



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB2173

by Rep. Jay Hoffman

SYNOPSIS AS INTRODUCED:

215 ILCS 5/534.3	from Ch. 73, par. 1065.84-3
215 ILCS 5/537.6	from Ch. 73, par. 1065.87-6
215 ILCS 5/537.7	from Ch. 73, par. 1065.87-7
215 ILCS 5/538.3	from Ch. 73, par. 1065.88-3
215 ILCS 5/538.4	from Ch. 73, par. 1065.88-4
215 ILCS 5/538.9 new	
215 ILCS 5/545	from Ch. 73, par. 1065.95

Amends the Illinois Insurance Guaranty Fund Article of the Illinois Insurance Code. Provides that a "covered claim" does not include a claim for fines and penalties paid to government authorities. Provides that the board of directors of the Illinois Insurance Guaranty Fund has the authority to assess to pay off a loan necessary to pay covered claims. Provides that if the loan is projected to be outstanding for 3 years or more, the board of directors has the authority to increase the assessment to 3% of net direct written premiums for the previous year until the loan has been paid in full. Makes changes in provisions that specify conditions under which the Fund is bound by certain settlements, releases, compromises, waivers, and final judgments. Provides that the Fund may also take legal action to recover from insurers and insureds in certain circumstances. Provides that the Fund may bring an action against certain third-party representatives of an insolvent insurer to obtain custody and control of all claim information related to the insolvent company. Provides that any person recovering under the Article and any insured whose liabilities are satisfied under the Article shall be deemed to have assigned the person's or insured's rights under the policy to the Fund to the extent of his or her recovery or satisfaction obtained from the Fund's payments. Provides that the Fund may also pay certain workers' compensation claims or any other third-party claims covered by a policy of an insolvent company on behalf of a high net worth insured and may recover from the high net worth insured through any action necessary to collect the full amount to the Fund's reimbursement. Effective immediately.

LRB101 05282 SMS 50295 b

1 AN ACT concerning regulation.

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

4 Section 5. The Illinois Insurance Code is amended by
5 changing Sections 534.3, 537.6, 537.7, 538.3, 538.4, and 545
6 and by adding Section 538.9 as follows:

7 (215 ILCS 5/534.3) (from Ch. 73, par. 1065.84-3)

8 Sec. 534.3. Covered claim; unearned premium defined.

9 (a) "Covered claim" means an unpaid claim for a loss
10 arising out of and within the coverage of an insurance policy
11 to which this Article applies and which is in force at the time
12 of the occurrence giving rise to the unpaid claim, including
13 claims presented during any extended discovery period which was
14 purchased from the company before the entry of a liquidation
15 order or which is purchased or obtained from the liquidator
16 after the entry of a liquidation order, made by a person
17 insured under such policy or by a person suffering injury or
18 damage for which a person insured under such policy is legally
19 liable, and for unearned premium, if:

20 (i) The company issuing the policy becomes an insolvent
21 company as defined in Section 534.4 after the effective
22 date of this Article; and

23 (ii) The claimant or insured is a resident of this

1 State at the time of the insured occurrence, or the
2 property from which a first party claim for damage to
3 property arises is permanently located in this State or, in
4 the case of an unearned premium claim, the policyholder is
5 a resident of this State at the time the policy was issued;
6 provided, that for entities other than an individual, the
7 residence of a claimant, insured, or policyholder is the
8 state in which its principal place of business is located
9 at the time of the insured event.

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

11 (i) any amount in excess of the applicable limits of
12 liability provided by an insurance policy to which this
13 Article applies; nor

14 (ii) any claim for punitive or exemplary damages or
15 finances and penalties paid to government authorities; nor

16 (iii) any first party claim by an insured who is an
17 affiliate of the insolvent company; nor

18 (iv) any first party or third party claim by or against
19 an insured whose net worth on December 31 of the year next
20 preceding the date the insurer becomes an insolvent insurer
21 exceeds \$25,000,000; provided that an insured's net worth
22 on such date shall be deemed to include the aggregate net
23 worth of the insured and all of its affiliates as
24 calculated on a consolidated basis. However, this
25 exclusion shall not apply to third party claims against the
26 insured where the insured has applied for or consented to

1 the appointment of a receiver, trustee, or liquidator for
2 all or a substantial part of its assets, filed a voluntary
3 petition in bankruptcy, filed a petition or an answer
4 seeking a reorganization or arrangement with creditors or
5 to take advantage of any insolvency law, or if an order,
6 judgment, or decree is entered by a court of competent
7 jurisdiction, on the application of a creditor,
8 adjudicating the insured bankrupt or insolvent or
9 approving a petition seeking reorganization of the insured
10 or of all or substantial part of its assets; nor

11 (v) any claim for any amount due any reinsurer,
12 insurer, insurance pool, or underwriting association as
13 subrogated recoveries, reinsurance recoverables,
14 contribution, indemnification or otherwise. No such claim
15 held by a reinsurer, insurer, insurance pool, or
16 underwriting association may be asserted in any legal
17 action against a person insured under a policy issued by an
18 insolvent company other than to the extent such claim
19 exceeds the Fund obligation limitations set forth in
20 Section 537.2 of this Code.

21 (c) "Unearned Premium" means the premium for the unexpired
22 period of a policy which has been terminated prior to the
23 expiration of the period for which premium has been paid and
24 does not mean premium which is returnable to the insured for
25 any other reason.

26 (Source: P.A. 89-97, eff. 7-7-95; 90-499, eff. 8-19-97.)

1 (215 ILCS 5/537.6) (from Ch. 73, par. 1065.87-6)

2 Sec. 537.6. Allocation of claims; assessments. The Fund
3 shall allocate covered claims paid and expenses incurred
4 between the accounts established by Section 535 separately, and
5 assess member companies separately for each account amounts
6 necessary to pay the obligations of the Fund under Section
7 537.2 subsequent to the entry of an Order of Liquidation
8 against an insolvent company, the expenses of handling covered
9 claims subsequent to such Order of Liquidation and other
10 expenses authorized by this Article. The assessments of each
11 member company shall be in the proportion that the net direct
12 written premiums of the member company for the calendar year
13 immediately preceding the year in which the assessment is
14 levied on the kinds of insurance in the account bears to the
15 net direct written premiums of all member companies for such
16 preceding calendar year on the kinds of insurance in the
17 account. Each member company shall be notified of the
18 assessment not later than 30 days before it is due. Before
19 January 1, 2002, no member company may be assessed in any year
20 on any account an amount greater than 1% of that member
21 company's net direct written premiums on the kinds of insurance
22 in the account for the calendar year preceding the assessment.
23 Beginning January 1, 2002, the amount a member company may be
24 assessed in any year on any account shall be a maximum of 2% of
25 that member company's net direct written premium on the kinds

1 of insurance in the account for the calendar year preceding the
2 assessment. This 2% maximum shall apply regardless of the date
3 of any insolvency that gives rise to the need for the
4 assessment. If the maximum assessment, together with the other
5 assets of the Fund in any account, does not provide, in any one
6 year, in any account, an amount sufficient to make all
7 necessary payments from that account, the funds available shall
8 be paid in the manner determined by the Fund and approved by
9 the Director and the unpaid portion shall be paid as soon
10 thereafter as funds become available. If requested by a member
11 company, the Director may exempt or defer the assessment of any
12 member company, if the assessment would cause the member
13 company's financial impairment.

14 In addition to the other assessment authority provided in
15 this Section, the board of directors shall also have the
16 assessment authority to pay off a loan as provided in Section
17 538.3. If a loan is projected to be outstanding for 3 years or
18 more, then the board of directors shall have the authority to
19 increase the assessment to 3% of the net direct written
20 premiums for the previous year until the loan has been paid in
21 full.

22 (Source: P.A. 92-77, eff. 7-12-01.)

23 (215 ILCS 5/537.7) (from Ch. 73, par. 1065.87-7)

24 Sec. 537.7. Investigation of claims; disposition.

25 (a) The Fund shall investigate claims brought against the

1 Fund and adjust, compromise, settle, and pay covered claims to
2 the extent of the Fund's obligation and deny all other claims.

3 (b) The Fund shall not be bound by a settlement, release,
4 compromise, waiver, or final judgment executed or entered
5 within 12 months prior to an order of liquidation and shall
6 have the right to assert all defenses available to the Fund
7 including, but not limited to, defenses applicable to
8 determining and enforcing its statutory rights and obligations
9 to any claim. The Fund shall be bound by a settlement, release,
10 compromise, waiver, or final judgment executed or entered more
11 than 12 months prior to an order of liquidation, but only
12 ~~however,~~ if the claim is a covered claim and the settlement,
13 release, compromise, waiver, or final judgment was not a result
14 of fraud, collusion, default, or failure to defend. In
15 addition, with respect to covered claims arising from a
16 judgment under a decision, verdict, or finding based on the
17 default of the insolvent insurer or its failure to defend, upon
18 application by the Fund, either on its own behalf or on behalf
19 of an insured, the court shall set aside the judgment, order,
20 decision, verdict, or finding, and the Fund shall be permitted
21 to defend against the claim on the merits. The same criteria
22 determining whether the Fund will be bound, as specified in
23 this subsection (b), shall apply to any settlement, release,
24 compromise, waiver, or final judgment entered into by a high
25 net worth insured before the date on which claims by or against
26 that insured became non-exempt for reasons specified in

1 paragraph (iv) of subsection (b) of Section 534.3.

2 (c) The Fund shall have the right to appoint or approve and
3 to direct legal counsel retained under liability insurance
4 policies for the defense of covered claims.

5 (Source: P.A. 92-77, eff. 7-12-01.)

6 (215 ILCS 5/538.3) (from Ch. 73, par. 1065.88-3)

7 Sec. 538.3. The Fund may borrow an amount of money
8 necessary to effect the purposes of this Article in accord with
9 the plan of operation. The board of directors shall have the
10 authority to pledge all or an appropriate portion of future
11 assessments as necessary to secure a loan that may be needed to
12 pay covered claims. Until all loans secured by assessments are
13 fully satisfied, the board of directors shall assess the
14 maximum allowable under Section 537.6.

15 (Source: P.A. 77-305.)

16 (215 ILCS 5/538.4) (from Ch. 73, par. 1065.88-4)

17 Sec. 538.4. Legal actions by Fund. The Fund may sue or be
18 sued, including, but not limited to, taking any legal actions
19 necessary or proper for recovery of: (i) any unpaid assessments
20 under Section ~~Sections~~ 537.1 or 537.6; (ii) any amounts due to
21 the Fund for salvage and subrogation under Section 537.4 or
22 from insurers described in subsection (a) of Section 546; or
23 (iii) any amounts due from an insured pursuant to subsections
24 (a) and (d) of Section 545. The Fund's power to sue includes,

1 but is not limited to, the power and right to intervene as a
2 party before any court that has jurisdiction over an insolvent
3 insurer when the Fund is a creditor or potential creditor of
4 the insolvent insurer.

5 (Source: P.A. 89-97, eff. 7-7-95; 90-499, eff. 8-19-97.)

6 (215 ILCS 5/538.9 new)

7 Sec. 538.9. Action regarding insolvent company records.

8 (a) In this Section, "claims information" includes files,
9 records, and electronic data.

10 (b) The Fund may bring an action against any third-party
11 administrator, agent, attorney, or other representative of the
12 insolvent insurer to obtain custody and control of all claims
13 information related to an insolvent company that are
14 appropriate or necessary for the Fund or a similar association
15 in other states to carry out its duties under this Article. In
16 such an action, the Fund shall have the absolute right through
17 emergency equitable relief to obtain custody and control of
18 such third-party administrator, agent, attorney or other
19 representative of the insolvent insurer, regardless of where
20 that claims information may be physically located. In bringing
21 an action under this Section, the Fund shall not be subject to
22 any defense, lien (possessory or otherwise), or other legal or
23 equitable ground whatsoever for refusal to surrender such
24 claims information that might be asserted against the
25 liquidator of the insolvent insurers. To the extent that

1 litigation is required for the Fund to obtain custody and
2 control of the claims information requested and it results in
3 the relinquishment of claims information to the Fund after
4 refusal to provide that information in response to a written
5 demand, the court shall award the Fund its costs, expenses, and
6 reasonable attorney's fees incurred in bringing the action.
7 This Section shall have the same effect on the rights and
8 remedies that the custodian of such claims information may have
9 against the insolvent insurers, so long as these rights and
10 remedies do not conflict with the rights of the Fund to custody
11 and control of the claims information under this Article.

12 (215 ILCS 5/545) (from Ch. 73, par. 1065.95)

13 Sec. 545. Effect of paid claims.

14 (a) Every insured or claimant seeking the protection of
15 this Article shall cooperate with the Fund to the same extent
16 as such person would have been required to cooperate with the
17 insolvent company. The Fund shall have all the rights, duties
18 and obligations under the policy to the extent of the covered
19 claim payment, provided the Fund shall have no cause of action
20 against the insured of the insolvent company for any sums it
21 has paid out except such causes of action as the insolvent
22 company would have had if such sums had been paid by the
23 insolvent company and except as provided in subsection
24 paragraph (d) of this Section. Any person recovering under this
25 Article and any insured whose liabilities are satisfied under

1 this Article shall be deemed to have assigned the person's or
2 insured's rights under the policy to the Fund to the extent of
3 his or her recovery or satisfaction obtained from the Fund's
4 payments.

5 (b) The Fund and any similar organization in another state
6 shall be recognized as claimants in the liquidation of an
7 insolvent company for any amounts paid by them on covered
8 claims obligations as determined under this Article or similar
9 laws in other states and shall receive dividends at the
10 priority set forth in paragraph (d) of subsection (1) of
11 Section 205 of this Code; provided that if, at the time that
12 the liquidator issues a cut-off notice to the Fund in
13 anticipation of closing the estate, a reserve has been
14 established by the Fund, or any similar organization in another
15 state, for the amount of their future administrative expenses
16 and loss development associated with unpaid reported pending
17 claims, these reserves will be deemed to have been paid as of
18 the date of the notice and payment shall be made accordingly.
19 The liquidator of an insolvent company shall be bound by
20 determinations of covered claim eligibility under the Act and
21 by settlements of claims made by the Fund or a similar
22 organization in another state on the receipt of certification
23 of such payments, to the extent those determinations or
24 settlements satisfy obligations of the Fund, but the receiver
25 shall not be bound in any way by those determinations or
26 settlements to the extent that there remains a claim in the

1 estate for amounts in excess of the payments by the Fund. In
2 submitting their claim for covered claim payments the Fund and
3 any similar organization in another state shall not be subject
4 to the requirements of Sections 208 and 209 of this Code and
5 shall not be affected by the failure of the person receiving a
6 covered claim payment to file a proof of claim.

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

16 (d) The Fund has the right to recover from the following
17 persons the amount of any covered claims (as determined without
18 regard to the exemption in paragraph (iv) of subsection (b) of
19 Section 534.3) and allocated claims expenses which the Fund
20 paid or incurred on behalf of such person in satisfaction, in
21 whole or in part, of liability obligations of such person to
22 any other person:

23 (i) any insured whose net worth on December 31 of the
24 year next preceding the date the company becomes an
25 insolvent company exceeds \$25,000,000; provided that an
26 insured's net worth on such date shall be deemed to include

1 the aggregate net worth of the insured and all of its
2 affiliates as calculated on a consolidated basis.

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

5 The Fund may also, at its sole discretion and without
6 assumption of any ongoing duty to do so, pay any workers
7 compensation claims or any other third-party claims covered by
8 a policy of an insolvent company on behalf of a high net worth
9 insured as defined in paragraph (iv) of subsection (b) of
10 Section 534.3 and may thereafter recover from the high net
11 worth insured under this Section for all amounts paid on its
12 behalf, all allocated claim adjusted expenses related to such
13 claims, the Fund's attorney's fees, and all court costs in any
14 action necessary to collect the full amount to the Fund's
15 reimbursement under this Section.

16 (Source: P.A. 100-410, eff. 8-25-17.)

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