

## CHAPTER 105

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**INSURANCE**

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**HOUSE BILL 97-1275**

BY REPRESENTATIVES C. Berry and Reeser;  
also SENATOR Schroeder.

**AN ACT**

CONCERNING PRIORITY OF DISTRIBUTION OF INSURERS' SEPARATE ACCOUNTS AND STRUCTURED SETTLEMENT ANNUITIES.

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

**SECTION 1.** 10-3-541 (1) (b) (I) (A), Colorado Revised Statutes, 1994 Repl. Vol., as amended, is amended, and the said 10-3-541 is further amended BY THE ADDITION OF A NEW SUBSECTION, 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:

(b) **Class 2.** 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:

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

(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 IS OTHERWISE AN ANNUITY ISSUED IN CONNECTION WITH AND FOR THE PURPOSE OF FUNDING STRUCTURED SETTLEMENTS OF LIABILITY; or

(2) (a) AS USED IN THIS SECTION, "INSURER'S ESTATE" MEANS THE GENERAL ASSETS OF SUCH INSURER LESS ANY ASSETS HELD IN SEPARATE ACCOUNTS THAT, PURSUANT TO SECTION 10-7-402, ARE NOT CHARGEABLE WITH LIABILITIES ARISING OUT OF ANY OTHER BUSINESS OF THE INSURER. TO THE EXTENT, IF ANY, ASSETS MAINTAINED IN THE SEPARATE ACCOUNT ARE IN EXCESS OF THE AMOUNTS NEEDED TO SATISFY CLAIMS UNDER THE SEPARATE ACCOUNT CONTRACTS, THE EXCESS SHALL BE TREATED AS PART OF THE INSURER'S ESTATE.

(b) EVERY CLAIM UNDER A SEPARATE ACCOUNT CONTRACT PROVIDING, IN EFFECT, THAT THE ASSETS IN THE SEPARATE ACCOUNT SHALL NOT BE CHARGEABLE WITH LIABILITIES ARISING OUT OF ANY OTHER BUSINESS OF THE INSURER SHALL BE SATISFIED OUT OF THE ASSETS IN THE SEPARATE ACCOUNT EQUAL TO THE RESERVES AND OTHER CONTRACT LIABILITIES MAINTAINED IN SUCH ACCOUNT FOR SUCH CONTRACT. TO THE EXTENT, IF ANY, THAT THE SEPARATE ACCOUNT ASSETS ARE NOT SUFFICIENT TO DISCHARGE SUCH CLAIMS DUE TO FRAUD, ERROR, OR OTHER MALFEASANCE ON THE PART OF THE INSURER OR IF UNSATISFIED CLAIMS ARISE FROM A CONTRACTUAL GUARANTEE MADE TO A CONTRACT HOLDER BY THE INSURER'S GENERAL ACCOUNT, SUCH UNSATISFIED CLAIMS SHALL BE TREATED AS A CLASS 2 CLAIM AGAINST THE INSURER'S ESTATE. ANY SUCH CLASS 2 CLAIM SHALL BE SUBJECT TO THE APPLICABLE EXCEPTIONS FOR THIS CLASS, EXCLUDING THE EXCEPTION FOR SEPARATE ACCOUNTS UNDER SUBPARAGRAPH (IV) OF PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION.

**SECTION 2. Effective date.** This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Approved: April 19, 1997