

# SENATE BILL No. 639

September 19, 2001, Introduced by Senator BULLARD and referred to the Committee on Financial Services.

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:

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 claims under policies for losses incurred,  
24 including third party claims, ~~all claims against the insurer for~~  
25 ~~liability for bodily injury or for injury to or destruction of~~  
26 ~~tangible property that are not under policies,~~ and all claims of  
27 a guaranty association or foreign guaranty association. All

1 claims under life insurance and annuity policies, whether for  
2 death proceeds, annuity proceeds, or investment values, shall be  
3 treated as loss claims. For purposes of this section, life  
4 insurance and annuity policies include, but are not limited to,  
5 individual annuities, group annuities, guaranteed investment con-  
6 tracts, and funding agreement contracts, issued by an insurer.  
7 That portion of any loss, indemnification for which is provided  
8 by other benefits or advantages recovered by the claimant, shall  
9 not be included in this class, other than benefits or advantages  
10 recovered or recoverable in discharge of familial obligation of  
11 support or by way of succession at death or as proceeds of life  
12 insurance, or as gratuities. A payment by an employer to his or  
13 her employee shall not be treated as a gratuity.

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

15 (d) Class 4. To the extent not included in class 1, debts  
16 due to employees for services performed to the extent that they  
17 do not exceed \$1,000.00 and represent payment for services per-  
18 formed within 1 year before the filing of the petition for  
19 liquidation. Officers and directors are not entitled to the ben-  
20 efit of this priority. This priority is in lieu of any other  
21 similar priority authorized by law as to wages or compensation of  
22 employees.

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

26 (f) Class 6. Claims of any state or local government.

27 Claims, including those of any governmental body for a penalty or

1 forfeiture, are allowed in this class only to the extent of the  
2 pecuniary loss sustained from the act, transaction, or proceeding  
3 out of which the penalty or forfeiture arose, with reasonable and  
4 actual costs incurred. The remainder of the claims shall be  
5 postponed to the class of claims under subdivision (i).

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

8 (h) Class 8. Surplus or contribution notes, or similar  
9 obligations, and premium refunds on assessable policies.

10 Payments to members of domestic mutual insurance companies are  
11 limited in accordance with law.

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

17 (2) If it is provided by written agreement, statute, or rule  
18 that the assets in a separate account are not chargeable with  
19 liabilities arising out of any other business of the insurer,  
20 that part of a claim that includes a separate account shall be  
21 satisfied out of the assets in the separate account equal to the  
22 reserves maintained in the separate account under the separate  
23 account agreement. The remainder of the claim shall be treated  
24 as a Class 2 claim against the insurer's estate to the extent  
25 that reserves have been established in the insurer's general  
26 account pursuant to statute, rule, or the separate account  
27 agreement.

1 (3) As used in this section:

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

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

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

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

12 (iii) General account investments held in the separate  
13 account.