

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 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, and by adding
sections 477, 478, 479, and 480.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 477. (1) THE COMMISSIONER SHALL IMPOSE A SIMILAR SANC-
2 TION, FINE, PENALTY, FINANCIAL OR DEPOSIT REQUIREMENT, PROHIBI-
3 TION, RESTRICTION, REGULATORY REQUIREMENT, OR OTHER OBLIGATION ON
4 DOMESTIC INSURERS OF ANOTHER STATE OR TERRITORY IF THE COMMIS-
5 SIONER DETERMINES THAT AN INSURANCE DEPARTMENT OR A SIMILAR REGU-
6 LATORY ENTITY OF ANY OTHER STATE OR TERRITORY OF THE UNITED
7 STATES HAS IMPOSED A SANCTION, FINE, PENALTY, FINANCIAL OR
8 DEPOSIT REQUIREMENT, PROHIBITION, RESTRICTION, REGULATORY

HB 5418, As Passed Senate, March 4, 1998

House Bill No. 5418

2

1 REQUIREMENT, OR OTHER OBLIGATION ON A DOMESTIC INSURER AUTHORIZED
2 TO TRANSACT INSURANCE IN THIS STATE AND LICENSED TO TRANSACT
3 INSURANCE BUSINESS IN THE OTHER STATE OR TERRITORY BECAUSE OF ANY
4 OF THE FOLLOWING:

5 (A) THE INSURANCE BUREAU OF THIS STATE IS NOT ACCREDITED OR
6 OTHERWISE APPROVED BY THE NAIC OR BY AN AGENT OR REPRESENTATIVE
7 OF THE NAIC.

8 (B) THE INSURANCE BUREAU OF THIS STATE HAS NOT COMPLIED WITH
9 A REPORTING REQUIREMENT OR OTHER REQUIREMENT OF ANY KIND IMPOSED
10 DIRECTLY OR INDIRECTLY THROUGH THE LAWS OR REGULATIONS OF ANOTHER
11 STATE, BY THE NAIC, OR BY AN AGENT OR REPRESENTATIVE OF THE
12 NAIC.

13 (C) A DOMESTIC INSURER HAS REFUSED TO COMPLY WITH, FILE, OR
14 PAY ANY REQUIREMENT, REPORT, FEE, ASSESSMENT, OR CHARGE NOT
15 AUTHORIZED BY THE COMMISSIONER PURSUANT TO SECTION 479, WHICH IS
16 IMPOSED DIRECTLY OR INDIRECTLY THROUGH THE LAWS OR REGULATIONS OF
17 ANOTHER STATE, BY THE NAIC, OR BY AN AGENT OR REPRESENTATIVE OF
18 THE NAIC.

19 (2) IF ANY OTHER STATE REQUIRES A MICHIGAN DOMESTIC INSURER
20 TO PAY, DIRECTLY OR INDIRECTLY, A FEE, ASSESSMENT, OR CHARGE OF
21 ANY KIND TO THE NAIC IN EXCESS OF A FEE, ASSESSMENT, OR CHARGE
22 APPROVED BY THE COMMISSIONER UNDER SECTION 479, THAT FEE, ASSESS-
23 MENT, OR CHARGE SHALL BE IMPOSED ON THE DOMESTIC INSURERS OF THE
24 OTHER STATE WHO ARE DOING BUSINESS IN THIS STATE.

25 (3) THE COMMISSIONER SHALL PROMULGATE RULES ADOPTING STAN-
26 DARDS AND PROCEDURES FOR IMPOSING, CALCULATING, APPORTIONING, OR
27 COLLECTING SANCTIONS, FINES, PENALTIES, FINANCIAL OR DEPOSIT

HB 5418, As Passed Senate, March 4, 1998

House Bill No. 5418

3

1 REQUIREMENTS, PROHIBITIONS, RESTRICTIONS, REGULATORY
2 REQUIREMENTS, OR OTHER OBLIGATIONS UNDER SUBSECTION (1) PURSUANT
3 TO THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL
4 24.201 TO 24.328.

5 SEC. 478. (1) ON OR BEFORE OCTOBER 1 OF EACH YEAR, THE NAIC
6 SHALL FILE A REPORT OF ITS ACTIVITIES WITH THE COMMISSIONER AND
7 THE SENATE AND HOUSE OF REPRESENTATIVES STANDING COMMITTEES ON
8 INSURANCE ISSUES. THE REPORT SHALL INCLUDE ALL OF THE
9 FOLLOWING:

10 (A) A SUMMARY OF THE ACTIVITIES OF THE NAIC DURING THE PRE-
11 CEDING YEAR.

12 (B) A FISCAL REPORT, IN ACCORDANCE WITH GENERALLY ACCEPTED
13 ACCOUNTING PRINCIPLES AND ON A FORM APPROVED BY THE COMMISSIONER,
14 STATING EACH CATEGORY OF PERSONAL, OPERATING, AND CAPITAL EXPEN-
15 DITURES, AND EACH CATEGORY OF REVENUE FROM ALL SOURCES FOR THE
16 NAIC'S PRECEDING FISCAL YEAR, AND ANTICIPATED EXPENSES AND REVE-
17 NUES FOR THE CURRENT AND SUCCEEDING FISCAL YEARS. THE FISCAL
18 REPORT SHALL INCLUDE FOR EACH FISCAL YEAR STATEMENTS OF EXPENDI-
19 TURES BY MAJOR PROGRAM; AN AUDIT OPINION OF THE ASSOCIATION'S
20 FISCAL REPORT; THE SALARIES AND OTHER COMPENSATION FOR THE
21 ASSOCIATION'S OFFICERS; THE SALARIES AND OTHER COMPENSATION OF
22 THE PROFESSIONAL AND MANAGERIAL EMPLOYEES RECEIVING THE HIGHEST 5
23 SALARIES; THE SALARY RANGE AND OTHER COMPENSATION OF ALL OTHER
24 PROFESSIONAL AND MANAGERIAL EMPLOYEES; AND OTHER INFORMATION AS
25 MAY BE REQUESTED ON OR BEFORE AUGUST 1 OF EACH YEAR BY THE COM-
26 MISSIONER OR THE SENATE AND HOUSE OF REPRESENTATIVES STANDING
27 COMMITTEES ON INSURANCE ISSUES.

HB 5418, As Passed Senate, March 4, 1998

House Bill No. 5418

4

1 (C) A LIST OF EACH PROPOSED OR REQUIRED NAIC STANDARD,
2 IDENTIFIED BY NAME AND VERSION, TO BE ENACTED, ADOPTED, OR FOL-
3 LOWED IN ORDER FOR A STATE TO RECEIVE OR CONTINUE ITS STATUS AS
4 AN NAIC ACCREDITED STATE, INCLUDING A DETAILED EXPLANATION OF HOW
5 EACH NAIC STANDARD BENEFITS THE PUBLIC INTEREST AND WHY ALTERNA-
6 TIVE MEANS, LESS RESTRICTIVE OF STATE SOVEREIGNTY AND INNOVATION,
7 WOULD NOT ACCOMPLISH AN EQUAL OR GREATER BENEFIT TO THE PUBLIC
8 INTEREST.

9 (D) A LIST OF EACH NAIC STANDARD ADOPTED OR PROPOSED TO BE
10 ADOPTED DURING THE PRECEDING CALENDAR YEAR, IDENTIFIED BY NAME
11 AND VERSION, THAT IS NOT REQUIRED OR PROPOSED TO BE REQUIRED FOR
12 A STATE TO RECEIVE OR CONTINUE ITS STATUS AS AN NAIC ACCREDITED
13 STATE.

14 (E) A DESCRIPTION OF THE POLICIES AND PROCEDURES IN EFFECT
15 WITH THE NAIC THAT ARE DESIGNED TO ENSURE THAT A STATE'S ACCRED-
16 ITATION STATUS IS DETERMINED SOLELY BASED ON THE MERITS OF A
17 STATE'S REGULATORY EFFECTIVENESS, A STATEMENT ON WHETHER THE NAIC
18 HAS COMPLIED WITH THOSE POLICIES AND PROCEDURES, AND A DETAILED
19 EXPLANATION OF ANY NONCOMPLIANCE WITH THOSE POLICIES AND
20 PROCEDURES.

21 (F) A DESCRIPTION OF THE POLICIES AND PROCEDURES DESIGNED TO
22 ENSURE THAT THE NAIC CONDUCTS ITS DELIBERATIONS AND MAKES ITS
23 DECISIONS IN MEETINGS THAT ARE OPEN TO THE PUBLIC AND IN A MANNER
24 THAT PROVIDES FAIR NOTICE AND A FAIR OPPORTUNITY FOR ALL AFFECTED
25 PERSONS TO BE HEARD; A STATEMENT ON WHETHER THE NAIC HAS COMPLIED
26 WITH THOSE POLICIES AND PROCEDURES; AND A DETAILED EXPLANATION OF
27 ANY NONCOMPLIANCE WITH THOSE POLICIES AND PROCEDURES.

HB 5418, As Passed Senate, March 4, 1998

House Bill No. 5418

5

1 (2) ON OR BEFORE MARCH 15 OF EACH YEAR, THE SENATE AND HOUSE
2 OF REPRESENTATIVES STANDING COMMITTEES ON INSURANCE ISSUES SHALL
3 REVIEW THE NAIC REPORT FILED UNDER SUBSECTION (1). THE COMMIT-
4 TEES MAY PROVIDE AN OPPORTUNITY FOR CONSUMERS, THE COMMISSIONER
5 AND OTHER STATE REGULATORS, INSURERS, AND ANY OTHER INTERESTED
6 PERSON TO BE HEARD ON MATTERS RELATING TO THE NAIC AND ANY OTHER
7 MATTER RELATIVE TO THE EFFICIENT AND EFFECTIVE REGULATION OF
8 INSURERS. THE COMMITTEES MAY EXPLORE THE FEASIBILITY OF CONDUCT-
9 ING LEGISLATIVE OVERSIGHT HEARINGS TOGETHER WITH THE LEGISLATIVE
10 COMMITTEES OF OTHER STATES THAT HAVE JURISDICTION OVER INSURANCE
11 MATTERS. THE COMMITTEES MAY TRANSMIT THE RECORD OF THEIR OVER-
12 SIGHT REVIEW TO THE NATIONAL CONFERENCE OF INSURANCE LEGISLATORS,
13 THE NAIC, AND THE COMMISSIONER ON OR BEFORE JULY 1 OF EACH YEAR.

14 SEC. 479. (1) AN INSURER DOMICILED IN THIS STATE AND AUTHO-
15 RIZED TO TRANSACT INSURANCE IN THIS STATE IS NOT REQUIRED AND
16 CANNOT BE COMPELLED TO PAY ANY FEE IMPOSED BY THE NAIC, UNLESS
17 THE FEE IS AUTHORIZED BY AN ORDER OF THE COMMISSIONER PURSUANT TO
18 THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL
19 24.201 TO 24.328.

20 (2) IN DETERMINING WHETHER TO AUTHORIZE THE PAYMENT OF A FEE
21 IMPOSED BY THE NAIC, THE COMMISSIONER SHALL CONSIDER THE NAIC'S
22 ANNUAL REPORT REQUIRED UNDER SECTION 478, ANY LEGISLATIVE OVER-
23 SIGHT REPORTS, RECORDS, OR FINDINGS TRANSMITTED BY THE SENATE AND
24 HOUSE OF REPRESENTATIVES STANDING COMMITTEES ON INSURANCE ISSUES
25 UNDER SECTION 478, AND THE FOLLOWING FACTORS:

HB 5418, As Passed Senate, March 4, 1998

House Bill No. 5418

6

1 (A) HOW THE NAIC DEDICATES THE USE OF THE FEES, INCLUDING
2 THE DEGREE TO WHICH ANY SOLVENCY-RELATED REVENUE IS IMPROPERLY
3 USED TO SUBSIDIZE NAIC FUNCTIONS OTHER THAN SOLVENCY OVERSIGHT.

4 (B) THE DEGREE TO WHICH FEES IMPOSED BY THE NAIC ARE BASED
5 ON AN INSURER'S ANNUAL AMOUNT OF PREMIUM VOLUME, RATHER THAN THE
6 COST OF A SERVICE RENDERED BY THE NAIC.

7 (C) WHETHER THE NAIC HAS EXCEEDED ITS LEGAL AUTHORITY, AS
8 DETERMINED BY AN EXAMINATION OF THE FISCAL REPORT REQUIRED UNDER
9 SECTION 478, AS WELL AS ANY OTHER FACTORS CONSIDERED APPROPRIATE
10 BY THE COMMISSIONER.

11 (D) THE LEVEL OF ACCOUNTABILITY SHOWN BY THE NAIC TO LEGIS-
12 LATIVE AND REGULATORY AUTHORITIES.

13 (E) THE EFFECT OF NAIC STANDARDS ON STATE SOVEREIGNTY AND
14 INNOVATION.

15 (F) WHETHER THE NAIC DETERMINES THE STATE'S ACCREDITATION
16 STATUS SOLELY ON THE BASIS OF ITS REGULATORY EFFECTIVENESS.

17 (G) WHETHER NAIC PROCEEDINGS AND DECISION MAKING ARE OPEN
18 AND PUBLICLY ACCESSIBLE.

19 (3) AN ORDER ISSUED UNDER THIS SECTION SHALL INCLUDE A
20 DETAILED EXPLANATION OF THE COMMISSIONER'S FINDINGS CONCERNING
21 THE FACTORS LISTED IN SUBSECTION (2).

22 (4) THE COMMISSIONER MAY BY AN APPROPRIATE ORDER AUTHORIZE
23 OR PROHIBIT, IN WHOLE OR IN PART, THE PAYMENT OF A FEE IMPOSED BY
24 THE NAIC. THE COMMISSIONER MAY RESCIND OR MODIFY, IN WHOLE OR IN
25 PART, AN ORDER ISSUED BY THE COMMISSIONER UNDER THIS SECTION AS
26 CIRCUMSTANCES WARRANT.

HB 5418, As Passed Senate, March 4, 1998

House Bill No. 5418

7

1 SEC. 480. AS USED IN SECTIONS 477 TO 479:

2 (A) "FEE" MEANS FINANCIAL DATA BASE FEES, ANNUAL STATEMENT
3 FILING FEES, SECURITIES VALUATION FEES, USER FEES, AND ANY OTHER
4 FINANCIAL ASSESSMENT OR CHARGE OF ANY KIND IMPOSED DIRECTLY OR
5 INDIRECTLY BY THE NAIC.

6 (B) "NAIC" MEANS THE NATIONAL ASSOCIATION OF INSURANCE
7 COMMISSIONERS.

8 (C) "NAIC STANDARD" MEANS A DIRECTIVE; FINANCIAL ANNUAL
9 STATEMENT REQUIREMENT; MODEL ACT; MODEL REGULATION; ISSUE PAPER;
10 MARKET CONDUCT OR FINANCIAL EXAMINATION REPORT OR REQUIREMENT;
11 ACCOUNTING PRACTICE, PROCEDURE, OR REPORTING STANDARD; SECURITIES
12 VALUATION REQUIREMENT; OR ANY REPORT, ACTION, OR PROGRAM OF ANY
13 KIND PROMULGATED BY THE NAIC, OR A COMMITTEE, TASK FORCE, WORKING
14 GROUP, OR ADVISORY COMMITTEE OF THE NAIC.

15 (D) "SOLVENCY OVERSIGHT" MEANS AN ACTIVITY DIRECTLY RELATED
16 TO REGULATING THE FINANCIAL CONDITION OF AN INSURER. SOLVENCY
17 OVERSIGHT DOES NOT INCLUDE AN ACTIVITY RELATED TO MARKET CONDUCT
18 REGULATION, MARKET REGULATORY SUPPORT, OR GENERAL REGULATORY
19 SUPPORT.

20 (E) "SOLVENCY-RELATED REVENUE" MEANS ONLY FINANCIAL DATA
21 BASE FEES, ANNUAL STATEMENT FEES, AND SECURITIES VALUATION FEES.

22 Sec. 8134. (1) Within 120 days of a final determination of
23 insolvency of an insurer by a court of competent jurisdiction of
24 this state, the liquidator shall make application to the court
25 for approval of a proposal to disburse assets out of marshalled
26 assets, from time to time as ~~such~~ THOSE assets become
27 available, to a guaranty association or foreign guaranty

HB 5418, As Passed Senate, March 4, 1998

House Bill No. 5418

8

1 association having obligations because of the insolvency. If the
2 liquidator determines that there are insufficient assets to dis-
3 burse, the application required by this section shall be consid-
4 ered satisfied by a filing by the liquidator stating the reasons
5 for this determination.

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

8 (a) Reserving amounts for the payment of expenses of admin-
9 istration and the payment of claims of secured creditors, to the
10 extent of the value of the security held, and claims falling
11 within the priorities established in section ~~8142(a) and (b)~~
12 8142(1)(A) AND (B) AND (2).

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

15 (c) Equitable allocation of disbursements to each of the
16 guaranty associations and foreign guaranty associations entitled
17 to disbursements.

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

26 (e) A full report to be made by each association to the
27 liquidator accounting for assets disbursed to the association,

HB 5418, As Passed Senate, March 4, 1998

House Bill No. 5418

9

1 all disbursements made from the assets, interest earned by the
2 association on the assets, and any other matter as the court ~~may~~
3 ~~direct~~ DIRECTS.

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

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

19 (5) Notice of application shall be given to the association
20 in each state and to the commissioners of insurance of each
21 state. Notice shall be considered to have been given when depos-
22 ited in the United States certified mails, first-class postage
23 prepaid, at least 30 days ~~prior to~~ BEFORE submission of the
24 application to the court. Action on the application may be taken
25 by the court if the notice under this subsection has been given
26 and if the liquidator's proposal complies with subsection (2)(a)
27 and (b).

HB 5418, As Passed Senate, March 4, 1998

House Bill No. 5418

10

1 Sec. 8142. (1) ~~The~~ EXCEPT AS PROVIDED IN SUBSECTION (2),
2 THE priority of distribution of claims from the insurer's estate
3 shall be in accordance with the order in which each class of
4 claims is set forth in this section. Every claim in each class
5 shall be paid in full or adequate funds retained for their pay-
6 ment before the members of the next class receive payment.
7 Subclasses shall not be established within a class. The order of
8 distribution of claims is as follows:

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

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

13 (ii) Compensation for all services rendered in the
14 liquidation.

15 (iii) Any necessary filing fees.

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

17 (v) Reasonable attorney's fees.

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

20 (vii) Debts due to employees for services performed to the
21 extent that they do not exceed \$1,000.00 and represent payment
22 for services performed within 1 year before the filing of the
23 petition for liquidation, ~~provided~~ IF the court determines that
24 the payments are reasonably necessary to an orderly and effective
25 administration for the protection of class 2 claimants. Officers
26 and directors are not entitled to the benefit of this priority.

HB 5418, As Passed Senate, March 4, 1998

House Bill No. 5418

11

1 This priority is in lieu of any other similar priority ~~that may~~
2 ~~be~~ authorized by law as to wages or compensation of employees.

3 (viii) Beginning January 3, 1990, the actual and necessary
4 fees of a supervisor appointed pursuant to section 8109 if the
5 liquidation was preceded by supervision pursuant to section 8109
6 and the fees were not paid at the date of liquidation.

7 (b) Class 2. All claims under policies for losses incurred,
8 including third party claims, all claims against the insurer for
9 liability for bodily injury or for injury to or destruction of
10 tangible property that are not under policies, and all claims of
11 a guaranty association or foreign guaranty association. All
12 claims under life insurance and annuity policies, whether for
13 death proceeds, annuity proceeds, or investment values, shall be
14 treated as loss claims. FOR PURPOSES OF THIS SECTION, LIFE
15 INSURANCE AND ANNUITY POLICIES INCLUDE, BUT ARE NOT LIMITED TO,
16 INDIVIDUAL ANNUITIES, GROUP ANNUITIES, GUARANTEED INVESTMENT CON-
17 TRACTS, AND FUNDING AGREEMENT CONTRACTS, ISSUED BY AN INSURER.
18 That portion of any loss, indemnification for which is provided
19 by other benefits or advantages recovered by the claimant, shall
20 not be included in this class, other than benefits or advantages
21 recovered or recoverable in discharge of familial obligation of
22 support or by way of succession at death or as proceeds of life
23 insurance, or as gratuities. A payment by an employer to his or
24 her employee shall not be treated as a gratuity.

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

26 (d) Class 4. To the extent not included in class 1, debts
27 due to employees for services performed to the extent that they

HB 5418, As Passed Senate, March 4, 1998

House Bill No. 5418

12

1 do not exceed \$1,000.00 and represent payment for services
2 performed within 1 year before the filing of the petition for
3 liquidation. Officers and directors are not entitled to the ben-
4 efit of this priority. This priority is in lieu of any other
5 similar priority ~~that may be~~ authorized by law as to wages or
6 compensation of employees.

7 (e) Class 5. Claims under nonassessable policies for
8 unearned premium or other premium refunds and claims of general
9 creditors.

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

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

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

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

HB 5418, As Passed Senate, March 4, 1998

House Bill No. 5418

13

1 (2) IF IT IS PROVIDED BY WRITTEN AGREEMENT, STATUTE, OR RULE
2 THAT THE ASSETS IN A SEPARATE ACCOUNT ARE NOT CHARGEABLE WITH
3 LIABILITIES ARISING OUT OF ANY OTHER BUSINESS OF THE INSURER,
4 THAT PART OF A CLAIM THAT INCLUDES A SEPARATE ACCOUNT SHALL BE
5 SATISFIED OUT OF THE ASSETS IN THE SEPARATE ACCOUNT EQUAL TO THE
6 RESERVES MAINTAINED IN THE SEPARATE ACCOUNT UNDER THE SEPARATE
7 ACCOUNT AGREEMENT. THE REMAINDER OF THE CLAIM SHALL BE TREATED
8 AS A CLASS 2 CLAIM AGAINST THE INSURER'S ESTATE TO THE EXTENT
9 THAT RESERVES HAVE BEEN ESTABLISHED IN THE INSURER'S GENERAL
10 ACCOUNT PURSUANT TO STATUTE, RULE, OR THE SEPARATE ACCOUNT
11 AGREEMENT.

12 (3) AS USED IN THIS SECTION:

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

16 (B) "INSURER'S ESTATE" MEANS ALL OF THE ASSETS OF THE
17 INSURER LESS ANY ASSETS HELD IN SEPARATE ACCOUNTS. THE FOLLOWING
18 ASSETS SHALL NOT BE CONSIDERED SEPARATE ACCOUNT ASSETS:

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

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

23 (iii) GENERAL ACCOUNT INVESTMENTS HELD IN THE SEPARATE
24 ACCOUNT.

25 Sec. 8159. If an ancillary receiver in another state or
26 foreign country, whether called by that name or not, fails to
27 transfer to the domiciliary liquidator in this state any assets

HB 5418, As Passed Senate, March 4, 1998

House Bill No. 5418

14

1 within his or her control other than special deposits, diminished
2 only by the expenses of the ancillary receivership, if any, the
3 claims filed in the ancillary receivership, other than special
4 deposit claims or secured claims, shall be placed in the class of
5 claims under section ~~8142(h)~~ 8142(1)(H).