



HOUSE BILL No. 6086

September 17, 1996, Introduced by Rep. Llewellyn and referred to the Committee on Insurance.

A bill to amend sections 8142 and 8159 of Act No. 218 of the Public Acts of 1956, entitled as amended "The insurance code of 1956," section 8142 as amended by Act No. 79 of the Public Acts of 1991 and section 8159 as added by Act No. 302 of the Public Acts of 1989, being sections 500.8142 and 500.8159 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 8142 and 8159 of Act No. 218 of the
2 Public Acts of 1956, section 8142 as amended by Act No. 79 of the
3 Public Acts of 1991 and section 8159 as added by Act No. 302 of
4 the Public Acts of 1989, being sections 500.8142 and 500.8159 of
5 the Michigan Compiled Laws, are amended to read as follows:

6 Sec. 8142. The priority of distribution of claims from the
7 insurer's estate shall be in accordance with the order in which

1 each class of claims is set forth in this section. Every claim
2 in each class shall be paid in full or adequate funds retained
3 for their payment before the members of the next class receive
4 payment. Subclasses shall not be established within a class.
5 The order of distribution of claims ~~shall be~~ IS as follows:

6 (a) Class 1. The costs and expenses of administration,
7 including, but not limited to, the following:

8 (i) The actual and necessary costs of preserving or recover-
9 ing the insurer's assets.

10 (ii) Compensation for all services rendered in the
11 liquidation.

12 (iii) Any necessary filing fees.

13 (iv) The fees and mileage payable to witnesses.

14 (v) Reasonable attorney's fees.

15 (vi) The reasonable expenses of a guaranty association or
16 foreign guaranty association in handling claims.

17 (vii) DEBTS DUE TO EMPLOYEES FOR SERVICES PERFORMED TO THE
18 EXTENT THAT THEY DO NOT EXCEED \$1,000.00 AND REPRESENT PAYMENT
19 FOR SERVICES PERFORMED WITHIN 1 YEAR BEFORE THE FILING OF THE
20 PETITION FOR LIQUIDATION, PROVIDED THE COURT DETERMINES THAT THE
21 PAYMENTS ARE REASONABLY NECESSARY TO AN ORDERLY AND EFFECTIVE
22 ADMINISTRATION FOR THE PROTECTION OF CLASS 2 CLAIMANTS. OFFICERS
23 AND DIRECTORS ARE NOT ENTITLED TO THE BENEFIT OF THIS PRIORITY.
24 THIS PRIORITY IS IN LIEU OF ANY OTHER SIMILAR PRIORITY THAT MAY
25 BE AUTHORIZED BY LAW AS TO WAGES OR COMPENSATION OF EMPLOYEES.

26 (viii) ~~(vii)~~ Beginning January 3, 1990, the actual and
27 necessary fees of a supervisor appointed pursuant to section 8109

1 if the liquidation was preceded by supervision pursuant to
2 section 8109 and ~~such~~ THE fees were not paid at the date of
3 liquidation.

4 (b) Class 2. ~~Debts due to employees for services performed~~
5 ~~to the extent that they do not exceed \$1,000.00 and represent~~
6 ~~payment for services performed within 1 year before the filing of~~
7 ~~the petition for liquidation. Officers and directors shall not~~
8 ~~be entitled to the benefit of this priority. This priority shall~~
9 ~~be in lieu of any other similar priority which may be authorized~~
10 ~~by law as to wages or compensation of employees.~~

11 ~~(c) Class 3.~~ All claims under policies for losses incurred,
12 including third party claims, all claims against the insurer for
13 liability for bodily injury or for injury to or destruction of
14 tangible property ~~which~~ THAT are not under policies, and all
15 claims of a guaranty association or foreign guaranty
16 association. All claims under life insurance and annuity poli-
17 cies, whether for death proceeds, annuity proceeds, or investment
18 values, shall be treated as loss claims. That portion of any
19 loss, indemnification for which is provided by other benefits or
20 advantages recovered by the claimant, shall not be included in
21 this class, other than benefits or advantages recovered or recov-
22 erable in discharge of familial obligation of support or by way
23 of succession at death or as proceeds of life insurance, or as
24 gratuities. A payment by an employer to his or her employee
25 shall not be treated as a gratuity.

26 (C) CLASS 3. CLAIMS OF THE FEDERAL GOVERNMENT.

1 (D) CLASS 4. TO THE EXTENT NOT INCLUDED IN CLASS 1, DEBTS
2 DUE TO EMPLOYEES FOR SERVICES PERFORMED TO THE EXTENT THAT THEY
3 DO NOT EXCEED \$1,000.00 AND REPRESENT PAYMENT FOR SERVICES PER-
4 FORMED WITHIN 1 YEAR BEFORE THE FILING OF THE PETITION FOR
5 LIQUIDATION. OFFICERS AND DIRECTORS ARE NOT ENTITLED TO THE BEN-
6 EFIT OF THIS PRIORITY. THIS PRIORITY IS IN LIEU OF ANY OTHER
7 SIMILAR PRIORITY THAT MAY BE AUTHORIZED BY LAW AS TO WAGES OR
8 COMPENSATION OF EMPLOYEES.

9 (E) CLASS 5. ~~(d) Class 4.~~ Claims under nonassessable poli-
10 cies for unearned premium or other premium refunds and claims of
11 general creditors.

12 (F) CLASS 6. ~~(e) Class 5.~~ Claims of ~~the federal or~~ any
13 state or local government. Claims, including those of any gov-
14 ernmental body for a penalty or forfeiture, ~~shall be~~ ARE
15 allowed in this class only to the extent of the pecuniary loss
16 sustained from the act, transaction, or proceeding out of which
17 the penalty or forfeiture arose, with reasonable and actual costs
18 ~~occasioned thereby~~ INCURRED. The remainder of ~~such~~ THE
19 claims shall be postponed to the class of claims under subdivi-
20 sion ~~(h)~~ (I).

21 (G) CLASS 7. ~~(f) Class 6.~~ Claims filed late or any other
22 claims other than claims under subdivisions ~~(g) and (h)~~ (H) AND
23 (I).

24 (H) CLASS 8. ~~(g) Class 7.~~ Surplus or contribution notes,
25 or similar obligations, and premium refunds on assessable
26 policies. Payments to members of domestic mutual insurance
27 companies ~~shall be~~ ARE limited in accordance with law.

1 (I) CLASS 9. ~~(h) Class 8.~~ The claims of shareholders or
2 other owners. In paying claims pursuant to this class, disinter-
3 ested shareholders ~~shall~~ have priority over interested share-
4 holders who are directors or officers who fail to exercise their
5 duties in accordance with section 5240.

6 Sec. 8159. If an ancillary receiver in another state or
7 foreign country, whether called by that name or not, fails to
8 transfer to the domiciliary liquidator in this state any assets
9 within his or her control other than special deposits, diminished
10 only by the expenses of the ancillary receivership, if any, the
11 claims filed in the ancillary receivership, other than special
12 deposit claims or secured claims, shall be placed in the class of
13 claims under section ~~8142(g)~~ 8142(H).

14 Section 2. (1) Sections 8142 and 8159 of Act No. 218 of the
15 Public Acts of 1956, being sections 500.8142 and 500.8159 of the
16 Michigan Compiled Laws, as amended by this amendatory act, apply
17 to all pending and future cases brought under chapter 81 of the
18 insurance code of 1956, Act No. 218 of the Public Acts of 1956,
19 being sections 500.8101 to 500.8159 of the Michigan Compiled
20 Laws, on and after the effective date of this amendatory act.
21 These sections, as amended by this amendatory act, are intended
22 to correct existing law in light of the United States Supreme
23 Court decision in US Dept of Treasury v Fabe, 508 US 491; 113 S
24 Ct 2202; 124 L Ed 2d 449 (1993), and to introduce regulations
25 conducive to the public good.

26 (2) If any portion of this amendatory act or the application
27 of this amendatory act to any person or circumstance is found to

1 be invalid by a court, the invalidity shall not affect the
2 remaining portions or applications of the amendatory act that can
3 be given effect without the invalid portion or application pro-
4 vided the remaining portion is not determined by the court to be
5 inoperable. The court may alter the composition and order of
6 classes listed in section 8142 of Act No. 218 of the Public Acts
7 of 1956, being section 500.8142 of the Michigan Compiled Laws, as
8 amended by this amendatory act, to the minimum extent necessary
9 to render that section valid.