

**First Regular Session  
Sixty-eighth General Assembly  
STATE OF COLORADO**

**PREAMENDED**

*This Unofficial Version Includes Committee  
Amendments Not Yet Adopted on Second Reading*

LLS NO. 11-0385.01 Thomas Morris

**HOUSE BILL 11-1041**

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**HOUSE SPONSORSHIP**

**Riesberg**, Gardner B., McCann, Swalm

**SENATE SPONSORSHIP**

**(None)**,

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**House Committees**

Economic and Business Development

**Senate Committees**

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**A BILL FOR AN ACT**

101 **CONCERNING THE COLORADO INSURANCE GUARANTY ASSOCIATION.**

**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)*

The Colorado insurance guaranty association assesses, when needed, insurance companies doing business in Colorado for revenues that it uses to pay insurance claims for insurance companies that become insolvent. Currently, claims must be filed with the association by a date set by the court with jurisdiction over the insolvent insurer. The bill updates the association's statutes by:

! Excluding from the definition of a "covered claim" all

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.

Capital letters indicate new material to be added to existing statute.

Dashes through the words indicate deletions from existing statute.

- ! claims for incurred but unreported losses (**section 1**);
- ! Deleting the \$100 deductible, increasing the cap on claims from \$100,000 to \$300,000, and requiring claims to be filed by the earlier of the existing deadline or 24 months after the court's liquidation order (**section 2**); and
- ! Making all amounts recoverable under any insurance policy, rather than merely the claimant's policy, a setoff against the amounts recoverable from the association (**section 3**).

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1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** 10-4-503 (4), Colorado Revised Statutes, is  
3 amended to read:

4 **10-4-503. Definitions.** As used in this part 5, unless the context  
5 otherwise requires:

6 (4) (a) "Covered claim" means an unpaid claim, including one for  
7 unearned premiums:

8 (I) ~~which~~ THAT arises out of and is within the coverage and not in  
9 excess of the applicable limits of an insurance policy to which this part  
10 5 applies issued by an insurer if such insurer becomes an insolvent insurer  
11 after July 1, 1971; and

12 (II) WITH RESPECT TO WHICH the claimant or insured is a resident  
13 of this state at the time of the insured event or the claim is a first-party  
14 claim for damage to property with a permanent location in this state.

15 (b) "Covered claim" does not include:

16 (I) Any amount due any reinsurer, insurer, insurance pool, or  
17 underwriting association, as subrogation recoveries or otherwise; ~~but~~  
18 EXCEPT THAT:

19 (A) A claim for any such amount asserted against a person insured  
20 under a policy issued by an insurer ~~which~~ THAT has become insolvent

1 ~~which~~ AND WHICH CLAIM WOULD BE A COVERED CLAIM if it were not a  
2 claim by or for the benefit of a reinsurer, insurer, insurance pool, or  
3 underwriting association ~~would be a covered claim~~ may be filed directly  
4 with the receiver or the insolvent insurer; ~~except that~~ AND

5 (B) In no event may any such claim be asserted in any legal action  
6 against the insured of such insolvent insurer.

7 (II) ~~"Covered claim" does not include any~~ A first-party claim by  
8 an insured whose net worth exceeds ten million dollars on December 31  
9 of the year immediately preceding the date the insurer becomes an  
10 insolvent insurer. An insured's net worth on such date ~~shall be deemed~~  
11 ~~to include~~ INCLUDES the aggregate net worth of the insured and all of its  
12 subsidiaries as calculated on a consolidated basis.

13 (III) ANY CLAIM FOR INCURRED BUT NOT REPORTED LOSSES;  
14 EXCEPT THAT NOTHING IN THIS SUBPARAGRAPH (III) AFFECTS ANY  
15 COVERED CLAIMS OR RIGHTS UNDER THIS PART 5.

16 **SECTION 2.** 10-4-508 (1) (a), Colorado Revised Statutes, is  
17 amended to read:

18 **10-4-508. Powers and duties of association.** (1) The association  
19 shall:

20 (a) (I) Be obligated to the extent of the covered claims existing  
21 prior to a determination of insolvency and arising within thirty days after  
22 the determination of insolvency, or before the policy expiration date, if  
23 less than thirty days after such determination, or before the insured  
24 replaces the policy or on request effects cancellation, if ~~he~~ THE INSURED  
25 does so within thirty days ~~of~~ AFTER such determination, but such  
26 obligation ~~shall include~~ INCLUDES only that amount of each covered claim  
27 ~~which is in excess of one hundred dollars and~~ THAT is less than fifty

1 thousand dollars; except that:

2 (A) For an order of liquidation with a finding of insolvency by a  
3 court of competent jurisdiction ~~on or after~~ ENTERED BETWEEN July 1,  
4 1988, AND THE EFFECTIVE DATE OF SUB-SUBPARAGRAPH (B) OF THIS  
5 SUBPARAGRAPH (I), such obligation ~~shall include~~ INCLUDES only that  
6 amount of each covered claim ~~which is in excess of one hundred dollars~~  
7 ~~and~~ THAT is less than one hundred thousand dollars; ~~and except that the~~  
8 ~~association shall pay the full amount of any covered claim arising out of~~  
9 ~~workers' compensation policies;~~

10 (B) FOR AN ORDER OF LIQUIDATION WITH A FINDING OF  
11 INSOLVENCY BY A COURT OF COMPETENT JURISDICTION ENTERED ON OR  
12 AFTER THE EFFECTIVE DATE OF THIS SUB-SUBPARAGRAPH (B), SUCH  
13 OBLIGATION INCLUDES ONLY THAT AMOUNT OF EACH COVERED CLAIM  
14 THAT IS LESS THAN THREE HUNDRED THOUSAND DOLLARS; AND

15 (C) NOTWITHSTANDING SUB-SUBPARAGRAPH (A) OR (B) OF THIS  
16 SUBPARAGRAPH (I), THE ASSOCIATION SHALL PAY THE FULL AMOUNT OF  
17 ANY COVERED CLAIM ARISING OUT OF WORKERS' COMPENSATION POLICIES.

18 (II) In no event ~~shall~~ IS the association ~~be~~ obligated to a  
19 policyholder or claimant in an amount in excess of the face amount of the  
20 policy from which the claim arises.

21 (III) Notwithstanding any other provision of this part 5, a covered  
22 claim ~~shall~~ DOES not include any claim filed with the guaranty fund after  
23 THE EARLIER OF:

24 (A) TWENTY-FOUR MONTHS AFTER THE DATE OF THE ORDER OF  
25 LIQUIDATION; OR

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

1           **SECTION 3.** 10-4-512 (1), Colorado Revised Statutes, is  
2 amended to read:

3           **10-4-512. Nonduplication of recovery.** (1) Any person having  
4 a claim against ~~his~~ AN insurer under any provision in ~~his~~ ANY insurance  
5 policy ~~which~~ THAT is also a covered claim shall ~~be required to~~ exhaust  
6 first ~~his~~ THE PERSON'S right under such policy. Any amount payable on  
7 a covered claim under this part 5 ~~shall be~~ IS reduced by the amount ~~of~~  
8 ~~such recovery~~ RECOVERABLE under ~~the claimant's~~ SUCH insurance policy.

9           **SECTION 4. Act subject to petition - effective date -**  
10 **applicability.** (1) This act shall take effect at 12:01 a.m. on the day  
11 following the expiration of the ninety-day period after final adjournment  
12 of the general assembly (August 10, 2011, if adjournment sine die is on  
13 May 11, 2011); except that, if a referendum petition is filed pursuant to  
14 section 1 (3) of article V of the state constitution against this act or an  
15 item, section, or part of this act within such period, then the act, item,  
16 section, or part shall not take effect unless approved by the people at the  
17 general election to be held in November 2012 and shall take effect on the  
18 date of the official declaration of the vote thereon by the governor.

19           (2) The provisions of this act shall apply to new liquidations  
20 occurring on or after the applicable effective date of this act.