

HB5418, As Passed House, February 4, 1998

H.B. 5418

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
by amending sections 8134, 8142, and 8159 (MCL 500.8134,
500.8142, and 500.8159), section 8134 as added by 1989 PA 302 and
sections 8142 and 8159 as amended by 1996 PA 429.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 8134. (1) Within 120 days of a final determination of
2 insolvency of an insurer by a court of competent jurisdiction of
3 this state, the liquidator shall make application to the court
4 for approval of a proposal to disburse assets out of marshalled
5 assets, from time to time as ~~such~~ THOSE assets become avail-
6 able, to a guaranty association or foreign guaranty association
7 having obligations because of the insolvency. If the liquidator
8 determines that there are insufficient assets to disburse, the
9 application required by this section shall be considered

HB5418, As Passed House, February 4, 1998

04472'97 *

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HB5418, As Passed House, February 4, 1998

2

1 satisfied by a filing by the liquidator stating the reasons for
2 this determination.

3 (2) A proposal under subsection (1) shall at least include
4 provisions for all of the following:

5 (a) Reserving amounts for the payment of expenses of admin-
6 istration and the payment of claims of secured creditors, to the
7 extent of the value of the security held, and claims falling
8 within the priorities established in section ~~8142(a) and (b)~~
9 8142(1)(A) AND (B) AND (2).

10 (b) Disbursement of the assets marshalled to date and subse-
11 quent disbursement of assets as they become available.

12 (c) Equitable allocation of disbursements to each of the
13 guaranty associations and foreign guaranty associations entitled
14 to disbursements.

15 (d) The securing by the liquidator from each of the associa-
16 tions entitled to disbursements pursuant to this section of an
17 agreement to return to the liquidator such assets, together with
18 income earned on assets previously disbursed, as may be required
19 to pay claims of secured creditors and claims falling within the
20 priorities established in section 8142 in accordance with those
21 priorities. A bond shall not be required of any such

HB5418, As Passed House, February 4, 1998

22 association.

23 (e) A full report to be made by each association to the liq-

24 uidator accounting for assets disbursed to the association, all

25 disbursements made from the assets, interest earned by the asso-

26 ciation on the assets, and any other matter as the court ~~may~~

27 ~~direct~~ DIRECTS.

04472'97 *

HB5418, As Passed House, February 4, 1998

3

1 (3) The liquidator's proposal shall provide for
2 disbursements to the associations in amounts estimated at least
3 equal to the claim payments made or to be made thereby for which
4 the associations could assert a claim against the liquidator, and
5 shall further provide that if the assets available for disburse-
6 ment from time to time do not equal or exceed the amount of claim
7 payments made or to be made by the association, then disburse-
8 ments shall be in the amount of available assets.

9 (4) The liquidator's proposal shall, with respect to an
10 insolvent insurer writing life or health insurance or annuities,
11 provide for disbursements of assets to any guaranty association
12 or any foreign guaranty association covering life or health
13 insurance or annuities or to any other entity or organization
14 reinsuring, assuming, or guaranteeing policies or contracts of
15 insurance under the acts creating the associations.

16 (5) Notice of application shall be given to the association
17 in each state and to the commissioners of insurance of each
18 state. Notice shall be considered to have been given when depos-
19 ited in the United States certified mails, first-class postage
20 prepaid, at least 30 days ~~prior to~~ BEFORE submission of the
21 application to the court. Action on the application may be taken

HB5418, As Passed House, February 4, 1998

22 by the court if the notice under this subsection has been given

23 and if the liquidator's proposal complies with subsection (2)(a)

24 and (b).

25 Sec. 8142. (1) ~~The~~ EXCEPT AS PROVIDED IN SUBSECTION (2),

26 THE priority of distribution of claims from the insurer's estate

27 shall be in accordance with the order in which each class of

04472'97 *

HB5418, As Passed House, February 4, 1998

4

1 claims is set forth in this section. Every claim in each class
2 shall be paid in full or adequate funds retained for their pay-
3 ment before the members of the next class receive payment.

4 Subclasses shall not be established within a class. The order of
5 distribution of claims 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~~ IF the court determines that
21 the payments are reasonably necessary to an orderly and effective

HB5418, As Passed House, February 4, 1998

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) Beginning January 3, 1990, the actual and necessary

27 fees of a supervisor appointed pursuant to section 8109 if the

04472'97 *

HB5418, As Passed House, February 4, 1998

5

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

3 (b) Class 2. All claims under policies for losses incurred,
4 including third party claims, all claims against the insurer for
5 liability for bodily injury or for injury to or destruction of
6 tangible property that are not under policies, and all claims of
7 a guaranty association or foreign guaranty association. All
8 claims under life insurance and annuity policies, whether for
9 death proceeds, annuity proceeds, or investment values, shall be
10 treated as loss claims. That portion of any loss, indemnifica-
11 tion for which is provided by other benefits or advantages recov-
12 ered by the claimant, shall not be included in this class, other
13 than benefits or advantages recovered or recoverable in discharge
14 of familial obligation of support or by way of succession at
15 death or as proceeds of life insurance, or as gratuities. A pay-
16 ment by an employer to his or her employee shall not be treated
17 as a gratuity.

18 (c) Class 3. Claims of the federal government.

19 (d) Class 4. To the extent not included in class 1, debts
20 due to employees for services performed to the extent that they
21 do not exceed \$1,000.00 and represent payment for services per-

HB5418, As Passed House, February 4, 1998

22 formed within 1 year before the filing of the petition for
23 liquidation. Officers and directors are not entitled to the ben-
24 efit of this priority. This priority is in lieu of any other
25 similar priority ~~that may be~~ authorized by law as to wages or
26 compensation of employees.

04472'97 *

HB5418, As Passed House, February 4, 1998

6

1 (e) Class 5. Claims under nonassessable policies for
2 unearned premium or other premium refunds and claims of general
3 creditors.

4 (f) Class 6. Claims of any state or local government.
5 Claims, including those of any governmental body for a penalty or
6 forfeiture, are allowed in this class only to the extent of the
7 pecuniary loss sustained from the act, transaction, or proceeding
8 out of which the penalty or forfeiture arose, with reasonable and
9 actual costs incurred. The remainder of the claims shall be
10 postponed to the class of claims under subdivision (i).

11 (g) Class 7. Claims filed late or any other claims other
12 than claims under subdivisions (h) and (i).

13 (h) Class 8. Surplus or contribution notes, or similar
14 obligations, and premium refunds on assessable policies.
15 Payments to members of domestic mutual insurance companies are
16 limited in accordance with law.

17 (i) Class 9. The claims of shareholders or other owners.
18 In paying claims pursuant to this class, disinterested sharehold-
19 ers have priority over interested shareholders who are directors
20 or officers who fail to exercise their duties in accordance with
21 section 5240.

HB5418, As Passed House, February 4, 1998

22 (2) IF IT IS PROVIDED BY WRITTEN AGREEMENT, STATUTE, OR RULE
23 THAT THE ASSETS IN A SEPARATE ACCOUNT ARE NOT CHARGEABLE WITH
24 LIABILITIES ARISING OUT OF ANY OTHER BUSINESS OF THE INSURER,
25 THAT PART OF A CLAIM THAT INCLUDES A SEPARATE ACCOUNT SHALL BE
26 SATISFIED OUT OF THE ASSETS IN THE SEPARATE ACCOUNT EQUAL TO
 THE
27 RESERVES MAINTAINED IN THE SEPARATE ACCOUNT UNDER THE
 SEPARATE

04472'97 *

1 ACCOUNT AGREEMENT. THE REMAINDER OF THE CLAIM SHALL BE
TREATED
2 AS A CLASS 2 CLAIM AGAINST THE INSURER'S ESTATE TO THE EXTENT
3 THAT RESERVES HAVE BEEN ESTABLISHED IN THE INSURER'S GENERAL
4 ACCOUNT PURSUANT TO STATUTE, RULE, OR THE SEPARATE ACCOUNT
5 AGREEMENT.

6 (3) AS USED IN THIS SECTION:

7 (A) "SEPARATE ACCOUNT" MEANS A SEPARATE ACCOUNT AUTHORIZED
8 UNDER SECTION 925 AND ESTABLISHED IN ACCORDANCE WITH THE
TERMS OF
9 A WRITTEN AGREEMENT OR A CONTRACT ON A VARIABLE BASIS.

10 (B) "INSURER'S ESTATE" MEANS ALL OF THE ASSETS OF THE
11 INSURER LESS ANY ASSETS HELD IN SEPARATE ACCOUNTS. THE
FOLLOWING

12 ASSETS SHALL NOT BE CONSIDERED SEPARATE ACCOUNT ASSETS:

13 (i) ASSETS THAT REPRESENT MONEY PROVIDED BY THE INSURER INI-
14 TIALY TO FUND THE SEPARATE ACCOUNT.

15 (ii) ASSETS THAT REPRESENT POLICY RESERVES THAT ARE PROPERLY
16 ALLOCABLE TO THE GENERAL ACCOUNT.

17 (iii) GENERAL ACCOUNT INVESTMENTS HELD IN THE SEPARATE
18 ACCOUNT.

19 Sec. 8159. If an ancillary receiver in another state or

HB5418, As Passed House, February 4, 1998

20 foreign country, whether called by that name or not, fails to
21 transfer to the domiciliary liquidator in this state any assets
22 within his or her control other than special deposits, diminished
23 only by the expenses of the ancillary receivership, if any, the
24 claims filed in the ancillary receivership, other than special
25 deposit claims or secured claims, shall be placed in the class of
26 claims under section ~~8142(h)~~ 8142(1)(H).