AN ACT concerning insurance.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 5. The Illinois Insurance Code is amended by changing Sections 537.2, 537.6, 537.7, and 551 as follows:

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

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

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

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

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

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

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

Sec. 537.6. Allocation of claims; assessments. The Fund shall allocate covered claims paid and expenses incurred between the accounts established by Section 535 separately, and assess member companies separately for each account amounts necessary to pay the obligations of the Fund under Section 537.2 subsequent to the entry of an Order of Liquidation against an insolvent company, the expenses of handling covered claims subsequent to such Order of Liquidation and other expenses authorized by this Article. The assessments of each member company shall be in the proportion that the net direct written premiums of the member company for the calendar year immediately preceding the year in which the assessment is levied on the kinds of insurance in the account bears to the net direct written premiums of all member companies for such preceding calendar year on the kinds of insurance in the account. Each member company shall be notified of the assessment not later than 30 days before

it is due. Before January 1, 2002, no member company may be assessed in any year on any account an amount greater than 1% of that member company's net direct written premiums on the kinds of insurance in the account for the calendar year preceding the assessment. Beginning January 1, 2002, the amount a member company may be assessed in any year on any account shall be a maximum of 2% of that member company's net direct written premium on the kinds of insurance in the account for the calendar year preceding the assessment. This 2% maximum shall apply regardless of the date of any insolvency that gives rise to the need for the assessment. If the maximum assessment, together with the other assets of the Fund in any account, does not provide, in any one year, in any account, an amount sufficient to make all necessary payments from that account, the funds available shall be paid in the manner determined by the Fund and approved by the Director and the unpaid portion shall be paid as soon thereafter as funds become available. If requested by a member company, the Director may exempt or defer the assessment of any member company, if the assessment would cause the member company's financial impairment.

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

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

Sec. 537.7. Investigation of claims; disposition.

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

(b) The Fund shall not be bound by a settlement, release, compromise, waiver, or final judgment executed or

entered within 12 months prior to an order of liquidation and shall have the right to assert all defenses available to the Fund including, but not limited to, defenses applicable to determining and enforcing its statutory rights and obligations to any claim. The Fund shall be bound by a settlement, release, compromise, waiver, or final judgment executed or entered more than 12 months prior to an order of liquidation, however, if the claim is a covered claim and the settlement or judgment was not a result of fraud, collusion, default, or failure to defend. In addition, with respect to covered claims arising from a judgment under a decision, verdict, or finding based on the default of the insolvent insurer or its failure to defend, upon application by the Fund, either on its own behalf or on behalf of an insured, the court shall set aside the judgment, order, decision, verdict, or finding, and the Fund shall be permitted to defend against the claim on the merits.

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

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

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

Sec. 551. Stay of proceedings. All proceedings arising out of a claim under a policy of insurance written by an insolvent company shall be stayed for 120 days from the date of the entry of the Order of Liquidation to permit proper defense by the Fund of all such pending causes of action. ~~As to any covered claims arising from a judgment under any decision, verdict or finding based on the default of the insolvent company or its failure to defend an insured, upon application of the Fund, either on its own behalf or on behalf of such insured, the court or administrator that made such judgment, order, decision, verdict or finding shall set~~

~~aside such judgment, order, decision, verdict or finding and the Fund shall be permitted to defend against such claim on the merits.~~

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

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

President of the Senate

Michael J. Madigan
Speaker, House of Representatives

APPROVED

this 12th day of July 20 01 A.D.

GOVERNOR