



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB0089

Introduced 1/20/2023, by Sen. Napoleon Harris, III

SYNOPSIS AS INTRODUCED:

215 ILCS 5/533	from Ch. 73, par. 1065.83
215 ILCS 5/534	from Ch. 73, par. 1065.84
215 ILCS 5/534.9 new	
215 ILCS 5/537.2	from Ch. 73, par. 1065.87-2
215 ILCS 5/537.7	from Ch. 73, par. 1065.87-7
215 ILCS 5/538.2	from Ch. 73, par. 1065.88-2
215 ILCS 5/545	from Ch. 73, par. 1065.95

Amends the Illinois Insurance Code. Provides that if the entry of an Order of Liquidation occurs on or after January 1, 2023, then the obligations shall not exceed \$500,000 or exceed without any deduction \$50,000 for any unearned premium claim or refund under any one policy. Provides that in no event shall the Fund be obligated to pay an amount in excess of \$500,000 in the aggregate for all first-party and third-party claims under a policy or endorsement providing cybersecurity insurance coverage and arising out of or related to a single insured event, regardless of the number of claims made or number of claimants. Provides that the Illinois Insurance Guaranty Fund shall have the right to appoint or approve and to direct legal counsel and other service providers under any other insurance policies subject to the provisions, regardless of any limitations in the policy. Provides that the Fund may employ or retain such persons as are necessary to provide policy benefits and services. Provides that the Fund may, at its sole discretion and without assumption of any ongoing duty to do so, pay any cybersecurity insurance obligations covered by a policy of an insolvent company on behalf of a high net worth insured. Defines cybersecurity insurance. Makes other changes. Effective immediately.

LRB103 05113 BMS 50127 b

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
5 changing Sections 533, 534, 537.2, 537.7, 538.2, and 545 and
6 by adding Section 534.9 as follows:

7 (215 ILCS 5/533) (from Ch. 73, par. 1065.83)

8 Sec. 533. Scope. This Article applies to all of the kinds
9 of insurance written on a direct basis which are included in
10 Class 2 and Class 3 of Section 4 of this Code ~~as they appear~~
11 ~~and are defined in those clauses as of January 1, 1985,~~ except
12 that it shall not apply to:

13 (a) accident and health insurance written under clause (a)
14 of Class 2, or

15 (b) mortgage guaranty or other financial guaranty written
16 as suretyship obligations or insurance under clause (g),
17 clause (h) or clause (i) of Class 2 or otherwise, or

18 (c) fidelity or surety bonds, or any other bonding
19 obligations other than employee fidelity bonds, or

20 (d) marine insurance other than inland marine insurance,
21 written under clause (d) of Class 3, or

22 (e) insurance of warranties or service contracts,
23 including insurance that provides for the repair, replacement,

1 or service of goods or property or indemnification for repair,
2 replacement, or service for the operational or structural
3 failure of the goods or property due to a defect in materials,
4 workmanship, or normal wear and tear or provides reimbursement
5 for the liability incurred by the issuer of agreements or
6 service contracts that provide these benefits, or

7 (f) any claim servicing agreement or insurance policy
8 which contains a retrospective rating or other premium
9 adjustment agreement under which premiums are substantially
10 equal to the losses and loss expenses covered under the policy
11 or any policy providing retroactive insurance of known loss,
12 or

13 (g) any insurance which is provided, guaranteed or
14 reinsured pursuant to the Federal Crop Insurance Program or
15 the National Flood Insurance Program, including flood
16 insurance written by National Flood Insurance Program Write
17 Your Own Companies.

18 (Source: P.A. 89-97, eff. 7-7-95.)

19 (215 ILCS 5/534) (from Ch. 73, par. 1065.84)

20 Sec. 534. Definitions. For the purposes of this Article,
21 unless the context requires otherwise, the words and phrases
22 defined in Sections 534.1 through 534.9 ~~534.8~~ have the
23 meanings set forth in those Sections.

24 (Source: P.A. 85-576.)

1 (215 ILCS 5/534.9 new)

2 Sec. 534.9. Cybersecurity insurance. "Cybersecurity
3 insurance" means a type of insurance under Class 2 of Section 4
4 of this Code that involves first-party and third-party
5 coverage, in a policy or endorsement, written on a direct,
6 admitted basis to cover losses and loss mitigation arising out
7 of or relating to data privacy breaches, unauthorized
8 information network security intrusions, computer viruses,
9 ransomware, cyber extortion, identity theft, and similar
10 exposures.

11 (215 ILCS 5/537.2) (from Ch. 73, par. 1065.87-2)

12 Sec. 537.2. Obligation of Fund. The Fund shall be
13 obligated to the extent of the covered claims existing prior
14 to the entry of an Order of Liquidation against an insolvent
15 company and arising within 30 days after the entry of such
16 Order, or before the policy expiration date if less than 30
17 days after the entry of such Order, or before the insured
18 replaces the policy or on request effects cancellation, if he
19 does so within 30 days after the entry of such Order. If the
20 entry of an Order of Liquidation occurs on or after October 1,
21 1975 and before October 1, 1977, such obligations shall not:
22 (i) exceed \$100,000, or (ii) include any obligation to refund
23 the first \$100 of any unearned premium claim; and if the entry
24 of an Order of Liquidation occurs on or after October 1, 1977
25 and before January 1, 1988, such obligations shall not: (i)

1 exceed \$150,000, except that this limitation shall not apply
2 to any workers compensation claims, or (ii) include any
3 obligation to refund the first \$100 of any unearned premium
4 claim; and if the entry of an Order of Liquidation occurs on or
5 after January 1, 1988 and before January 1, 2011, such
6 obligations shall not: (i) exceed \$300,000, except that this
7 limitation shall not apply to any workers compensation claims,
8 or (ii) include any obligation to refund the first \$100 of any
9 unearned premium claim or to refund any unearned premium over
10 \$10,000 under any one policy. If the entry of an Order of
11 Liquidation occurs on or after January 1, 2011, then such
12 obligations shall not: (i) exceed \$500,000, except that this
13 limitation shall not apply to any workers compensation claims
14 or (ii) include any obligation to refund the first \$100 of any
15 unearned premium claim or refund any unearned premium over
16 \$10,000 under any one policy. If the entry of an Order of
17 Liquidation occurs on or after January 1, 2023, then such
18 obligations shall not: (i) exceed \$500,000, except that this
19 limitation shall not apply to any workers compensation claims,
20 or (ii) exceed without any deduction \$50,000 for any unearned
21 premium claim or refund under any one policy. In no event shall
22 the Fund be obligated to a policyholder or claimant in an
23 amount in excess of the face amount of the policy from which
24 the claim arises, including, but not limited to, any
25 applicable specific or aggregate limits. For purposes of this
26 Article Act, obligations arising under an insurance policy

1 written to indemnify a permissibly self-insured employer under
2 subsection (a) of Section 4 of the Workers' Compensation Act
3 for its liability to pay workers' compensation benefits in
4 excess of a specific or aggregate retention shall be subject
5 to the applicable per-claim limits set forth in this Section.

6 In no event shall the Fund be obligated to pay an amount in
7 excess of \$500,000 in the aggregate for all first-party and
8 third-party claims under a policy or endorsement providing
9 cybersecurity insurance as defined in Section 534.9 and
10 arising out of or related to a single insured event,
11 regardless of the number of claims made or number of
12 claimants.

13 In no event shall the Fund be liable for any interest on
14 any judgment entered against the insured or the insolvent
15 company, or for any other interest claim against the insured
16 or the insolvent company, regardless of whether the insolvent
17 company would have been obligated to pay such interest under
18 the terms of its policy. The Fund shall be liable for interest
19 at the statutory rate on money judgments entered against the
20 Fund until the judgment is satisfied.

21 Any obligation of the Fund to defend an insured shall
22 cease upon the Fund's payment or tender of an amount equal to
23 the lesser of the Fund's covered claim obligation limit or the
24 applicable policy limit.

25 (Source: P.A. 99-368, eff. 8-14-15.)

1 (215 ILCS 5/537.7) (from Ch. 73, par. 1065.87-7)

2 Sec. 537.7. Investigation of claims; disposition.

3 (a) The Fund shall investigate claims brought against the
4 Fund and adjust, compromise, settle, and pay covered claims to
5 the extent of the Fund's obligation and deny all other claims.

6 (b) The Fund shall not be bound by a settlement, release,
7 compromise, waiver, or final judgment executed or entered
8 within 12 months prior to an order of liquidation and shall
9 have the right to assert all defenses available to the Fund
10 including, but not limited to, defenses applicable to
11 determining and enforcing its statutory rights and obligations
12 to any claim. The Fund shall be bound by a settlement, release,
13 compromise, waiver, or final judgment executed or entered more
14 than 12 months prior to an order of liquidation, but only if
15 the claim is a covered claim and the settlement, release,
16 compromise, waiver, or final judgment was not a result of
17 fraud, collusion, default, or failure to defend. In addition,
18 with respect to covered claims arising from a judgment under a
19 decision, verdict, or finding based on the default of the
20 insolvent insurer or its failure to defend, upon application
21 by the Fund, either on its own behalf or on behalf of an
22 insured, the court shall set aside the judgment, order,
23 decision, verdict, or finding, and the Fund shall be permitted
24 to defend against the claim on the merits. The same criteria
25 determining whether the Fund will be bound, as specified in
26 this subsection (b), shall apply to any settlement, release,

1 compromise, waiver, or final judgment entered into by a high
2 net worth insured before the date on which claims by or against
3 that insured became non-exempt for reasons specified in
4 paragraph (iv) of subsection (b) of Section 534.3.

5 (c) The Fund shall have the right to appoint or approve and
6 to direct legal counsel retained under liability insurance
7 policies for the defense of covered claims as well as the right
8 to appoint or approve and to direct legal counsel and other
9 service providers under any other insurance policies subject
10 to this Article, regardless of any limitations in the policy.

11 (Source: P.A. 101-60, eff. 7-12-19.)

12 (215 ILCS 5/538.2) (from Ch. 73, par. 1065.88-2)

13 Sec. 538.2. The Fund may employ or retain such persons as
14 are necessary to handle claims, provide policy benefits and
15 services, and perform other duties of the Fund.

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

17 (215 ILCS 5/545) (from Ch. 73, par. 1065.95)

18 Sec. 545. Effect of paid claims.

19 (a) Every insured or claimant seeking the protection of
20 this Article shall cooperate with the Fund to the same extent
21 as such person would have been required to cooperate with the
22 insolvent company. The Fund shall have all the rights, duties
23 and obligations under the policy to the extent of the covered
24 claim payment, provided the Fund shall have no cause of action

1 against the insured of the insolvent company for any sums it
2 has paid out except such causes of action as the insolvent
3 company would have had if such sums had been paid by the
4 insolvent company and except as provided in subsection (d) of
5 this Section. Any person recovering under this Article and any
6 insured whose liabilities are satisfied under this Article
7 shall be deemed to have assigned the person's or insured's
8 rights under the policy to the Fund to the extent of his or her
9 recovery or satisfaction obtained from the Fund's payments.

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

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

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

21 (d) The Fund has the right to recover from the following
22 persons the amount of any covered claims (as determined
23 without regard to the exemption in paragraph (iv) of
24 subsection (b) of Section 534.3) and allocated claims expenses
25 which the Fund paid or incurred on behalf of such person in
26 satisfaction, in whole or in part, of liability obligations of

1 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
6 include the aggregate net worth of the insured and all of
7 its affiliates as calculated on a consolidated basis.

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

10 The Fund may also, at its sole discretion and without
11 assumption of any ongoing duty to do so, pay any workers
12 compensation claims or any other third-party claims or any
13 cybersecurity insurance obligations covered by a policy of an
14 insolvent company on behalf of a high net worth insured as
15 defined in paragraph (iv) of subsection (b) of Section 534.3.
16 In that case, the Fund shall recover from the high net worth
17 insured under this Section for all amounts paid on its behalf,
18 all allocated claim adjusted expenses related to such claims,
19 the Fund's attorney's fees, and all court costs in any action
20 necessary to collect the full amount to the Fund's
21 reimbursement under this Section.

22 (Source: P.A. 100-410, eff. 8-25-17; 101-60, eff. 7-12-19.)

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