

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 205 and 545 as follows:

6 (215 ILCS 5/205) (from Ch. 73, par. 817)

7 Sec. 205. Priority of distribution of general assets.

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

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

12 (i) The reasonable expenses of the Illinois
13 Insurance Guaranty Fund, the Illinois Life and Health
14 Insurance Guaranty Association, and the Illinois
15 Health Maintenance Organization Guaranty Association
16 and of any similar organization in any other state,
17 including overhead, salaries, and other general
18 administrative expenses allocable to the receivership
19 (administrative and claims handling expenses and
20 expenses in connection with arrangements for ongoing
21 coverage), but excluding expenses incurred in the
22 performance of duties under Section 547 or similar
23 duties under the statute governing a similar

1 organization in another state. For property and
2 casualty insurance guaranty associations that guaranty
3 certain obligations of any member company as defined by
4 Section 534.5, expenses shall include, but not be
5 limited to, loss adjustment expenses, which shall
6 include adjusting and other expenses and defense and
7 cost containment expenses. The expenses of such
8 property and casualty guaranty associations, including
9 the Illinois Insurance Guaranty Fund, shall be
10 reimbursed as prescribed by Section 545, but shall be
11 subordinate to all other costs and expenses of
12 administration, including the expenses reimbursed
13 pursuant to subparagraph (ii) of this paragraph (a).

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

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

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

23 (3) any necessary filing fees;

24 (4) the fees and mileage payable to witnesses;

25 (5) unsecured loans obtained by the receiver;

26 and

1 (6) expenses approved by the conservator or
2 rehabilitator of the insurer, if any, incurred in the
3 course of the conservation or rehabilitation that are
4 unpaid at the time of the entry of the order of
5 liquidation.

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

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

24 (c) Claims for wages actually owing to employees for
25 services rendered within 3 months prior to the date of the
26 filing of the complaint, not exceeding \$1,000 to each

1 employee unless there are claims due the federal government
2 under paragraph (f), then the claims for wages shall have a
3 priority of distribution immediately following that of
4 federal claims under paragraph (f) and immediately
5 preceding claims of general creditors under paragraph (g).

6 (d) Claims by policyholders, beneficiaries, and
7 insureds, under insurance policies, annuity contracts, and
8 funding agreements, liability claims against insureds
9 covered under insurance policies and insurance contracts
10 issued by the company, claims of obligees (and, subject to
11 the discretion of the receiver, completion contractors)
12 under surety bonds and surety undertakings (not to include
13 bail bonds, mortgage or financial guaranty, or other forms
14 of insurance offering protection against investment risk),
15 claims by principals under surety bonds and surety
16 undertakings for wrongful dissipation of collateral by the
17 insurer or its agents, and claims incurred during any
18 extension of coverage provided under subsection (5) of
19 Section 193, and claims of the Illinois Insurance Guaranty
20 Fund, the Illinois Life and Health Insurance Guaranty
21 Association, the Illinois Health Maintenance Organization
22 Guaranty Association, and any similar organization in
23 another state as prescribed in Section 545. For purposes of
24 this Section, "funding agreement" means an agreement
25 whereby an insurer authorized to write business under Class
26 1 of Section 4 of this Code may accept and accumulate funds

1 and make one or more payments at future dates in amounts
2 that are not based upon mortality or morbidity
3 contingencies.

4 (e) Claims by policyholders, beneficiaries, and
5 insureds, the allowed values of which were determined by
6 estimation under paragraph (b) of subsection (4) of Section
7 209.

8 (f) Any other claims due the federal government.

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

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

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

20 Every claim under a written agreement, statute, or rule
21 providing that the assets in a separate account are not
22 chargeable with the liabilities arising out of any other
23 business of the insurer shall be satisfied out of the funded
24 assets in the separate account equal to, but not to exceed, the
25 reserves maintained in the separate account under the separate
26 account agreement, and to the extent, if any, the claim is not

1 fully discharged thereby, the remainder of the claim shall be
2 treated as a priority level (d) claim under paragraph (d) of
3 this subsection to the extent that reserves have been
4 established in the insurer's general account pursuant to
5 statute, rule, or the separate account agreement.

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

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

24 To the extent, if any, reserves or assets maintained in the
25 separate account are in excess of the amounts needed to satisfy
26 claims under the separate account contracts, the excess shall

1 be treated as part of the general assets of the insurer's
2 estate.

3 (2) Within 120 days after the issuance of an Order of
4 Liquidation with a finding of insolvency against a domestic
5 company, the Director shall make application to the court
6 requesting authority to disburse funds to the Illinois
7 Insurance Guaranty Fund, the Illinois Life and Health Insurance
8 Guaranty Association, the Illinois Health Maintenance
9 Organization Guaranty Association, and similar organizations
10 in other states from time to time out of the company's
11 marshaled assets as funds become available in amounts equal to
12 disbursements made by the Illinois Insurance Guaranty Fund, the
13 Illinois Life and Health Insurance Guaranty Association, the
14 Illinois Health Maintenance Organization Guaranty Association, and
15 similar organizations in other states for covered claims
16 obligations on the presentation of evidence that such
17 disbursements have been made by the Illinois Insurance Guaranty
18 Fund, the Illinois Life and Health Insurance Guaranty
19 Association, the Illinois Health Maintenance Organization
20 Guaranty Association, and similar organizations in other
21 states.

22 The Director shall establish procedures for the ratable
23 allocation and distribution of disbursements to the Illinois
24 Insurance Guaranty Fund, the Illinois Life and Health Insurance
25 Guaranty Association, the Illinois Health Maintenance
26 Organization Guaranty Association, and similar organizations

1 in other states. In determining the amounts available for
2 disbursement, the Director shall reserve sufficient assets for
3 the payment of the expenses of administration described in
4 paragraph (1)(a) of this Section. All funds available for
5 disbursement after the establishment of the prescribed reserve
6 shall be promptly distributed. As a condition to receipt of
7 funds in reimbursement of covered claims obligations, the
8 Director shall secure from the Illinois Insurance Guaranty
9 Fund, the Illinois Life and Health Insurance Guaranty
10 Association, the Illinois Health Maintenance Organization
11 Guaranty Association, and each similar organization in other
12 states, an agreement to return to the Director on demand funds
13 previously received as may be required to pay claims of secured
14 creditors and claims falling within the priorities established
15 in paragraphs (a), (b), (c), and (d) of subsection (1) of this
16 Section in accordance with such priorities.

17 (3) The changes made in this Section by this amendatory Act
18 of the 99th General Assembly apply to all liquidation,
19 rehabilitation, or conservation proceedings that are pending
20 on the effective date of this amendatory Act of the 99th
21 General Assembly and to all future liquidation,
22 rehabilitation, or conservation proceedings.

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

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

1 (215 ILCS 5/545) (from Ch. 73, par. 1065.95)

2 Sec. 545. Effect of paid claims.

3 (a) Every insured or claimant seeking the protection of
4 this Article shall cooperate with the Fund to the same extent
5 as such person would have been required to cooperate with the
6 insolvent company. The Fund shall have all the rights, duties
7 and obligations under the policy to the extent of the covered
8 claim payment, provided the Fund shall have no cause of action
9 against the insured of the insolvent company for any sums it
10 has paid out except such causes of action as the insolvent
11 company would have had if such sums had been paid by the
12 insolvent company and except as provided in paragraph (d) of
13 this Section.

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

1 the date of the notice and payment shall be made accordingly.
2 The liquidator of an insolvent company shall be bound by
3 determinations of covered claim eligibility under the Act and
4 by settlements of claims made by the Fund or a similar
5 organization in another state on the receipt of certification
6 of such payments, to the extent those determinations or
7 settlements satisfy obligations of the Fund, but the receiver
8 shall not be bound in any way by those determinations or
9 settlements to the extent that there remains a claim in the
10 estate for amounts in excess of the payments by the Fund. In
11 submitting their claim for covered claim payments the Fund and
12 any similar organization in another state shall not be subject
13 to the requirements of Sections 208 and 209 of this Code and
14 shall not be affected by the failure of the person receiving a
15 covered claim payment to file a proof of claim.

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

26 (d) The Fund has the right to recover from the following

1 persons the amount of any covered claims and allocated claims
2 expenses which the Fund paid or incurred on behalf of such
3 person in satisfaction, in whole or in part, of liability
4 obligations of such person to any other person:

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

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

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

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