had if such sums had been paid out by the insolvent insurer. In the case of an insolvent insurer operating on a plan with assessment liability, payments of claims of the association shall not operate to reduce the liability of insureds to the receiver, liquidator, or statutory successor for unpaid assessments.

(b) 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 claims priority equal to that which the claimant would have been entitled in the absence of this act 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. *For purposes of this subsection, expenses for the investigation or defense of claims against insureds under policies with an insolvent insurer shall be considered expenses of the association or other similar organization in handling claims.*

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

(d) *The association shall have the right to recover from any person who is an affiliate of the insolvent insurer and whose liability obligations to other persons are satisfied in whole or in part by payments made under this act.*

Sec. 4. K.S.A. 40-2910 is hereby amended to read as follows: 40-2910. (a) Any person having a claim against an insurer under any provision in an insurance policy other than a policy of an insolvent insurer which is also a covered claim shall be required to exhaust first his right under such policy. *A claim under an insurance policy shall include a claim under any kind of insurance, whether such claim is a first party or third party claim, and shall include, without limitation, accident and health insurance, workers' compensation, Blue Cross and Blue Shield and all other coverages except for policies of an insolvent insurer.* Any amount payable on a covered claim under this act shall be reduced by the amount of any recovery under such *other* insurance policy.

(b) Any person having a claim which may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured except that if it is a first party claim for damage to property with a permanent location, from the association of the location of the property, and if it is a workmen's compensation claim, from the association of the residence of the claimant. Any recovery under this act shall be reduced by the amount of the recovery from any other insurance guaranty association or its equivalent.

(c) *The provisions of this section, as amended, shall apply to all claims*

which have not been paid prior to the effective date of this act.

Sec. 5. K.S.A. 40-3641 is hereby amended to read as follows: 40-3641. The priority of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is herein set forth. Every claim in each class shall be paid in full or adequate funds retained for such payment before the members of the next class receive any payment. No subclasses shall be established within any class. The order of distribution of claims shall be:

(a) Class 1. The costs and expenses of administration during rehabilitation and liquidation including, but not limited to the following:

(1) The actual and necessary costs of preserving or recovering the assets of the insurer;

(2) compensation for all authorized services rendered in the rehabilitation and liquidation;

(3) any necessary filing fees;

(4) the fees and mileage payable to witnesses;

(5) authorized reasonable attorney fees and other professional services rendered in the rehabilitation and liquidation;

(6) the reasonable expenses of a guaranty association or foreign guaranty association ~~for unallocated loss adjustment expenses in handling claims.~~

(b) Class 2. ~~Reasonable compensation to employees for services performed to the extent they do not exceed two months of monetary compensation and represent payment for services performed within one year before the filing of the petition for liquidation or, if rehabilitation preceded liquidation, within one year before the filing of the petition for rehabilitation. Principal officers and directors shall not be entitled to the benefits of this priority except as otherwise approved by the liquidator and the court. Such priority shall be in lieu of any other similar priority which may be authorized by law as to wages or compensation of employees.~~

~~(c) Class 3. All claims under policies including claims for unearned premium or other premium refunds and such claims of the federal or any state or local government for losses incurred, ("loss claims") including third-party claims and all claims of a guaranty association or foreign guaranty association other than those claims included in Class 1. All claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds or investment values shall be treated as loss claims. That portion of any loss, indemnification for which is provided by other benefits or advantages recovered by the claimant, shall not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligation of support or by way of succession at death or as proceeds of life insurance, or as gratuities. No payment by an employer to an employee shall be treated as a gratuity.~~

~~(c) Class 3. Claims of the federal government not included in Class 2.~~

~~(d) Class 4. Reasonable compensation to employees for services performed to the extent they do not exceed two months of monetary compensation and represent payment for services performed within one year before the filing of the petition for liquidation or, if rehabilitation preceded liquidation, within one year before the filing of the petition for rehabilitation. Principal officers and directors shall not be entitled to the benefits of this priority except as otherwise approved by the liquidator and the court. Such priority shall be in lieu of any other similar priority which may be authorized by law as to wages or compensation of employees. Where there are no claims and no potential claims of the federal government in the estate, claims in this class will have priority over claims in Class 2 and below.~~

~~(d) Class 4. (e) Class 5. Claims of general creditors including claims of ceding and assuming companies in their capacity as such.~~

~~(e) Class 5. (f) Class 6. Claims of the federal or any state or local government except those under Class 3 2. Claims, including those of any governmental body for a penalty or forfeiture, shall be allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby. The remainder of such claims shall be postponed to be equal to the class of claims under subsection (h) (i).~~

~~(f) Class 6. (g) Class 7. Claims filed late or any other claims other~~

than claims under subsections ~~(g) and (h)~~ (h) and (i).

~~(g) Class 7.~~ (h) Class 8. Surplus or contribution notes, or similar obligations, and premium refunds on assessable policies. Payments to members of domestic mutual insurance companies shall be limited in accordance with law.

~~(h) Class 8.~~ (i) Class 9. The claims of shareholders or other owners in their capacity as shareholders.

The provisions of this section, as amended, shall apply to all claims which have not been paid prior to the effective date of this act.

Sec. 6. K.S.A. 40-2903, 40-2906, 40-2909, 40-2910 and 40-3641 are hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its publication in the Kansas register.

Approved April 7, 2005.

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