

CHAPTER 54

INSURANCE

SENATE BILL 96-034

BY SENATORS Matsunaka, Casey, Hernandez, Perlmutter, and Tebedo;
also REPRESENTATIVE Schwarz.

AN ACT**CONCERNING THE PRIORITY OF DISTRIBUTION OF INSURANCE CLAIMS IN THE EVENT OF AN INSURER'S INSOLVENCY.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 10-3-541, Colorado Revised Statutes, 1994 Repl. Vol., is amended to read:

10-3-541. Priority of distribution. (1) The priority of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is set forth in this section. Every claim in each class shall be paid in full, or adequate funds shall be retained for such payment, before the members of the next class receive any payment. No subclasses shall be established within any class. The order of distribution of claims shall be:

(a) **Class 1.** The costs and expenses of administration during rehabilitation and liquidation, including but not limited to the following:

(I) The actual and necessary costs of preserving or recovering the assets of the insurer;

(II) Compensation for all authorized services rendered in the rehabilitation and liquidation;

(III) Any necessary filing fees;

(IV) The fees and mileage payable to witnesses;

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(V) Authorized reasonable attorney fees and fees for other professional services rendered in the rehabilitation and liquidation; and

(VI) ~~The reasonable expenses of a guaranty association or foreign guaranty association for unallocated loss adjustment expenses~~ THE ADMINISTRATIVE EXPENSES OF GUARANTY ASSOCIATIONS.

(b) ~~Class 2. Reasonable compensation to employees for services performed to the extent that they do not exceed two months of monetary compensation and represent payment for services performed within the one-year period immediately preceding the filing of the petition for liquidation or, if rehabilitation preceded liquidation, within the one-year period immediately preceding the filing of the petition for rehabilitation. Principal officers and directors shall not be entitled to the benefit of this priority except as otherwise approved by the liquidator and the court. Such priority shall be in lieu of any other similar priority which may be authorized by law as to wages or compensation of employees.~~ ALL CLAIMS UNDER POLICIES INCLUDING SUCH CLAIMS OF THE FEDERAL OR ANY STATE OR LOCAL GOVERNMENT INCLUDING UNEARNED PREMIUM CLAIMS, THIRD-PARTY CLAIMS, AND ALL CLAIMS OF A GUARANTY ASSOCIATION OR FOREIGN GUARANTY ASSOCIATION. THAT PORTION OF ANY LOSS FOR WHICH INDEMNIFICATION IS PROVIDED BY OTHER BENEFITS OR ADVANTAGES RECOVERED BY THE CLAIMANT, OTHER THAN BENEFITS OR ADVANTAGES RECOVERED OR RECOVERABLE IN DISCHARGE OF FAMILIAL OBLIGATION OF SUPPORT OR BY WAY OF SUCCESSION AT DEATH OR AS PROCEEDS OF LIFE INSURANCE, OR AS GRATUITIES, SHALL NOT BE INCLUDED IN THIS CLASS. NO PAYMENT BY AN EMPLOYER TO THE EMPLOYER'S EMPLOYEE SHALL BE TREATED AS A GRATUITY. ALL CLAIMS UNDER LIFE INSURANCE AND ANNUITIES POLICIES AND DEPOSITS, WHETHER FOR DEATH PROCEEDS, ANNUITY PROCEEDS, OR VALUES, SHALL BE TREATED AS CLASS 2 CLAIMS; EXCEPT THAT CLASS 2 CLAIMS SHALL NOT INCLUDE:

(I) CLAIMS UNDER ANNUITY AND DEPOSIT CONTRACTS, HOWEVER LABELED, INCLUDING LABELS SUCH AS ANNUITY, DEPOSIT, FINANCIAL GUARANTEE, FUNDING AGREEMENT, OR GUARANTEED INVESTMENT CONTRACT, UNLESS THE CONTRACT IS:

(A) ISSUED TO, OR OWNED BY, AN INDIVIDUAL; OR

(B) ISSUED TO, FOR THE BENEFIT OF, OR IN CONNECTION WITH, A SPECIFIC EMPLOYEE BENEFIT PLAN OR GOVERNMENTAL LOTTERY;

(II) CLAIMS WHERE THE RISK IS NOT BORNE BY THE INSURER, SUCH AS THE UNINSURED PORTION OF:

(A) A MINIMUM PREMIUM GROUP INSURANCE PLAN;

(B) A STOP-LOSS GROUP INSURANCE PLAN; OR

(C) AN ADMINISTRATIVE-SERVICES ONLY CONTRACT AND THE RELATED UNINSURED PLAN LIABILITIES;

(III) CLAIMS UNDER AN UNALLOCATED ANNUITY CONTRACT ISSUED TO AN EMPLOYEE BENEFIT PLAN PROTECTED UNDER THE FEDERAL PENSION BENEFIT GUARANTY CORPORATION; AND

(IV) CLAIMS FOR BENEFITS WHICH ARE EXCLUSIVELY PAYABLE OR DETERMINED BY A SEPARATE ACCOUNT REQUIRED BY THE TERMS OF SUCH CONTRACT TO BE MAINTAINED BY THE INSURER OR A SEPARATE ENTITY.

~~(c) Class 3. All claims under policies including such claims of the federal or any state or local government including unearned premium claims, third-party claims, and all claims of a guaranty association or foreign guaranty association. That portion of any loss for which indemnification is provided by other benefits or advantages recovered by the claimant, other than benefits or advantages recovered or recoverable in discharge of familial obligation of support or by way of succession at death or as proceeds of life insurance, or as gratuities, shall not be included in this class. No payment by an employer to the employer's employee shall be treated as a gratuity. All claims under life insurance and annuities policies and deposits, whether for death proceeds, annuity proceeds, or values, shall be treated as class 3 claims; except that class 3 claims shall not include:~~

~~(I) Claims under annuity and deposit contracts, however labeled, including labels such as annuity, deposit, financial guarantee, funding agreement, or guaranteed investment contract, unless the contract is:~~

~~(A) Issued to, or owned by, an individual; or~~

~~(B) Issued to, for the benefit of, or in connection with, a specific employee benefit plan or governmental lottery;~~

~~(II) Claims where the risk is not borne by the insurer, such as the uninsured portion of:~~

~~(A) A minimum premium group insurance plan;~~

~~(B) A stop-loss group insurance plan; or~~

~~(C) An administrative-services only contract and the related uninsured plan liabilities;~~

~~(III) Claims under an unallocated annuity contract issued to an employee benefit plan protected under the federal pension benefit guaranty corporation; and~~

~~(IV) Claims for benefits which are exclusively payable or determined by a separate account required by the terms of such contract to be maintained by the insurer or a separate entity. CLAIMS OF THE FEDERAL GOVERNMENT, EXCEPT THOSE DESCRIBED IN PARAGRAPH (b) OF THIS SUBSECTION (1).~~

~~(d) Class 4. Claims of the federal or any state or local government except those under paragraph (c) of this subsection (1). Claims in this paragraph (d), including those of any governmental body for a penalty or forfeiture, shall be allowed only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose and for the reasonable and actual costs occasioned thereby. The remainder of such claims shall be postponed to class 7. REASONABLE COMPENSATION TO EMPLOYEES FOR SERVICES PERFORMED TO THE EXTENT THAT THEY DO NOT EXCEED TWO MONTHS OF MONETARY COMPENSATION AND~~

REPRESENT PAYMENT FOR SERVICES PERFORMED WITHIN THE ONE-YEAR PERIOD IMMEDIATELY PRECEDING THE FILING OF THE PETITION FOR LIQUIDATION. PRINCIPAL OFFICERS AND DIRECTORS SHALL NOT BE ENTITLED TO THE BENEFIT OF THIS PRIORITY EXCEPT AS OTHERWISE APPROVED BY THE LIQUIDATOR AND THE COURT. SUCH PRIORITY SHALL BE IN LIEU OF ANY OTHER SIMILAR PRIORITY WHICH MAY BE AUTHORIZED BY LAW AS TO WAGES OR COMPENSATION OF EMPLOYEES.

~~(e) Class 5. Claims filed late and any other claims other than claims described in paragraph (g) of this subsection (1)~~ CLAIMS OF ANY STATE OR LOCAL GOVERNMENT EXCEPT THOSE UNDER PARAGRAPH (b) OF THIS SUBSECTION (1). CLAIMS IN THIS PARAGRAPH (e), INCLUDING THOSE OF ANY GOVERNMENTAL BODY FOR A PENALTY OR FORFEITURE, SHALL BE ALLOWED ONLY TO THE EXTENT OF THE PECUNIARY LOSS SUSTAINED FROM THE ACT, TRANSACTION, OR PROCEEDING OUT OF WHICH THE PENALTY OR FORFEITURE AROSE AND FOR THE REASONABLE AND ACTUAL COSTS OCCASIONED THEREBY. THE REMAINDER OF SUCH CLAIMS SHALL BE POSTPONED TO CLASS 7.

~~(f) Class 6. Surplus or contribution notes, or similar obligations, and premium refunds on assessable policies. Payments to members of domestic mutual insurance companies shall be limited in accordance with law.~~ CLAIMS FILED LATE AND ANY OTHER CLAIMS OTHER THAN CLAIMS DESCRIBED IN PARAGRAPH (h) OF THIS SUBSECTION (1).

~~(g) Class 7. Claims of shareholders or other owners in their capacity as shareholders.~~ SURPLUS OR CONTRIBUTION NOTES OR SIMILAR OBLIGATIONS, AND PREMIUM REFUNDS ON ASSESSABLE POLICIES. PAYMENTS TO MEMBERS OF DOMESTIC MUTUAL INSURANCE COMPANIES SHALL BE LIMITED IN ACCORDANCE WITH LAW.

(h) **Class 8.** CLAIMS OF SHAREHOLDERS OR OTHER OWNERS IN THEIR CAPACITY AS SHAREHOLDERS.

SECTION 2. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 8, 1996