

AN ACT concerning regulation.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Illinois Insurance Code is amended by adding Section 141b and by changing Sections 205 and 545 as follows:

(215 ILCS 5/141b new)

Sec. 141b. Third party access to files. Any contract with a third party ("administrator") to provide claim services for a property and casualty company must contain the following provisions:

(1) Upon liquidation or rehabilitation of the insurer, the files and any data related thereto become the sole property of the estate. The administrator shall have reasonable access and right to copy files at the administrator's expense.

(2) In the event electronic files are used, the administrator must keep all data in such a format that it is easily separated from other data maintained by the administrator and timely transferred to the liquidator upon the entry of an order of liquidation. "Timely transferred", in this context, means the claim file data must be transferred to the liquidator within 10 days after the entry of an order of liquidation.

The provisions of this Section shall apply to all contracts entered into after the effective date of this amendatory Act of the 100th General Assembly, and any existing contracts shall have one year to come into compliance with this Section.

(215 ILCS 5/205) (from Ch. 73, par. 817)

Sec. 205. Priority of distribution of general assets.

(1) The priorities of distribution of general assets from the company's estate is to be as follows:

(a) The costs and expenses of administration, including, but not limited to, the following:

(i) The reasonable expenses of the Illinois Insurance Guaranty Fund, the Illinois Life and Health Insurance Guaranty Association, and the Illinois Health Maintenance Organization Guaranty Association and of any similar organization in any other state, including overhead, salaries, and other general administrative expenses allocable to the receivership (administrative and claims handling expenses and expenses in connection with arrangements for ongoing coverage), but excluding expenses incurred in the performance of duties under Section 547 or similar duties under the statute governing a similar organization in another state. For property and casualty insurance guaranty associations that guaranty certain obligations of any member company as defined by

Section 534.5, expenses shall include, but not be limited to, loss adjustment expenses, which shall include adjusting and other expenses and defense and cost containment expenses. The expenses of such property and casualty guaranty associations, including the Illinois Insurance Guaranty Fund, shall be reimbursed as prescribed by Section 545, but shall be subordinate to all other costs and expenses of administration, including the expenses reimbursed pursuant to subparagraph (ii) of this paragraph (a).

(ii) The expenses expressly approved or ratified by the Director as liquidator or rehabilitator, including, but not limited to, the following:

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

(2) reasonable compensation for all services rendered on behalf of the administrative supervisor or receiver;

(3) any necessary filing fees;

(4) the fees and mileage payable to witnesses;

(5) unsecured loans obtained by the receiver;

and

(6) expenses approved by the conservator or rehabilitator of the insurer, if any, incurred in the course of the conservation or rehabilitation that are

unpaid at the time of the entry of the order of liquidation.

Any unsecured loan falling under item (5) of subparagraph (ii) of this paragraph (a) shall have priority over all other costs and expenses of administration, unless the lender agrees otherwise. Absent agreement to the contrary, all other costs and expenses of administration shall be shared on a pro-rata basis, except for the expenses of property and casualty guaranty associations, which shall have a lower priority pursuant to subparagraph (i) of this paragraph (a).~~, including the expenses of the Illinois Insurance Guaranty Fund, the Illinois Life and Health Insurance Guaranty Association, the Illinois Health Maintenance Organization Guaranty Association and of any similar organization in any other state as prescribed in subsection (c) of Section 545.~~

(b) Secured claims, including claims for taxes and debts due the federal or any state or local government, that are secured by liens perfected prior to the filing of the complaint.

(c) Claims for wages actually owing to employees for services rendered within 3 months prior to the date of the filing of the complaint, not exceeding \$1,000 to each employee unless there are claims due the federal government under paragraph (f), then the claims for wages shall have a priority of distribution immediately following that of

federal claims under paragraph (f) and immediately preceding claims of general creditors under paragraph (g).

(d) Claims by policyholders, beneficiaries, and insureds, under insurance policies, annuity contracts, and funding agreements, liability claims against insureds covered under insurance policies and insurance contracts issued by the company, claims of obligees (and, subject to the discretion of the receiver, completion contractors) under surety bonds and surety undertakings (not to include bail bonds, mortgage or financial guaranty, or other forms of insurance offering protection against investment risk), claims by principals under surety bonds and surety undertakings for wrongful dissipation of collateral by the insurer or its agents, and claims incurred during any extension of coverage provided under subsection (5) of Section 193, and claims of the Illinois Insurance Guaranty Fund, the Illinois Life and Health Insurance Guaranty Association, the Illinois Health Maintenance Organization Guaranty Association, and any similar organization in another state as prescribed in Section 545. For purposes of this Section, "funding agreement" means an agreement whereby an insurer authorized to write business under Class 1 of Section 4 of this Code may accept and accumulate funds and make one or more payments at future dates in amounts that are not based upon mortality or morbidity contingencies.

(e) Claims by policyholders, beneficiaries, and insureds, the allowed values of which were determined by estimation under paragraph (b) of subsection (4) of Section 209.

(f) Any other claims due the federal government.

(g) All other claims of general creditors not falling within any other priority under this Section including claims for taxes and debts due any state or local government which are not secured claims and claims for attorneys' fees incurred by the company in contesting its conservation, rehabilitation, or liquidation.

(h) Claims of guaranty fund certificate holders, guaranty capital shareholders, capital note holders, and surplus note holders.

(i) Proprietary claims of shareholders, members, or other owners.

Every claim under a written agreement, statute, or rule providing that the assets in a separate account are not chargeable with the liabilities arising out of any other business of the insurer shall be satisfied out of the funded assets in the separate account equal to, but not to exceed, the reserves maintained in the separate account under the separate account agreement, and to the extent, if any, the claim is not fully discharged thereby, the remainder of the claim shall be treated as a priority level (d) claim under paragraph (d) of this subsection to the extent that reserves have been

established in the insurer's general account pursuant to statute, rule, or the separate account agreement.

For purposes of this provision, "separate account policies, contracts, or agreements" means any policies, contracts, or agreements that provide for separate accounts as contemplated by Section 245.21.

To the extent that any assets of an insurer, other than those assets properly allocated to and maintained in a separate account, have been used to fund or pay any expenses, taxes, or policyholder benefits that are attributable to a separate account policy, contract, or agreement that should have been paid by a separate account prior to the commencement of receivership proceedings, then upon the commencement of receivership proceedings, the separate accounts that benefited from this payment or funding shall first be used to repay or reimburse the company's general assets or account for any unreimbursed net sums due at the commencement of receivership proceedings prior to the application of the separate account assets to the satisfaction of liabilities or the corresponding separate account policies, contracts, and agreements.

To the extent, if any, reserves or assets maintained in the separate account are in excess of the amounts needed to satisfy claims under the separate account contracts, the excess shall be treated as part of the general assets of the insurer's estate.

(2) Within 120 days after the issuance of an Order of

Liquidation with a finding of insolvency against a domestic company, the Director shall make application to the court requesting authority to disburse funds to the Illinois Insurance Guaranty Fund, the Illinois Life and Health Insurance Guaranty Association, the Illinois Health Maintenance Organization Guaranty Association, and similar organizations in other states from time to time out of the company's marshaled assets as funds become available in amounts equal to disbursements made by the Illinois Insurance Guaranty Fund, the Illinois Life and Health Insurance Guaranty Association, the Illinois Health Maintenance Organization Guaranty Association, and similar organizations in other states for covered claims obligations on the presentation of evidence that such disbursements have been made by the Illinois Insurance Guaranty Fund, the Illinois Life and Health Insurance Guaranty Association, the Illinois Health Maintenance Organization Guaranty Association, and similar organizations in other states.

The Director shall establish procedures for the ratable allocation and distribution of disbursements to the Illinois Insurance Guaranty Fund, the Illinois Life and Health Insurance Guaranty Association, the Illinois Health Maintenance Organization Guaranty Association, and similar organizations in other states. In determining the amounts available for disbursement, the Director shall reserve sufficient assets for the payment of the expenses of administration described in

paragraph (1)(a) of this Section. All funds available for disbursement after the establishment of the prescribed reserve shall be promptly distributed. As a condition to receipt of funds in reimbursement of covered claims obligations, the Director shall secure from the Illinois Insurance Guaranty Fund, the Illinois Life and Health Insurance Guaranty Association, the Illinois Health Maintenance Organization Guaranty Association, and each similar organization in other states, an agreement to return to the Director on demand funds previously received as may be required to pay claims of secured creditors and claims falling within the priorities established in paragraphs (a), (b), (c), and (d) of subsection (1) of this Section in accordance with such priorities.

(3) The changes made in this Section by this amendatory Act of the 100th General Assembly apply to all liquidation, rehabilitation, or conservation proceedings that are pending on the effective date of this amendatory Act of the 100th General Assembly and to all future liquidation, rehabilitation, or conservation proceedings.

(4) The provisions of this Section are severable under Section 1.31 of the Statute on Statutes.

(Source: P.A. 92-65, eff. 7-12-01; 92-875, eff. 1-3-03.)

(215 ILCS 5/545) (from Ch. 73, par. 1065.95)

Sec. 545. Effect of paid claims.

(a) Every insured or claimant seeking the protection of

this Article shall cooperate with the Fund to the same extent as such person would have been required to cooperate with the insolvent company. The Fund shall have all the rights, duties and obligations under the policy to the extent of the covered claim payment, provided the Fund shall have no cause of action against the insured of the insolvent company for any sums it has paid out except such causes of action as the insolvent company would have had if such sums had been paid by the insolvent company and except as provided in paragraph (d) of this Section.

(b) The Fund and any similar organization in another state shall be recognized as claimants in the liquidation of an insolvent company for any amounts paid by them on covered claims obligations as determined under this Article or similar laws in other states and shall receive dividends at the priority set forth in paragraph (d) of subsection (1) of Section 205 of this Code; provided that if, at the time that the liquidator ~~Liquidator~~ issues a cut-off notice to the Fund in anticipation of closing the estate, a reserve has been established by the Fund, or any similar organization in another state, for the amount of their future administrative expenses and loss development associated with unpaid reported pending claims, these reserves will be deemed to have been paid as of the date of the notice and payment shall be made accordingly. The liquidator of an insolvent company shall be bound by determinations of covered claim eligibility under the Act and

by settlements of claims made by the Fund or a similar organization in another state on the receipt of certification of such payments, to the extent those determinations or settlements satisfy obligations of the Fund, but the receiver shall not be bound in any way by those determinations or settlements to the extent that there remains a claim in the estate for amounts in excess of the payments by the Fund. In submitting their claim for covered claim payments the Fund and any similar organization in another state shall not be subject to the requirements of Sections 208 and 209 of this Code and shall not be affected by the failure of the person receiving a covered claim payment to file a proof of claim.

(c) The expenses of the Fund and of any similar organization in any other state, other than expenses incurred in the performance of duties under Section 547 or similar duties under the statute governing a similar organization in another state, shall be accorded ~~the same~~ priority over all claims against the estate, except as provided for in paragraph (a) of subsection (1) of Section 205 of this Code ~~as the liquidator's expenses~~. The liquidator shall make prompt reimbursement to the Fund and any similar organization for such expense payments.

(d) The Fund has the right to recover from the following persons the amount of any covered claims and allocated claims expenses which the Fund paid or incurred on behalf of such person in satisfaction, in whole or in part, of liability

obligations of such person to any other person:

(i) any insured whose net worth on December 31 of the year next preceding the date the company becomes an insolvent company exceeds \$25,000,000; provided that an insured's net worth on such date shall be deemed to include the aggregate net worth of the insured and all of its affiliates as calculated on a consolidated basis.

(ii) any insured who is an affiliate of the insolvent company.

(Source: P.A. 96-1450, eff. 8-20-10.)

Section 99. Effective date. This Act takes effect upon becoming law.