

AN ACT concerning regulation.

**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 533, 534, 537.2, 537.7, 538.2, and 545 and by adding Section 534.9 as follows:

(215 ILCS 5/533) (from Ch. 73, par. 1065.83)

Sec. 533. Scope. This Article applies to all of the kinds of insurance written on a direct basis which are included in Class 2 and Class 3 of Section 4 of this Code ~~as they appear and are defined in those clauses as of January 1, 1985,~~ except that it shall not apply to:

(a) accident and health insurance written under clause (a) of Class 2, or

(b) mortgage guaranty or other financial guaranty written as suretyship obligations or insurance under clause (g), clause (h) or clause (i) of Class 2 or otherwise, or

(c) fidelity or surety bonds, or any other bonding obligations other than employee fidelity bonds, or

(d) marine insurance other than inland marine insurance, written under clause (d) of Class 3, or

(e) insurance of warranties or service contracts, including insurance that provides for the repair, replacement,

or service of goods or property or indemnification for repair, replacement, or service for the operational or structural failure of the goods or property due to a defect in materials, workmanship, or normal wear and tear or provides reimbursement for the liability incurred by the issuer of agreements or service contracts that provide these benefits, or

(f) any claim servicing agreement or insurance policy which contains a retrospective rating or other premium adjustment agreement under which premiums are substantially equal to the losses and loss expenses covered under the policy or any policy providing retroactive insurance of known loss, or

(g) any insurance which is provided, guaranteed or reinsured pursuant to the Federal Crop Insurance Program or the National Flood Insurance Program, including flood insurance written by National Flood Insurance Program Write Your Own Companies.

(Source: P.A. 89-97, eff. 7-7-95.)

(215 ILCS 5/534) (from Ch. 73, par. 1065.84)

Sec. 534. Definitions. For the purposes of this Article, unless the context requires otherwise, the words and phrases defined in Sections 534.1 through 534.9 ~~534.8~~ have the meanings set forth in those Sections.

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

(215 ILCS 5/534.9 new)

Sec. 534.9. Cybersecurity insurance. "Cybersecurity insurance" means a type of insurance under Class 2 of Section 4 of this Code that involves first-party and third-party coverage, in a policy or endorsement, written on a direct, admitted basis to cover losses and loss mitigation arising out of or relating to data privacy breaches, unauthorized information network security intrusions, computer viruses, ransomware, cyber extortion, identity theft, and similar exposures.

(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 and before January 1, 2011, 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. If the entry of an Order of Liquidation occurs on or after January 1, 2011, then such obligations shall not: (i) exceed \$500,000, 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 refund any unearned premium over \$10,000 under any one policy. If the entry of an Order of Liquidation occurs on or after January 1, 2023, then such obligations shall not: (i) exceed \$500,000, except that this limitation shall not apply to any workers compensation claims, or (ii) exceed without any deduction \$50,000 for any unearned premium claim or refund under any one policy. In no event shall the Fund be obligated to a policyholder or claimant in an amount in excess of the face amount of the policy from which the claim arises, including, but not limited to, any applicable specific or aggregate limits. For purposes of this Article Act, obligations arising under an insurance policy

written to indemnify a permissibly self-insured employer under subsection (a) of Section 4 of the Workers' Compensation Act for its liability to pay workers' compensation benefits in excess of a specific or aggregate retention shall be subject to the applicable per-claim limits set forth in this Section.

In no event shall the Fund be obligated to pay an amount in excess of \$500,000 in the aggregate for all first-party and third-party claims under a policy or endorsement providing cybersecurity insurance as defined in Section 534.9 and arising out of or related to a single insured event, regardless of the number of claims made or number of claimants.

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. 99-368, eff. 8-14-15.)

(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.

(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, but only if the claim is a covered claim and the settlement, release, compromise, waiver, or final 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. The same criteria determining whether the Fund will be bound, as specified in this subsection (b), shall apply to any settlement, release,

compromise, waiver, or final judgment entered into by a high net worth insured before the date on which claims by or against that insured became non-exempt for reasons specified in paragraph (iv) of subsection (b) of Section 534.3.

(c) 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 as well as the right to appoint or approve and to direct legal counsel and other service providers under any other insurance policies subject to this Article, regardless of any limitations in the policy.

(Source: P.A. 101-60, eff. 7-12-19.)

(215 ILCS 5/538.2) (from Ch. 73, par. 1065.88-2)

Sec. 538.2. The Fund may employ or retain such persons as are necessary to handle claims, provide policy benefits and services, and perform other duties of the Fund.

(Source: P.A. 77-305.)

(215 ILCS 5/545) (from Ch. 73, par. 1065.95)

Sec. 545. Effect of paid claims.

(a) Every insured or claimant seeking the protection of this Article shall cooperate with the Fund to the same extent as such person would have been required to cooperate with the insolvent company. The Fund shall have all the rights, duties and obligations under the policy to the extent of the covered claim payment, provided the Fund shall have no cause of action

against the insured of the insolvent company for any sums it has paid out except such causes of action as the insolvent company would have had if such sums had been paid by the insolvent company and except as provided in subsection (d) of this Section. Any person recovering under this Article and any insured whose liabilities are satisfied under this Article shall be deemed to have assigned the person's or insured's rights under the policy to the Fund to the extent of his or her recovery or satisfaction obtained from the Fund's payments.

(b) The Fund and any similar organization in another state shall be recognized as claimants in the liquidation of an insolvent company for any amounts paid by them on covered claims obligations as determined under this Article or similar laws in other states and shall receive dividends at the priority set forth in paragraph (d) of subsection (1) of Section 205 of this Code; provided that if, at the time that the liquidator issues a cut-off notice to the Fund in anticipation of closing the estate, a reserve has been established by the Fund, or any similar organization in another state, for the amount of their future administrative expenses and loss development associated with unpaid reported pending claims, these reserves will be deemed to have been paid as of the date of the notice and payment shall be made accordingly. The liquidator of an insolvent company shall be bound by determinations of covered claim eligibility under the Act and by settlements of claims made by the Fund or a similar

organization in another state on the receipt of certification of such payments, to the extent those determinations or settlements satisfy obligations of the Fund, but the receiver shall not be bound in any way by those determinations or settlements to the extent that there remains a claim in the estate for amounts in excess of the payments by the Fund. In submitting their claim for covered claim payments the Fund and any similar organization in another state shall not be subject to the requirements of Sections 208 and 209 of this Code and shall not be affected by the failure of the person receiving a covered claim payment to file a proof of claim.

(c) The expenses of the Fund and of any similar organization in any other state, other than expenses incurred in the performance of duties under Section 547 or similar duties under the statute governing a similar organization in another state, shall be accorded priority over all claims against the estate, except as provided for in paragraph (a) of subsection (1) of Section 205 of this Code. The liquidator shall make prompt reimbursement to the Fund and any similar organization for such expense payments.

(d) The Fund has the right to recover from the following persons the amount of any covered claims (as determined without regard to the exemption in paragraph (iv) of subsection (b) of Section 534.3) and allocated claims expenses which the Fund paid or incurred on behalf of such person in satisfaction, in whole or in part, of liability obligations of

such person to any other person:

(i) any insured whose net worth on December 31 of the year next preceding the date the company becomes an insolvent company exceeds \$25,000,000; provided that an insured's net worth on such date shall be deemed to include the aggregate net worth of the insured and all of its affiliates as calculated on a consolidated basis.

(ii) any insured who is an affiliate of the insolvent company.

The Fund may also, at its sole discretion and without assumption of any ongoing duty to do so, pay any workers compensation claims or any other third-party claims or any cybersecurity insurance obligations covered by a policy of an insolvent company on behalf of a high net worth insured as defined in paragraph (iv) of subsection (b) of Section 534.3. In that case, the Fund shall recover from the high net worth insured under this Section for all amounts paid on its behalf, all allocated claim adjusted expenses related to such claims, the Fund's attorney's fees, and all court costs in any action necessary to collect the full amount to the Fund's reimbursement under this Section.

(Source: P.A. 100-410, eff. 8-25-17; 101-60, eff. 7-12-19.)

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