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HB 1429/96 - ECM

1997 Regular Session
7r2010

By: Delegates Kirk, Harrison, Donoghue, Frank, Exum, Love, Watson, Busch, Walkup, Goldwater, Marriott, Boston, Gordon, V. Mitchell, C. Mitchell, Krysiak, Barve, and Fulton

Introduced and read first time: January 30, 1997
Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Property and Casualty Insurance Guaranty Corporation - Obligations**

3 FOR the purpose of excluding from the definition of "covered claim" certain claims by
4 certain insureds with a certain net worth; providing that any obligation of the
5 Property and Casualty Insurance Guaranty Corporation to defend an insured ceases
6 on payment of a certain amount; providing that any obligation of the Corporation
7 ceases when a certain amount has been paid by the Corporation and certain other
8 entities in a certain manner on certain claims arising under policies of one insolvent
9 insurer; authorizing the Corporation to allocate certain amounts payable in a
10 certain manner; and generally relating to obligations of the Property and Casualty
11 Insurance Guaranty Corporation.

12 BY repealing and reenacting, with amendments,

13 Article - Insurance
14 Section 9-301(d)
15 Annotated Code of Maryland
16 (1995 Volume and 1996 Supplement)
17 (As enacted by Chapter 11 of the Acts of the General Assembly of 1996)

18 BY adding to

19 Article - Insurance
20 Section 9-310.1
21 Annotated Code of Maryland
22 (1995 Volume and 1996 Supplement)
23 (As enacted by Chapter 11 of the Acts of the General Assembly of 1996)

24 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
25 MARYLAND, That the Laws of Maryland read as follows:

2

1 **Article - Insurance**

2 9-301.

3 (d) (1) "Covered claim" means an insolvent insurer's unpaid obligation,
4 including an unearned premium:

5 (i) that:

6 1. A. for insurance other than insurance that covers members
7 of a purchasing group, arises out of a policy of the insolvent insurer issued to a resident
8 or payable to a resident on behalf of an insured of the insolvent insurer; or

9 B. for insurance that covers members of a purchasing group,
10 arises out of insurance that covers the members of the purchasing group to the extent that
11 the insurance is obtained by the purchasing group, the insurance is written by an
12 authorized insurer, and the claim is made by a person residing or located in the State; or

13 2. arises out of a surety bond issued by the insolvent insurer for
14 the protection of a third party that is a resident;

15 (ii) that is presented on or before the last date fixed for the filing of
16 claims in the domiciliary delinquency proceeding as a claim to the corporation or to the
17 receiver in the State;

18 (iii) that:

19 1. except for a surety bond claim, was incurred or existed
20 before, on, or within 30 days after the determination of insolvency; or

21 2. for a surety bond claim that arises out of a surety bond issued
22 by a domestic insurer, was incurred or existed before, on, or within 18 months after the
23 determination of insolvency, whether or not the surety bond is issued for no stated period
24 or for a stated period; and

25 (iv) that arises out of a policy or surety bond of the insolvent insurer
26 issued for a kind of insurance to which this subtitle applies.

27 (2) "Covered claim" does not include:

28 (i) an amount due a reinsurer, insurer, insurance pool, or
29 underwriting association, as a subrogation recovery or otherwise; or

30 (ii) an amount due that arises out of insurance covering the members
31 of a purchasing group if the insurance obtained by the purchasing group is written by an
32 unauthorized insurer.

33 (3) (I) "COVERED CLAIM" DOES NOT INCLUDE A FIRST PARTY CLAIM
34 BY AN INSURED WHOSE NET WORTH EXCEEDS \$50,000,000 ON DECEMBER 31 OF THE
35 YEAR BEFORE THE YEAR IN WHICH THE INSURER BECOMES AN INSOLVENT
36 INSURER.

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1 (II) FOR PURPOSES OF THIS PARAGRAPH, THE NET WORTH OF AN
2 INSURED IS DEEMED TO INCLUDE THE AGGREGATE NET WORTH OF THE INSURED
3 AND ALL OF ITS SUBSIDIARIES CALCULATED ON A CONSOLIDATED BASIS.

4 9-310.1.

5 (A) ANY OBLIGATION OF THE CORPORATION TO DEFEND AN INSURED SHALL
6 CEASE ON PAYMENT BY THE CORPORATION, BY SETTLEMENT RELEASING THE
7 INSURED OR ON A JUDGMENT, OF AN AMOUNT EQUAL TO THE LESSER OF THE
8 CORPORATION'S COVERED CLAIM OBLIGATION LIMIT OR THE APPLICABLE POLICY
9 LIMIT.

10 (B) (1) IN THIS SUBSECTION, "AFFILIATE" MEANS A PERSON THAT
11 DIRECTLY OR INDIRECTLY, THROUGH ONE OR MORE INTERMEDIARIES, CONTROLS,
12 IS CONTROLLED BY, OR IS UNDER COMMON CONTROL WITH ANOTHER PERSON.

13 (2) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SUBTITLE,
14 EXCEPT FOR A CLAIM FOR BENEFITS UNDER WORKERS' COMPENSATION
15 COVERAGE, ANY OBLIGATION OF THE CORPORATION TO ANY AND ALL PERSONS
16 SHALL CEASE WHEN \$10,000,000 HAS BEEN PAID IN THE AGGREGATE:

17 (I) BY THE CORPORATION AND ONE OR MORE INSURANCE
18 GUARANTY CORPORATIONS OR ASSOCIATIONS SIMILAR TO THE CORPORATION IN
19 OTHER STATES OR PROPERTY CASUALTY INSURANCE SECURITY FUNDS THAT
20 OBTAIN CONTRIBUTIONS FROM INSURERS ON A PRE-INSOLVENCY BASIS IN OTHER
21 STATES;

22 (II) TO OR ON BEHALF OF AN INSURED AND ITS AFFILIATES; AND

23 (III) ON COVERED CLAIMS OR ON CLAIMS ALLOWED ARISING
24 UNDER ONE OR MORE POLICIES OF ONE INSOLVENT INSURER.

25 (3) IF THE CORPORATION DETERMINES THAT THERE MAY BE MORE
26 THAN ONE CLAIMANT WITH A COVERED CLAIM OR ALLOWED CLAIM AGAINST THE
27 CORPORATION OR ANY INSURANCE GUARANTY CORPORATIONS OR ASSOCIATIONS
28 SIMILAR TO THE CORPORATION IN OTHER STATES OR ANY PROPERTY CASUALTY
29 INSURANCE SECURITY FUNDS IN OTHER STATES, ARISING UNDER ONE OR MORE
30 POLICIES OF ONE INSOLVENT INSURER, THE CORPORATION MAY ESTABLISH A PLAN
31 TO ALLOCATE AMOUNTS PAYABLE BY THE CORPORATION IN THE MANNER THAT
32 THE CORPORATION IN ITS DISCRETION CONSIDERS EQUITABLE.

33 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
34 October 1, 1997.