

CHAPTER 93

**INSURANCE**

**HOUSE BILL 01-1335**

BY REPRESENTATIVE(S) Snook and Williams T.;  
also SENATOR(S) Dennis.

**AN ACT**

CONCERNING THE LIABILITIES OF INSURERS IN THE CONTEXT OF INSOLVENCY PROCEEDINGS.

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

**SECTION 1.** 10-3-529 (1), (2) (a), (2) (f), and (3), Colorado Revised Statutes, are amended to read:

**10-3-529. Setoffs - effective date - applicability.** (1) NOTWITHSTANDING ANY OTHER PROVISION OF THIS TITLE, mutual debts or mutual credits, whether arising out of one or more contracts between the insurer and another person in connection with any action or proceeding under this part 5, shall be set off and the balance only shall be allowed or paid, except as provided in subsections (2) ~~(3)~~; and (4) of this section and section 10-3-532.

(2) No setoff shall be allowed in favor of any person where:

(a) The obligation of the insurer to the person would not at the date of the filing of a petition for ~~liquidation~~ RECEIVERSHIP entitle the person to share as a claimant in the assets of the insurer; or

(f) ~~The person ceded to the domestic insurer, whose capital and surplus was at the time of the cession less than twenty million dollars, and The obligations between the person and the insurer arise from business which is both ceded to and assumed from the insurer; except that the commissioner may, with regard to such business, allow certain setoffs if appropriate but may not allow setoffs where~~ IN WHICH either the person or the insurer has assumed risks and obligations from the other party and then has ceded back to that party substantially the same risks and obligations; EXCEPT THAT, WITH REGARD TO SUCH BUSINESS, THE COMMISSIONER HAS DISCRETION TO ALLOW CERTAIN SETOFFS IF THE COMMISSIONER DEEMS THEM APPROPRIATE.

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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.*

(3) ~~The receiver shall provide persons with accounting statements identifying debts which are due and payable. Where a person owes to the insurer amounts which are due and payable, against which the person asserts setoff of mutual credits which may become due and payable from the insurer in the future, the person shall promptly pay to the receiver the amounts due and payable; except that, notwithstanding section 10-3-541, the receiver shall promptly and fully refund, to the extent of the person's prior payments, any mutual credits that become due and payable to the person by the insurer within a reasonable accounting period to be determined in regulation by the commissioner.~~

**SECTION 2.** 10-3-531, Colorado Revised Statutes, is amended to read:

**10-3-531. Reinsurers' liability.** (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2) OF THIS SECTION, the amount recoverable by the liquidator from reinsurers shall ~~not be reduced as a result of the delinquency proceedings regardless of any contrary provision in the reinsurance contract or other agreement~~ BE PAYABLE UNDER A CONTRACT OR CONTRACTS REINSURED BY THE REINSURER ON THE BASIS OF REPORTED CLAIMS ALLOWED BY THE LIQUIDATION COURT WITHOUT DIMINUTION AS A RESULT OF THE INSOLVENCY OF THE CEDING INSURER. SUCH payment SHALL BE made directly to ~~an insured or other creditor shall not diminish the reinsurer's obligation to the insurer's estate except when the reinsurance contract provided for direct coverage of a named insured and the payment was made in discharge of that obligation~~ THE CEDING INSURER OR TO ITS DOMICILIARY LIQUIDATOR UNLESS THE CONTRACT OR OTHER WRITTEN AGREEMENT SPECIFICALLY PROVIDES ANOTHER PAYEE OF SUCH REINSURANCE IN THE EVENT OF THE INSOLVENCY OF THE CEDING INSURER.

(2) NOTWITHSTANDING SUBSECTION (1) OF THIS SECTION, IF A LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION HAS ELECTED TO SUCCEED TO THE RIGHTS AND OBLIGATIONS OF THE INSOLVENT INSURER UNDER THE CONTRACT OF REINSURANCE, WHETHER PURSUANT TO SECTION 10-20-108 (13) (h) OR OTHERWISE, THEN THE REINSURER'S LIABILITY TO PAY COVERED REINSURED CLAIMS SHALL CONTINUE UNDER THE CONTRACT OF REINSURANCE, SUBJECT TO THE PAYMENT TO THE REINSURER OF THE REINSURANCE PREMIUMS FOR SUCH COVERAGE. PAYMENT FOR SUCH REINSURED CLAIMS SHALL ONLY BE MADE BY THE REINSURER PURSUANT TO THE DIRECTION OF THE GUARANTY ASSOCIATION OR ITS DESIGNATED SUCCESSOR. ANY PAYMENT MADE AT THE DIRECTION OF THE GUARANTY ASSOCIATION OR ITS DESIGNATED SUCCESSOR BY THE REINSURER SHALL DISCHARGE THE REINSURER OF ALL FURTHER LIABILITY TO ANY OTHER PARTY FOR SUCH CLAIM PAYMENT.

**SECTION 3. Effective date - applicability.** This act shall take effect July 1, 2001, and shall apply to applications or proceedings for receivership that are commenced on or after said date.

**SECTION 4. 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: March 28, 2001