

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 changing Sections 534.3, 537.6, 537.7, 538.3, 538.4, and 545 and by adding Section 538.9 as follows:

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

Sec. 534.3. Covered claim; unearned premium defined.

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

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

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

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

(b) "Covered claim" does not include:

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

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

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

(iv) any first party or third party claim by or against an insured whose net worth on December 31 of the year next preceding the date the insurer becomes an insolvent insurer 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. However, this exclusion shall not apply to third party claims against the insured where the insured has applied for or consented to

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

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

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

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

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

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

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

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

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

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

Sec. 537.7. Investigation of claims; disposition.

(a) The Fund shall investigate claims brought against the

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

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

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

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

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

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

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

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

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

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

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

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

(215 ILCS 5/538.9 new)

Sec. 538.9. Action regarding insolvent company records.

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

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



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

(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 subsection paragraph (d) of this Section. Any person recovering under this

Article and any insured whose liabilities are satisfied under this 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.

(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 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 priority over all claims against the estate, except as provided for in paragraph (a) of subsection (1) of Section 205 of this Code. 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 (as determined without regard to the exemption in paragraph (iv) of subsection (b) of Section 534.3) 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.

The Fund may also, at its sole discretion and without assumption of any ongoing duty to do so, pay any 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 as defined in paragraph (iv) of subsection (b) of Section 534.3. In that case, the Fund shall recover from the high net worth insured under this Section for all amounts paid on its behalf, all allocated claim adjusted expenses related to such claims, the Fund's attorney's fees, and all court costs in any action necessary to collect the full amount to the Fund's reimbursement under this Section.

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

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