

SENATE BILL NO. 74—COMMITTEE ON FINANCE

FEBRUARY 1, 1999

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing insurance guaranty associations. (BDR 57-814)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~{omitted material}~~ is material to be omitted.

AN ACT relating to insurance guaranty associations; excluding certain claims from the definition of “covered claim”; revising the provisions governing the obligation of the Nevada insurance guaranty association to pay a covered claim; revising the provisions that require an insured or claimant under certain policies of insurance to exhaust his rights under the policy; revising the order of distribution of certain claims from the estate of an insurer on liquidation of the insurer; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND
ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** NRS 687A.033 is hereby amended to read as follows:
- 2 687A.033 1. “Covered claim” means an unpaid claim or judgment,
- 3 including a claim for unearned premiums, which arises out of and is within
- 4 the coverage of an insurance policy to which this chapter applies issued by
- 5 an insurer which becomes an insolvent insurer , if one of the following
- 6 conditions exists:
- 7 (a) The claimant or insured, if a natural person, is a resident of this state
- 8 at the time of the insured event.
- 9 (b) The claimant or insured, if other than a natural person, maintains its
- 10 principal place of business in this state at the time of the insured event.
- 11 (c) The property from which the first party property damage claim arises
- 12 is permanently located in this state.
- 13 (d) The claim is not a covered claim pursuant to the laws of any other
- 14 state and the premium tax imposed on the insurance policy is payable in
- 15 this state pursuant to NRS 680B.027.

2. The term does not include:

(a) ~~Any~~ **An amount *that is directly or indirectly* due ~~any~~ a reinsurer, insurer, insurance pool or underwriting association, as *recovered by* subrogation ~~recoveries~~, *indemnity or contribution*, or otherwise.**

(b) That part of a loss which would not be payable because of a provision for a deductible ***or a self-insured retention specified*** in the policy.

(c) Any claim filed with the association after ~~the~~ :

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

(2) *The final date set by the court for the filing of claims against the liquidator or receiver of the insolvent insurer ~~it~~, whichever is earlier.*

(d) ~~Any~~ **A claim filed with the association for a loss that is incurred but is not reported to the association before the expiration of the period specified in subparagraph (1) or (2) of paragraph (c).**

(e) An obligation to make a supplementary payment for adjustment or attorney's fees and expenses, court costs or interest and bond premiums incurred by the insolvent insurer before the appointment of a liquidator, unless the expenses would also be a valid claim against the insured.

(f) *A first party or third party claim brought by or against an insured, if the aggregate net worth of the insured and any affiliate of the insured, as determined on a consolidated basis, is more than \$25,000,000 on December 31 of the year immediately preceding the date the insurer becomes an insolvent insurer.*

Sec. 2. NRS 687A.060 is hereby amended to read as follows:

687A.060 1. The association:

(a) Is obligated to the extent of the covered claims existing before the determination of insolvency and arising within 30 days after the determination of insolvency, or before the ~~policy~~ expiration date ***of the policy*** if ***that date is*** less than 30 days after the determination, or before the insured replaces the policy or on request cancels the policy if he does so within 30 days ~~of~~ ***after*** the determination. The obligation ~~includes only that amount of each covered claim for unearned premiums, except a claim filed pursuant to chapter 616A to 616D, inclusive, or 617 of NRS, which is more than \$100. The obligation must also include that amount of any other covered claim, except a claim filed pursuant to chapter 616A to 616D, inclusive, or 617 of NRS, which is less than \$300,000. The association is not obligated to a policyholder or claimant in an amount in excess of the face amount of the policy from which the claim arises.]~~ ***of the association to pay a covered claim is limited to the payment of:***

(1) *The entire amount of the claim, if the claim is for benefits under a policy of industrial insurance;*

1 (2) *More than \$100 but not more than \$300,000 for each policy, if*
2 *the claim is for the return of unearned premiums; or*

3 (3) *The limit specified in a policy or \$300,000, whichever is less, for*
4 *each occurrence for any covered claim other than a covered claim*
5 *specified in subparagraph (1) or (2).*

6 (b) Shall be deemed the insurer to the extent of its obligations on the
7 covered claims and to ~~{such extent shall have all}~~ **that extent has any**
8 rights, duties and obligations of the insolvent insurer as if the insurer had
9 not become insolvent. **The rights include, without limitation, the right to**
10 **seek and obtain any recoverable salvage and to subrogate a covered**
11 **claim, to the extent that the association has paid its obligation under the**
12 **claim.**

13 (c) Shall assess member insurers amounts necessary to pay the
14 obligations of the association pursuant to paragraph (a) after an insolvency,
15 the expenses of handling covered claims subsequent to an insolvency, the
16 cost of examinations pursuant to NRS 687A.110, and other expenses
17 authorized by this chapter. The assessment of each member insurer must be
18 in the proportion that the net direct written premiums of the member insurer
19 for the calendar year preceding the assessment bear to the net direct written
20 premiums of all member insurers for the same calendar year. Each member
21 insurer must be notified of the assessment not later than 30 days before it is
22 due. No member insurer may be assessed in any year an amount greater
23 than 2 percent of ~~{that member insurer's}~~ **the net direct written premiums of**
24 **that member insurer** for the calendar year preceding the assessment. If the
25 maximum assessment, together with the other assets of the association, does
26 not provide in any 1 year an amount sufficient to make all necessary
27 payments, the money available may be prorated and the unpaid portion
28 must be paid as soon as money becomes available. The association may pay
29 claims in any order, including the order in which ~~{they}~~ **the claims** are
30 received or in groups or categories. The association may exempt or defer,
31 in whole or in part, the assessment of any member insurer if the assessment
32 would cause the ~~{member insurer's}~~ **financial statement of the member**
33 **insurer** to reflect amounts of capital or surplus less than the minimum
34 amounts required for a certificate of authority by any jurisdiction in which
35 the member insurer is authorized to transact insurance. During the period of
36 deferment, no dividends may be paid to shareholders or policyholders.
37 Deferred assessments must be paid when payment will not reduce capital or
38 surplus below required minimums. Payments must be refunded to those
39 companies receiving larger assessments ~~{by virtue}~~ **because** of deferment,
40 or, in the discretion of ~~{any such}~~ **the** company, credited against future assessments.
41 Each member insurer must be allowed a premium tax credit
42 for any amounts paid ~~{under}~~ **pursuant to the provisions of** this chapter:

1 (1) For assessments made before January 1, 1993, at the rate of 10
2 percent per year for 10 successive years beginning March 1, 1996; or

3 (2) For assessments made on or after January 1, 1993, at the rate of
4 20 percent per year for 5 successive years beginning with the calendar year
5 following the calendar year in which ~~{such}~~ **the** assessments are paid.

6 (d) Shall investigate claims brought against the fund and adjust,
7 compromise, settle and pay covered claims to the extent of the
8 ~~{association's}~~ obligation **of the association** and deny ~~{all}~~ **any** other
9 claims.

10 (e) Shall notify such persons as the commissioner directs pursuant to
11 paragraph (a) of subsection 2 of NRS 687A.080.

12 (f) Shall act on claims through its employees or through one or more
13 member insurers or other persons designated as servicing facilities.
14 Designation of a servicing facility is subject to the approval of the
15 commissioner, but the designation may be declined by a member insurer.

16 (g) Shall reimburse each servicing facility for obligations of the
17 association paid by the facility and for expenses incurred by the facility
18 while handling claims on behalf of the association, and pay the other
19 expenses of the association authorized by this chapter.

20 2. The association may:

21 (a) Appear in, defend and appeal any action on a claim brought against
22 the association.

23 (b) Employ or retain persons necessary to handle claims and perform
24 other duties of the association.

25 (c) Borrow money necessary to carry out the purposes of this chapter in
26 ~~{accord}~~ **accordance** with the plan of operation.

27 (d) Sue or be sued.

28 (e) Negotiate and become a party to contracts necessary to carry out the
29 purposes of this chapter.

30 (f) Perform other acts necessary or proper to effectuate the purposes of
31 this chapter.

32 (g) If, at the end of any calendar year, the board of directors finds that
33 the assets of the association exceed its liabilities as estimated by the board
34 of directors for the coming year, refund to the member insurers in
35 proportion to the contribution of each that amount by which the assets of
36 the association exceed the liabilities.

37 (h) Assess each member insurer equally ~~{no}~~ **not** more than \$100 per
38 year for administrative expenses not related to the insolvency of any
39 ~~{particular}~~ insurer.

1 **Sec. 3.** NRS 687A.100 is hereby amended to read as follows:

2 687A.100 1. ~~{Any person having a claim against his insurer,~~
3 ~~including, but not limited to, a claim for damages caused by an uninsured~~
4 ~~motorist, under any provision in his insurance policy, which is also a~~
5 ~~covered claim shall}~~ ***If an insured or claimant has a claim under a policy***
6 ***of insurance issued by an insurer other than the insurer who has become***
7 ***an insolvent insurer, and if the claim arises from the same facts, injury***
8 ***or loss for which the insured or claimant seeks recovery under a covered***
9 ***claim, the insured or claimant must first exhaust his {right under the***
10 ***policy. Any amount payable on a covered claim under this chapter} rights***
11 ***under that policy, regardless of whether the policy is written by a member***
12 ***insurer.***

13 **2. The obligation of the association to pay a covered claim pursuant**
14 ***to NRS 687A.060 must be reduced by the amount {of the applicable limit***
15 ***under the claimant's insurance policy, regardless of whether the claimant***
16 ***recovers the full amount payable under that policy or exhausts only a lesser***
17 ***amount.***

18 ~~—2.—Any}~~ ***that is recovered or is recoverable, whichever is greater,***
19 ***under a policy specified in subsection 1. If the policy provides coverage***
20 ***for uninsured or underinsured motorists, the amount recoverable shall***
21 ***be deemed the entire applicable limit of that coverage. If the obligation of***
22 ***the association to pay a covered claim is reduced pursuant to this***
23 ***subsection, the liability of the insured or claimant for the payment of a***
24 ***claim under the policy must be reduced by an amount that is equal to the***
25 ***amount by which the obligation of the association is reduced.***

26 **3. A person having a claim which may be recovered under more than**
27 ***one insurance guaranty association or its equivalent {shall} must seek***
28 ***recovery first from the association of the place of residence of the insured.***
29 ***However, if the claim is a first party claim for damage to property with a***
30 ***permanent location, recovery must first be sought from the association of***
31 ***the location of the property. If the claim is a workman's compensation***
32 ***claim, recovery must first be sought from the association of the residence of***
33 ***the claimant. Any recovery {under} pursuant to the provisions of this***
34 ***chapter must be reduced by the amount of the recovery from any other***
35 ***insurance guaranty association or its equivalent.***

36 **Sec. 4.** NRS 696B.415 is hereby amended to read as follows:

37 696B.415 1. Upon the issuance of an order of liquidation with a
38 finding of insolvency against a domestic insurer, the commissioner shall
39 apply to the district court for authority to disburse money to the Nevada
40 insurance guaranty association or the Nevada life and health insurance
41 guaranty association out of the ~~{insurer's}~~ ***marshaled assets { } of the insurer,*** as
42 money becomes available, in amounts equal to disbursements
43 made or to be made by the association for claims-handling expense and

1 covered-claims obligations upon the presentation of evidence that
2 disbursements have been made by the association. The commissioner shall
3 apply to the district court for authority to make similar disbursements to
4 insurance guaranty associations in other jurisdictions if one of the Nevada
5 associations is entitled to like payment ~~under~~ **pursuant to** the laws
6 relating to insolvent insurers in the jurisdiction in which the organization is
7 domiciled.

8 2. The commissioner, in determining the amounts available for
9 disbursement to the Nevada insurance guaranty association, the Nevada life
10 and health insurance guaranty association, and similar organizations in
11 other jurisdictions, shall reserve sufficient assets for the payment of **the**
12 expenses of administration.

13 3. The commissioner shall establish procedures for the ratable
14 allocation of disbursements to the Nevada insurance guaranty association,
15 the Nevada life and health insurance guaranty association, and similar
16 organizations in other jurisdictions, and shall secure from each organization
17 to which money is paid as a condition to advances in reimbursement of
18 covered-claims obligations an agreement to return to the commissioner, on
19 demand, amounts previously advanced which are required to pay claims of
20 secured creditors and claims falling within the priorities established in
21 **paragraph (a) or (b) of subsection 1 of NRS 696B.420 .** ~~for~~
22 ~~administration costs and expenses, and wage debts due employees for~~
23 ~~services performed.]~~

24 **Sec. 5.** NRS 696B.420 is hereby amended to read as follows:

25 696B.420 1. The order of distribution of claims from the ~~[insurer's]~~
26 **estate of the insurer** on liquidation of the insurer must be as ~~[stated]~~ **set**
27 **forth** in this section. ~~[The first \$50 of the amount allowed on each claim in~~
28 ~~the classes under paragraphs (b) to (g), inclusive, must be deducted from~~
29 ~~the claim and included in the class under paragraph (i). Claims may not be~~
30 ~~cumulated by assignment to avoid application of the \$50 deductible~~
31 ~~provision. Subject to the \$50 deductible provision, every]~~ **Each** claim in
32 each class must be paid in full or adequate money retained for the payment
33 before the members of the next class receive any payment. No subclasses
34 may be established within any class. Except as otherwise provided in
35 subsection 2, the order of distribution and of priority must be as follows:

36 (a) Administration costs and expenses, including, but not limited to, the
37 following:

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

40 (2) Compensation for ~~all~~ **any** services rendered in the liquidation;

41 (3) Any necessary filing fees;

42 (4) The fees and mileage payable to witnesses; and

43 (5) Reasonable attorney's fees.

1 (b) Loss claims, including ~~{all}~~ **any** claims under policies for losses
2 incurred, including third party claims, ~~{all}~~ **any** claims against the insurer
3 for liability for bodily injury or for injury to or destruction of tangible
4 property which are not under policies, and ~~{all}~~ **any** claims of the Nevada
5 insurance guaranty association, the Nevada life and health insurance
6 guaranty association, and other similar statutory organizations in other
7 jurisdictions . ~~I, except the first \$200 of losses otherwise payable to any~~
8 ~~claimant under this paragraph. All~~ **Any** claims under life insurance and
9 annuity policies, whether for death proceeds, annuity proceeds or
10 investment values, must be treated as loss claims. ~~{Claims may not be~~
11 ~~cumulated by assignment to avoid application of the \$200 deductible~~
12 ~~provision.}~~ That portion of any loss for which indemnification is provided
13 by other benefits or advantages recovered or recoverable by the claimant
14 may not be included in this class, other than benefits or advantages
15 recovered or recoverable in discharge of familial obligations of support or
16 ~~{by way}~~ **because** of succession at death or as proceeds of life insurance, or
17 as gratuities. No payment made by an employer to his employee may be
18 treated as a gratuity.

19 (c) Unearned premiums and small loss claims, including claims under
20 nonassessable policies for unearned premiums or other premium refunds .
21 ~~{and the first \$200 of loss excepted by the deductible provision in~~
22 ~~paragraph (b).}~~

23 (d) Claims of the Federal Government . ~~{and}~~

24 **(e) Claims of** any state or local government, including, but not limited
25 to, a claim of ~~{any governmental body}~~ **a state or local government** for a
26 penalty or forfeiture.

27 ~~{(e)}~~ **(f)** Wage debts due employees for services performed, not to
28 exceed \$1,000 to each employee, that have been earned within 1 year
29 before the filing of the petition for liquidation. Officers of the insurer are
30 not entitled to the benefit of this priority. The priority set forth in this
31 paragraph must be in lieu of any other similar priority authorized by law as
32 to wages or compensation of employees.

33 ~~{(f)}~~ **(g)** Residual classification, including ~~{all}~~ **any** other claims not
34 falling within other classes ~~{under}~~ **pursuant to the provisions of** this
35 section. Claims for a penalty or forfeiture must be allowed in this class only
36 to the extent of the pecuniary loss sustained from the act, transaction or
37 proceeding out of which the penalty or forfeiture arose, with reasonable and
38 actual costs occasioned thereby. The remainder of ~~{such}~~ **the** claims must
39 be postponed to the class of claims ~~{under paragraph (i).}~~
40 ~~—(g)}~~ **specified in paragraph (j).**

1 **(h)** Judgment claims based solely on judgments. If a claimant files a
2 claim and bases ~~it both~~ **the claim** on the judgment and on the underlying
3 facts, the claim must be considered by the liquidator, who shall give the
4 judgment such weight as he deems appropriate. The claim as allowed must
5 receive the priority it would receive in the absence of the judgment. If the
6 judgment is larger than the allowance on the underlying claim, the
7 remaining portion of the judgment must be treated as if it were a claim
8 based solely on a judgment.

9 ~~{(h)}~~ **(i)** Interest on claims already paid, which must be calculated at the
10 legal rate compounded annually on ~~{all}~~ **any** claims in the classes ~~{under}~~
11 **specified in** paragraphs (a) to ~~{(g),}~~ **(h)**, inclusive, from the date of the
12 petition for liquidation or the date on which the claim becomes due,
13 whichever is later, until the date on which the dividend is declared. The
14 liquidator, with the approval of the court, may ~~{make}~~ :

15 **(1) Make** reasonable classifications of claims for purposes of
16 computing interest ~~{, may make}~~ ;

17 **(2) Make** approximate computations ; and ~~{may ignore}~~

18 **(3) Ignore** certain classifications and periods as de minimis.

19 ~~{(i)}~~ **(j)** Miscellaneous subordinated claims, ~~{including the remaining}~~
20 ~~claims or portions of claims not already paid,}~~ with interest as **provided** in
21 paragraph ~~{(h)}~~:

22 ~~—(1) The first \$50 of each claim in the classes under paragraphs (b) to~~
23 ~~{(g), inclusive, subordinated under this section;~~

24 ~~—(2)}~~ **(i):**

25 **(1)** Claims subordinated by NRS 696B.430;

26 ~~{(3)}~~ **(2)** Claims filed late;

27 ~~{(4)}~~ **(3)** Portions of claims subordinated ~~{under paragraph (f);}~~

28 ~~—(5)}~~ **pursuant to the provisions of paragraph (g);**

29 **(4)** Claims or portions of claims the payment of which is provided by
30 other benefits or advantages recovered or recoverable by the claimant; and

31 ~~{(6)}~~ **(5)** Claims not otherwise provided for in this section.

32 ~~{(j)}~~ **(k)** Preferred ownership claims, including surplus or contribution
33 notes, or similar obligations, and premium refunds on assessable policies.
34 Interest at the legal rate must be added to each claim, as **provided** in
35 paragraphs ~~{(h) and (i)}~~.

36 ~~—(k)}~~ **(i) and (j).**

37 **(l)** Proprietary claims of shareholders or other owners.

38 2. If there are no existing or potential claims of the government against
39 the estate, claims for wages have priority over ~~{all}~~ **any** claims set forth in
40 paragraphs (c) to ~~{(j),}~~ **(k)**, inclusive, of subsection 1. The provisions of this
41 subsection must not be construed to require the ~~{deduction of \$50 or the}~~
42 accumulation of interest for claims as described in paragraph ~~{(h)}~~ **(i)** of subsection
43 1.

1 **Sec. 6.** NRS 696B.430 is hereby amended to read as follows:
2 696B.430 If an ancillary receiver in another state or foreign country,
3 by whatever name called, fails to transfer to the domiciliary liquidator in
4 this state any assets within his control other than special deposits,
5 diminished only by the expenses, if any, of the ancillary receivership,
6 claims filed in the ancillary receivership, other than special deposit claims
7 or secured claims, must be placed in the class of claims ~~under paragraph~~
8 ~~(i)~~ ***specified in paragraph (j)*** of subsection 1 of NRS 696B.420.

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