



## 100TH GENERAL ASSEMBLY

### State of Illinois

2017 and 2018

SB0683

Introduced 1/25/2017, by Sen. John G. Mulroe

#### SYNOPSIS AS INTRODUCED:

215 ILCS 5/141b new

215 ILCS 5/205

215 ILCS 5/545

from Ch. 73, par. 817

from Ch. 73, par. 1065.95

Amends the Illinois Insurance Code. Provides that any contract with a third party to provide claim services for a property and casualty company must contain specified language that provides that upon liquidation or rehabilitation of the insurer, the files and related data become the sole property of the estate with the administrator having reasonable access and right to copy files; provides that the requirement shall apply to all contracts entered into after the effective date, and any existing contracts shall have one year to comply with the requirement. In provisions concerning the distribution of general assets of a company's estate that is undergoing liquidation, rehabilitation, or conservation proceedings: Prioritizes costs and expenses of administration, including the reasonable expenses of certain funds and associations, but excluding certain other expenses, and the expenses expressly approved or ratified by the Director of Insurance as liquidator or rehabilitator, including specified costs and expenses, over all other claims. Provides that claims of obligees under surety bonds and undertakings, claims by principals under surety bonds and surety undertakings for wrongful dissipation of collateral by the insurer or its agents, and claims incurred during certain extensions of coverage are granted the same priority level as claims by policyholders, beneficiaries, and insureds, under insurance policies, annuity contracts, and funding agreements. Provides that these changes apply to all pending and future liquidation, rehabilitation, or conservation proceedings. Makes other changes. Effective immediately.

LRB100 06876 SMS 16925 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

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 adding  
5 Section 141b and by changing Sections 205 and 545 as follows:

6 (215 ILCS 5/141b new)

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (3) any necessary filing fees;

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

22 (5) unsecured loans obtained by the receiver;

23 and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

23 (215 ILCS 5/545) (from Ch. 73, par. 1065.95)

24 Sec. 545. Effect of paid claims.

25 (a) Every insured or claimant seeking the protection of

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

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

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

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

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

1 obligations of such person to any other person:

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

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

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

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