

1 AN ACT concerning insurance.

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 537.2, 537.6, 537.7, and 551 as follows:

6 (215 ILCS 5/537.2) (from Ch. 73, par. 1065.87-2)

7 Sec. 537.2. Obligation of Fund. The Fund shall be
8 obligated to the extent of the covered claims existing prior
9 to the entry of an Order of Liquidation against an insolvent
10 company and arising within 30 days after the entry of such
11 Order, or before the policy expiration date if less than 30
12 days after the entry of such Order, or before the insured
13 replaces the policy or on request effects cancellation, if he
14 does so within 30 days after the entry of such Order. If the
15 entry of an Order of Liquidation occurs on or after October
16 1, 1975 and before October 1, 1977, such obligations shall
17 not: (i) exceed \$100,000, or (ii) include any obligation to
18 refund the first \$100 of any unearned premium claim; and if
19 the entry of an Order of Liquidation occurs on or after
20 October 1, 1977 and before January 1, 1988, such obligations
21 shall not: (i) exceed \$150,000, except that this limitation
22 shall not apply to any workers compensation claims, or (ii)
23 include any obligation to refund the first \$100 of any
24 unearned premium claim; and if the entry of an Order of
25 Liquidation occurs on or after January 1, 1988, such
26 obligations shall not: (i) exceed \$300,000, except that this
27 limitation shall not apply to any workers compensation
28 claims, or (ii) include any obligation to refund the first
29 \$100 of any unearned premium claim or to refund any unearned
30 premium over \$10,000 under any one policy. In no event shall
31 the Fund be obligated to a policyholder or claimant in an

1 amount in excess of the face amount of the policy from which
2 the claim arises.

3 In no event shall the Fund be liable for any interest on
4 any judgment entered against the insured or the insolvent
5 company, or for any other interest claim against the insured
6 or the insolvent company, regardless of whether the insolvent
7 company would have been obligated to pay such interest under
8 the terms of its policy. The Fund shall be liable for
9 interest at the statutory rate on money judgments entered
10 against the Fund until the judgment is satisfied.

11 Notwithstanding any other provisions of this Article,
12 except in the case of a claim for benefits under workers'
13 compensation coverage, any obligation of the Fund to any and
14 all persons shall cease when \$10,000,000 has been paid in the
15 aggregate by the Fund and any one or more similar
16 organizations of another state or any property and casualty
17 security fund that obtains contributions from insurers on a
18 pre-insolvency basis to or on behalf of any insured and its
19 affiliates on covered claims or allowed claims arising under
20 the policy or policies of any one insolvent insurer. As used
21 in this Section, "affiliate" means a person who, directly or
22 indirectly, through one or more intermediaries controls, is
23 controlled by, or is under common control with another
24 person. If the Fund determines that there may be more than
25 one claimant having a covered claim or allowed claim against
26 the Fund or similar organizations or any property and
27 casualty insurance security fund in other states under the
28 policy or policies of any one insolvent insurer, the Fund may
29 establish a plan to allocate amounts payable by the Fund in
30 the manner the Fund in its discretion deems equitable.

31 Any obligation of the Fund to defend an insured shall
32 cease upon the Fund's payment or tender of an amount equal to
33 the lesser of the Fund's covered claim obligation limit or
34 the applicable policy limit.

1 (Source: P.A. 85-576; 86-1155; 86-1156; 86-1475.)

2 (215 ILCS 5/537.6) (from Ch. 73, par. 1065.87-6)

3 Sec. 537.6. Allocation of claims; assessments. The Fund
4 shall allocate covered claims paid and expenses incurred
5 between the accounts established by Section 535 separately,
6 and assess member companies separately for each account
7 amounts necessary to pay the obligations of the Fund under
8 Section 537.2 subsequent to the entry of an Order of
9 Liquidation against an insolvent company, the expenses of
10 handling covered claims subsequent to such Order of
11 Liquidation and other expenses authorized by this Article.
12 The assessments of each member company shall be in the
13 proportion that the net direct written premiums of the member
14 company for the calendar year immediately preceding the year
15 in which the assessment is levied on the kinds of insurance
16 in the account bears to the net direct written premiums of
17 all member companies for such preceding calendar year on the
18 kinds of insurance in the account. Each member company shall
19 be notified of the assessment not later than 30 days before
20 it is due. Before January 1, 2002, no member company may be
21 assessed in any year on any account an amount greater than 1%
22 of that member company's net direct written premiums on the
23 kinds of insurance in the account for the calendar year
24 preceding the assessment. Beginning January 1, 2002, the
25 amount a member company may be assessed in any year on any
26 account shall be a maximum of 2% of that member company's net
27 direct written premium on the kinds of insurance in the
28 account for the calendar year preceding the assessment. This
29 2% maximum shall apply regardless of the date of any
30 insolvency that gives rise to the need for the assessment.
31 If the maximum assessment, together with the other assets of
32 the Fund in any account, does not provide, in any one year,
33 in any account, an amount sufficient to make all necessary

1 payments from that account, the funds available shall be paid
2 in the manner determined by the Fund and approved by the
3 Director and the unpaid portion shall be paid as soon
4 thereafter as funds become available. If requested by a
5 member company, the Director may exempt or defer the
6 assessment of any member company, if the assessment would
7 cause the member company's financial impairment.

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

9 (215 ILCS 5/537.7) (from Ch. 73, par. 1065.87-7)

10 Sec. 537.7. Investigation of claims; disposition.

11 (a) The Fund shall investigate claims brought against
12 the Fund and adjust, compromise, settle, and pay covered
13 claims to the extent of the Fund's obligation and deny all
14 other claims ~~and--may--review--settlements,--releases---and~~
15 ~~judgments--to--which--the--insolvent--company--or--its--insureds--were~~
16 ~~parties--to--determine--the--extent--to--which--such--settlements,~~
17 ~~releases--and--judgments--may--be--properly--contested.~~

18 (b) The Fund shall not be bound by a settlement,
19 release, compromise, waiver, or final judgment executed or
20 entered within 12 months prior to an order of liquidation and
21 shall have the right to assert all defenses available to the
22 Fund including, but not limited to, defenses applicable to
23 determining and enforcing its statutory rights and
24 obligations to any claim. The Fund shall be bound by a
25 settlement, release, compromise, waiver, or final judgment
26 executed or entered within 12 months prior to an order of
27 liquidation, however, if the claim is a covered claim and the
28 settlement or judgment was not a result of fraud, collusion,
29 default, or failure to defend. In addition, with respect to
30 covered claims arising from a judgment under a decision,
31 verdict, or finding based on the default of the insolvent
32 insurer or its failure to defend, upon application by the
33 Fund, either on its own behalf or on behalf of an insured,

1 the court shall set aside the judgment, order, decision,
2 verdict, or finding, and the Fund shall be permitted to
3 defend against the claim on the merits.

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

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

8 (215 ILCS 5/551) (from Ch. 73, par. 1065.101)

9 Sec. 551. Stay of proceedings. All proceedings arising
10 out of a claim under a policy of insurance written by an
11 insolvent company shall be stayed for 120 days from the date
12 of the entry of the Order of Liquidation to permit proper
13 defense by the Fund of all such pending causes of action. As
14 ~~to--any--covered--claims--arising--from--a--judgment--under--any~~
15 ~~decision, verdict or finding based--on--the--default--of--the~~
16 ~~insolvent--company--or--its--failure--to--defend--an--insured, upon~~
17 ~~application--of--the--Fund, either--on--its--own--behalf--or--on~~
18 ~~behalf--of--such--insured, the court or administrator that made~~
19 ~~such--judgment, order, decision, verdict or finding shall--set~~
20 ~~aside--such--judgment, order, decision, verdict or finding and~~
21 ~~the Fund shall be permitted to defend against such--claim--on~~
22 ~~the merits.~~

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

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