



Sen. William R. Haine

Filed: 3/31/2016

09900SB2609sam001

LRB099 20574 EGJ 46494 a

1 AMENDMENT TO SENATE BILL 2609

2 AMENDMENT NO. _____. Amend Senate Bill 2609 by replacing
3 everything after the enacting clause with the following:

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,

1 including overhead, salaries, and other general
2 administrative expenses allocable to the receivership
3 (administrative and claims handling expenses and
4 expenses in connection with arrangements for ongoing
5 coverage), but excluding expenses incurred in the
6 performance of duties under Section 547 or similar
7 duties under the statute governing a similar
8 organization in another state. For property and
9 casualty insurance guaranty associations that guaranty
10 certain obligations of any member company as defined by
11 Section 534.5, expenses shall include, but not be
12 limited to, loss adjustment expenses, which shall
13 include adjusting and other expenses and defense and
14 cost containment expenses. The expenses of such
15 property and casualty guaranty associations, including
16 the Illinois Insurance Guaranty Fund, shall be
17 reimbursed as prescribed by Section 545, but shall be
18 subordinate to all other costs and expenses of
19 administration, including the expenses reimbursed
20 pursuant to subparagraph (ii) of this paragraph (a).

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

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

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

4 (3) any necessary filing fees;

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

6 (5) unsecured loans obtained by the receiver;

7 and

8 (6) expenses approved by the conservator or
9 rehabilitator of the insurer, if any, incurred in the
10 course of the conservation or rehabilitation that are
11 unpaid at the time of the entry of the order of
12 liquidation.

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

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

5 (c) Claims for wages actually owing to employees for
6 services rendered within 3 months prior to the date of the
7 filing of the complaint, not exceeding \$1,000 to each
8 employee unless there are claims due the federal government
9 under paragraph (f), then the claims for wages shall have a
10 priority of distribution immediately following that of
11 federal claims under paragraph (f) and immediately
12 preceding claims of general creditors under paragraph (g).

13 (d) Claims by policyholders, beneficiaries, and
14 insureds, under insurance policies, annuity contracts, and
15 funding agreements, liability claims against insureds
16 covered under insurance policies and insurance contracts
17 issued by the company, claims of obligees (and, subject to
18 the discretion of the receiver, completion contractors)
19 under surety bonds and surety undertakings (not to include
20 bail bonds, mortgage or financial guaranty, or other forms
21 of insurance offering protection against investment risk),
22 claims by principals under surety bonds and surety
23 undertakings for wrongful dissipation of collateral by the
24 insurer or its agents, and claims incurred during any
25 extension of coverage provided under subsection (5) of
26 Section 193, and claims of the Illinois Insurance Guaranty

1 Fund, the Illinois Life and Health Insurance Guaranty
2 Association, the Illinois Health Maintenance Organization
3 Guaranty Association, and any similar organization in
4 another state as prescribed in Section 545. For purposes of
5 this Section, "funding agreement" means an agreement
6 whereby an insurer authorized to write business under Class
7 1 of Section 4 of this Code may accept and accumulate funds
8 and make one or more payments at future dates in amounts
9 that are not based upon mortality or morbidity
10 contingencies.

11 (e) Claims by policyholders, beneficiaries, and
12 insureds, the allowed values of which were determined by
13 estimation under paragraph (b) of subsection (4) of Section
14 209.

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

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

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

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

1 Every claim under a written agreement, statute, or rule
2 providing that the assets in a separate account are not
3 chargeable with the liabilities arising out of any other
4 business of the insurer shall be satisfied out of the funded
5 assets in the separate account equal to, but not to exceed, the
6 reserves maintained in the separate account under the separate
7 account agreement, and to the extent, if any, the claim is not
8 fully discharged thereby, the remainder of the claim shall be
9 treated as a priority level (d) claim under paragraph (d) of
10 this subsection to the extent that reserves have been
11 established in the insurer's general account pursuant to
12 statute, rule, or the separate account agreement.

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

17 To the extent that any assets of an insurer, other than
18 those assets properly allocated to and maintained in a separate
19 account, have been used to fund or pay any expenses, taxes, or
20 policyholder benefits that are attributable to a separate
21 account policy, contract, or agreement that should have been
22 paid by a separate account prior to the commencement of
23 receivership proceedings, then upon the commencement of
24 receivership proceedings, the separate accounts that benefited
25 from this payment or funding shall first be used to repay or
26 reimburse the company's general assets or account for any

1 unreimbursed net sums due at the commencement of receivership
2 proceedings prior to the application of the separate account
3 assets to the satisfaction of liabilities or the corresponding
4 separate account policies, contracts, and agreements.

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

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

1 Guaranty Association, and similar organizations in other
2 states.

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

24 (3) The changes made in this Section by this amendatory Act
25 of the 99th General Assembly apply to all liquidation,
26 rehabilitation, or conservation proceedings that are pending

1 on the effective date of this amendatory Act of the 99th
2 General Assembly and to all future liquidation,
3 rehabilitation, or conservation proceedings.

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

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

7 (215 ILCS 5/545) (from Ch. 73, par. 1065.95)

8 Sec. 545. Effect of paid claims.

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

20 (b) The Fund and any similar organization in another state
21 shall be recognized as claimants in the liquidation of an
22 insolvent company for any amounts paid by them on covered
23 claims obligations as determined under this Article or similar
24 laws in other states and shall receive dividends at the
25 priority set forth in paragraph (d) of subsection (1) of

1 Section 205 of this Code; provided that if, at the time that
2 the liquidator ~~Liquidator~~ issues a cut-off notice to the Fund
3 in anticipation of closing the estate, a reserve has been
4 established by the Fund, or any similar organization in another
5 state, for the amount of their future administrative expenses
6 and loss development associated with unpaid reported pending
7 claims, these reserves will be deemed to have been paid as of
8 the date of the notice and payment shall be made accordingly.
9 The liquidator of an insolvent company shall be bound by
10 determinations of covered claim eligibility under the Act and
11 by settlements of claims made by the Fund or a similar
12 organization in another state on the receipt of certification
13 of such payments, to the extent those determinations or
14 settlements satisfy obligations of the Fund, but the receiver
15 shall not be bound in any way by those determinations or
16 settlements to the extent that there remains a claim in the
17 estate for amounts in excess of the payments by the Fund. In
18 submitting their claim for covered claim payments the Fund and
19 any similar organization in another state shall not be subject
20 to the requirements of Sections 208 and 209 of this Code and
21 shall not be affected by the failure of the person receiving a
22 covered claim payment to file a proof of claim.

23 (c) The expenses of the Fund and of any similar
24 organization in any other state, other than expenses incurred
25 in the performance of duties under Section 547 or similar
26 duties under the statute governing a similar organization in

1 another state, shall be accorded ~~the same~~ priority over all
2 claims against the estate, except as provided for in paragraph
3 (a) of subsection (1) of Section 205 of this Code ~~as the~~
4 ~~liquidator's expenses~~. The liquidator shall make prompt
5 reimbursement to the Fund and any similar organization for such
6 expense payments.

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

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

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

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

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