

SB 639, As Passed Senate, November 8, 2001

**SUBSTITUTE FOR
SENATE BILL NO. 639**

A bill to amend 1956 PA 218, entitled
"The insurance code of 1956,"
by amending section 8142 (MCL 500.8142), as amended by 1998
PA 279.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 8142. (1) Except as provided in subsection (2), the
2 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:

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1 (i) The actual and necessary costs of preserving or
2 recovering the insurer's assets.

3 (ii) Compensation for all services rendered in the
4 liquidation.

5 (iii) Any necessary filing fees.

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

7 (v) Reasonable attorney's fees.

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

10 (vii) Debts due to employees for services performed to the
11 extent that they do not exceed \$1,000.00 and represent payment
12 for services performed within 1 year before the filing of the
13 petition for liquidation, if the court determines that the pay-
14 ments are reasonably necessary to an orderly and effective admin-
15 istration for the protection of class 2 claimants. Officers and
16 directors are not entitled to the benefit of this priority. This
17 priority is in lieu of any other similar priority authorized by
18 law as to wages or compensation of employees.

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

23 (b) Class 2. ~~All~~ EXCEPT AS OTHERWISE PROVIDED IN THIS
24 SECTION, ALL claims under policies for losses incurred, including
25 third party claims, ~~all claims against the insurer for liability~~
26 ~~for bodily injury or for injury to or destruction of tangible~~
27 ~~property that are not under policies,~~ and all claims of a

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1 guaranty association or foreign guaranty association. HOWEVER,
2 OBLIGATIONS OF AN INSOLVENT INSURER ARISING OUT OF REINSURANCE
3 CONTRACTS SHALL NOT BE INCLUDED IN THIS CLASS. All claims under
4 life insurance and annuity policies, whether for death proceeds,
5 annuity proceeds, or investment values, shall be treated as loss
6 claims. For purposes of this section, life insurance and annuity
7 policies include, but are not limited to, individual annuities,
8 group annuities, guaranteed investment contracts, and funding
9 agreement contracts, issued by an insurer. That portion of any
10 loss, indemnification for which is provided by other benefits or
11 advantages recovered by the claimant, shall not be included in
12 this class, other than benefits or advantages recovered or recov-
13 erable in discharge of familial obligation of support or by way
14 of succession at death or as proceeds of life insurance, or as
15 gratuities. A payment by an employer to his or her employee
16 shall not be treated as a gratuity.

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

18 (d) Class 4. ~~To~~ ALL CLAIMS AGAINST THE INSURER FOR
19 LIABILITY FOR BODILY INJURY OR FOR INJURY TO OR DESTRUCTION OF
20 TANGIBLE PROPERTY THAT ARE NOT UNDER POLICIES AND, TO the extent
21 not included in class 1, debts due to employees for services per-
22 formed to the extent that they do not exceed \$1,000.00 and repre-
23 sent payment for services performed within 1 year before the
24 filing of the petition for liquidation. Officers and directors
25 are not entitled to the benefit of ~~this priority. This~~
26 ~~priority~~ THE PRIORITY FOR DEBTS DUE TO EMPLOYEES FOR SERVICES
27 PERFORMED. THE PRIORITY FOR DEBTS DUE TO EMPLOYEES FOR SERVICES

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1 PERFORMED is in lieu of any other similar priority authorized by
2 law as to wages or compensation of employees.

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

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

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

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

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

24 (2) If it is provided by written agreement, statute, or rule
25 that the assets in a separate account are not chargeable with
26 liabilities arising out of any other business of the insurer,
27 that part of a claim that includes a separate account shall be

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1 satisfied out of the assets in the separate account equal to the
2 reserves maintained in the separate account under the separate
3 account agreement. The remainder of the claim shall be treated
4 as a Class 2 claim against the insurer's estate to the extent
5 that reserves have been established in the insurer's general
6 account pursuant to statute, rule, or the separate account
7 agreement.

8 (3) As used in this section:

9 (a) "Separate account" means a separate account authorized
10 under section 925 and established in accordance with the terms of
11 a written agreement or a contract on a variable basis.

12 (b) "Insurer's estate" means all of the assets of the
13 insurer less any assets held in separate accounts. The following
14 assets shall not be considered separate account assets:

15 (i) Assets that represent money provided by the insurer ini-
16 tially to fund the separate account.

17 (ii) Assets that represent policy reserves that are properly
18 allocable to the general account.

19 (iii) General account investments held in the separate
20 account.